

Magdalena Suska

Debate on Issues Concerning the EU Citizens' Rights after Brexit

Roczniki Administracji i Prawa 17/2, 121-142

2017

Artykuł został opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej bazhum.muzhp.pl, gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

Review article

Received: **04.09.2017**

Accepted: **16.10.2017**

Published: **20.12.2017**

Sources of funding for publication: **Humanitas University**

Authors' Contribution:

(A) Study Design

(B) **Data Collection**

(C) Statistical Analysis

(D) **Data Interpretation**

(E) Manuscript Preparation

(F) LiteratureSearch

Magdalena Suska*

DEBATE ON ISSUES CONCERNING THE EU CITIZENS' RIGHTS AFTER BREXIT

INTRODUCTION

The procedure of the withdrawal of a Member State from the EU is regulated by Article 50 of the Treaty of European Union (TEU)¹. Undisputedly, triggering the procedure under the Article 50 (TEU) which there is no turning back from, leads to a number of economic, political and social changes the UK and the EU will have to face. One of the most important matters connected with the UK's exit from the EU is the issue of the citizens' rights.

This paper raises a question what the EU's and UK's position towards the issue of the citizens' rights of both Europeans in the UK and Britons in the EU after Brexit is. What issues concerning Brexit are the most significant from the British and the EU's perspective? What will happen to EU migrants living in the UK after Brexit? Which countries would be affected most by the possible restrictions concerning the UK's migration policy, and rights of which migrants (from which countries) could be most threatened after the divorce?

* PhD, Warsaw School of Economics.

¹ A. Young, Brexit, Article 50 and the 'Joys' of a Flexible, Evolving, Un-codified Constitution, U.K. Const. L. Blog, 01.07.2016, <https://ukconstitutionallaw.org/2016/07/01/alison-l-young-brexit-article-50-andthe-joys-of-a-flexible-evolving-un-codified-constitution> (access: 01.09.2017).

The article is structured according to three parts – a theoretical one, an empirical one and the conclusions. In the theoretical part, I will analyse the main issues of Brexit negotiations, then the citizens' rights after Brexit, in particular. In the empirical part, I will analyse data concerning the structure of foreign-born population in the UK, by birth and nationality, including the number of EU and non-EU immigrants, as well as the main reasons for their migration and current migration trends. In the conclusions, I will try to answer the question why, in the ongoing debate on regulating the issue of the citizens' rights, there are different positions represented by the EU and the UK and what would be the consequences of Brexit for migrants living in the UK and their rights. I will also speculate over the citizens' rights that may be breached after the divorce and migrants who could be most affected by new restrictions.

The paper contributes to business literature as it is a compilation of different opinions and attitudes towards the situation of foreign-born people living in the UK, which is the key issue of Article 50 negotiations. It facilitates the understanding of possible consequences which Brexit may entail for immigrants living in the UK. It tries to answer a burning question of whether the EU nationals who arrive in the UK do pose a threat for the British labour market, and whether the restrictions proposed would be effective in the light of the current structure of foreign-born population resident in the UK.

THE MAIN ISSUES OF BREXIT NEGOTIATIONS

The procedure under the Article 50 of the Treaty on European Union (TEU) is triggered by notifying the European Council by a Member State about the intention to leave the EU. It was not surprising that the British government was cautious about taking this step. The former Prime Minister, David Cameron, announced many times that the procedure to leave the EU would initiate his successor in October 2016. The new Prime Minister, Theresa May, just after having taken the office, attended a number of bilateral meetings aimed at monitoring the political interests in different European capitals before the coming exit negotiations. On 29 March 2017 the UK notified formally the European Council about its intention to leave the EU. The European Council accepted the statement on the UK's notification. Consequently, the British government triggered formally, in frames of its competence (royal prerogative), the procedure to leave the EU under the Article 50 TEU².

Submitting the notification to the European Council under the Article 50 TEU leads to triggering the exit procedure and, therefore, opening negotiations to leave the EU. These negotiations are to determine the conditions of the exit (formalized under a special exit agreement), together with the specification of the frames of the future relations between the UK (as a third party in future) with the EU. On 19 June 2017 the first Brexit negotiation round between the UK and

² Statement made during an informal EU27 meeting, Brussels, 29.06.2016, www.consilium.europa.eu/pl/meetings/european-council/2016/06/29-27MSinformal-meeting-statement [access: 01.09.2017].

the EU began. Apart from the structure of negotiations, the main topics covered the issues connected with the citizens' rights, financial settlements, the future of the border between Ireland and Northern Ireland, which after Brexit will be the EU external land border, as well as other issues concerning the UK's exit from the EU. On 28 August 2017 the third round of Brexit negotiations began in Brussels³. When it comes to the citizens' rights, negotiators were still analysing and comparing their positions. They focused on issues which had not been raised yet, such as professional qualifications and economic rights. As far as other issues are concerned, negotiators discussed such topics related to Brexit as: Euratom, trade in goods, current EU procedures, as well as judicial cooperation in civil and criminal matters⁴. According to the schedule, during the next round the main principles of the divorce were to be agreed on, namely the three main issues were to be solved: the issue of the account for Great Britain for its liabilities resulting from the membership in the EU also after the date of Brexit, the EU citizens' rights in the UK and Britons' rights in the EU. Moreover, the status of the border between Ireland and Northern Ireland, which is essential to maintain peace in Northern Ireland, was to be settled, as well as tight economic relations between both countries maintained⁵.

To conduct these negotiations the Treaty outlines the time frame; according to Article 50(3), if the agreement is not achieved within two years, the UK will automatically leave the EU. As a result of a lack of different regulations in the agreement between the EU and UK, its status will be the status of a WTO Member State and according to WTO's principles their reciprocal economic relations will be shaped⁶.

The consequences of the qualitative change of the relations between the UK and the EU, i.e., transition from the status of a EU member to an "ordinary" trade partner according to WTO's principles can be substantial. Most probably they will not affect significantly trade in goods because in the light of the WTO's principles, duty rates are relatively low, ranging from 5% to 10%. However, if the volume of trade between the UK and the EU is considered, over half of the British exports goes to the EU, and simultaneously nearly half of the imported goods comes from the EU-19⁷.

The consequences of Brexit will be much more serious for the sector of financial services. Currently, each British bank, as well as a bank from a third state admitted to operate in UK may, on the basis of a single bank license, do business within the entire European internal market. This freedom, together

³ According to the schedule such rounds last for three days and take place once a month. Between them each party prepares their negotiation positions, and in the case of the EU consultations with the European Parliament and Member States are conducted.

⁴ Consilium Europa, UE i Wielka Brytania po referendum z 23 czerwca 2016, 2016, <http://www.consilium.europa.eu/pl/policies/eu-uk-after-referendum/> [access: 09.09.2017].

⁵ A. Słojewska, *Brexit: Flegmatyczne negocjacje*, „Rzeczpospolita”, 30.08.2017, <http://www.rp.pl/Brexit/308309887-Brexit-Flegmatyczne-negocjacje.html#ap-2> [access: 05.09.2017].

⁶ Ibidem.

⁷ Ibidem.

with an important argument to the advantage of the role of London as the main financial hub, will remain invalid after Brexit, and its position in the world of finance could be threatened⁸.

Since the referendum on Brexit, there has been insecurity concerning private direct investments made by entities using the UK as a gate to the European economy. According to the statement of the Japanese government published in July 2013 “over 1,300 companies invested in the UK as a part of the European internal market and created over 130,000 workplaces – more than in any other EU states”. It envisages the privileged position of the UK as the gate to the European economy, which caused that these investments were possible. The Japanese government expects the UK to maintain its position⁹. Other countries, such as: Chile, India, Russia, Canada, the USA, as well as the emerging markets, e.g., Mexico, Brazil, South Africa do similar businesses in the UK¹⁰.

Brexit tackles a number of issues – political, financial and social ones. Whereas the UK seems to put an emphasis on the financial matters connected with its withdrawal from the EU, for the EU the situation of migrants is the first priority of the Article 50 negotiations that are taking Britain out of the EU. Its key part is devoted to the status of EU citizens living in the UK and Britons living on the continent that needs to be settled in the withdrawal agreement, which will set the basic rules for life after Brexit.

CITIZENS’ RIGHTS AFTER BREXIT

Citizens’ rights are “the rights and protections offered to all EU citizens, including free movement and residence, equal treatment and a wide range of other rights under the EU law regarding work, education, social security and health”¹¹, which are held by more than three million European resident in the UK and more than a million Britons living in the EU.

According to Donald Tusk, the European Council’s President, the EU needs “real guarantees for our people who live, work and study in the UK, and the same goes for Brits”. Similarly, the British government emphasised in its Brexit white paper that it also wants to give people the certainty they want, which is the right and fair thing to do. In sessions of Article 50 negotiations both parties confirmed that they would prioritise the question of citizens’ rights and agree that any agreement on citizens’ future legal status and rights must be reciprocal¹².

However, admitting that a problem needs urgent resolution is not the same as agreeing on the answer how to resolve it since citizens’ rights constitute

⁸ H.B. Schäfer, A. Radwan, Brexit poker – czyli o tym, kto ma lepsze karty w negocjacjach ustąpieniowych (Art. 50 TUE), *Allerhand Working Paper 16/2016*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2840666 [access: 10.09.2017].

⁹ I. Oakeshott, M. Woolf, Japan warns UK not to leave Europe, “The Sunday Times”, 21.07.2013, http://www.thesundaytimes.co.uk/sto/news/uk_news/National/article1290626.ece [access: 01.09.2017].

¹⁰ H.B. Schäfer, A. Radwan, Brexit poker ..., op. cit.

¹¹ J. Henley, How do citizens’ rights affect Brexit negotiations?, “The Guardian”, 27.06.2017, <https://www.theguardian.com/politics/2017/jun/19/how-do-citizens-rights-affect-brexit-negotiations> [access: 01.09.2017].

¹² *Ibidem*.

an increasingly complex issue, and could prove a big obstacle for the UK and the EU. The issue of citizens' rights has already generated negative feelings. Theresa May's statement that she tried to reach an early deal on the issue, but was "rebuffed" by Member States reminded the EU that the problem could not be addressed beyond the formal negotiations¹³. Moreover, after a series of cases involving longstanding residents or their children being denied permanent residency, the British government has been accused of failing to treat EU citizens fairly and humanely¹⁴.

The UK and the EU have published a number of papers, outlining their position on the key debates in the Brexit negotiations. In June 2017, at a summit in Brussels, Theresa May outlined a plan concerning the regulation of the status of over 3 million migrants from the EU who live and work in the UK. She presented what she called a "fair and serious" proposal to guarantee the rights of the EU citizens in Britain¹⁵. Brandon Lewis, the Minister of State for Immigration, assured that the British government "wants the EU citizens to stay in Great Britain, and protection of their rights belongs to its priority". He argued that immigrants have "an enormous positive impact on Great Britain's society, economy and culture" and "they brought in ideas, innovations and skills on which British employers and enterprises rely"¹⁶.

However, EU leaders, at a summit in Brussels, criticized Theresa May's proposal how to secure the laws of migrants from the EU resident in the UK after Brexit as "not sufficient", "vague" and "a first step". The proposal was welcome on the continent with a mixture of a formal optimism and disappointment. Angela Merkel, the German Chancellor, described it as a "good beginning", whereas Jean-Claude Juncker, the Head of the European Commission, referred to it as "the first step", but "not sufficient", and he was not clear what kind of Brexit the British government wants. Donald Tusk, the President of European Council, in turn, admitted that the proposal does not fulfil the EU expectations, and poses a threat of worsening the EU citizens' current situation. Representatives of groups caring for the interests of over 3 million EU immigrants in the UK said that Theresa May's proposal was neither "fair" nor "serious," and it was a pity that the Prime Minister did not refer to the EU proposal presented in details in the document of 12 June 2017. The Britons on the continent also remind that the EU was far more generous for both parties¹⁷.

In a document handed to the EU ambassador in the UK on 12 June, the EU demanded "effective, enforceable, non-discriminatory and comprehensive"

¹³ Ibidem.

¹⁴ Ibidem.

¹⁵ Ibidem.

¹⁶ A. Michalak, Wiceszef MSW Wielkiej Brytanii: Chcemy, żeby obywatele UE zostali po Brexicie, „Rzeczpospolita”, 13.09.2017, <http://www.rp.pl/Brexit/170919610-Wiceszef-MSW-Wielkiej-Brytanii-Chcemy-zeby-obywatele-UE-zostali-po-Brexicie.html> [access: 15.09.2017].

¹⁷ M. Czarnecki, Donald Tusk o ofercie Londynu w sprawie praw imigrantów po brexicie: „Poniżej oczekiwań”, „Gazeta Wyborcza”, 23.06.2017, <http://wyborcza.pl/7,75399,22000176,donald-tusk-o-ofercie-londynu-w-sprawie-praw-imigrantow-po-brexicie.html> [access: 05.09.2017].

guarantees “to safeguard the status and rights derived from EU law at the date of withdrawal”. The EU wants these rights to apply not only to EU and British citizens in the UK, but also to those who lived abroad during the UK’s membership of the EU. The EU also wants those rights to apply to “current and future family members”, irrespective of their nationality, who decide to join the right-holder after Brexit, and to continue to apply to family members after the divorce or death of the right-holder¹⁸.

Guy Verhofstadt, the European Parliament’s Brexit coordinator and other EU leaders are of the opinion that the treatment of EU citizens in the British proposal is not acceptable. They claim that “the European Union has a common mission to extend, enhance and expand rights, not to reduce them”, and they “will never endorse the retroactive removal of acquired rights”. The European Parliament will reserve its right to reject any agreement that treats EU citizens, regardless of their nationality, less favourably than they are at present”. EU leaders also emphasise that they will oppose any extension of the two-year negotiating period, which ends in March 2019¹⁹.

Taking into consideration a preliminary analysis shared with the EU Member States, the EU’s chief negotiator, Michel Barnier, is concerned that EU nationals resident in the UK would be left with “no lifelong protection against future changes of UK law”. Barnier claims that the British proposal cannot be seen as reciprocal because EU nationals in the UK would be subject to different laws and courts than Britons on the continent²⁰.

Analysing the UK and EU’s position towards the citizens’ legal status and rights in more detail, the following issues will be discussed:

- citizens’ rights (free movement, residence, right to equal treatment, right to work, right to study, healthcare, benefits, pensions, voting rights, family reunion, right to leave and return);
- legal status;
- cut-off point;
- European Court of Justice (ECJ) and guaranteeing rights.

As far as free movement is concerned, the EU argues that UK citizens should only have protected rights in the state in which they have residence rights on Brexit day. Whereas, the UK maintains that, after Brexit, free movement will end, but migration between the UK and the EU will continue²¹.

When it comes to the right of residence, already during the referendum campaign, Boris Johnson, one of the leaders of Vote Leave and now the Foreign Secretary, emphasized that EU citizens who already live in the UK would be allowed to stay. Michael Gove, another key figure in Vote Leave and now

¹⁸ Ibidem.

¹⁹ J. Rankin, R. Mason, Brexit: May offering EU workers in UK ‘second-class citizenship’ – MEPs, “The Guardian”, 10.07.2017, <https://www.theguardian.com/politics/2017/jul/09/brexit-may-offering-eu-workers-in-uk-second-class-citizenship-meps> [access: 01.09.2017].

²⁰ Ibidem.

²¹ E. Zalan, Citizens’ rights: where EU and UK differ, EUobserver, 31.08.2017, <https://euobserver.com/uk-referendum/138823> [access: 01.09.2017].

the Environment Secretary, shared the same point of view claiming that “EU citizens already lawfully resident in the United Kingdom must retain their right of residence”²². From the EU’s perspective, it demands a lifetime guarantee of rights for EU citizens who reside in the UK when the withdrawal agreement enters into force, and for UK citizens who reside in one of the EU countries. This also applies to their current and future family members, who have already joined them, or will join them, regardless of their nationality. Meanwhile, the UK views that EU nationals who have been living in the UK for five years should receive a new “settled status” in a streamlined process. People who have been legally resident in the UK for less than five years at the time of Brexit will have to apply for a temporary status in order to stay²³. The UK would scrap the requirement to have “comprehensive sickness insurance” for self-employed workers to seek residency and settled status, and would streamline the application process²⁴.

The right to equal treatment should be recognized both by the EU and the UK as it is based on the principle of non-discrimination on the grounds of nationality. However, EU leaders warn that “the British proposal carries a real risk of creating a second class of citizenship”, which is even in contradiction with the Vote Leave manifesto, promising it would treat EU citizens “no less favorably than at present”²⁵.

In the case of the right to work, those immigrants who have settled status should have access to employment in the UK. However, it is argued that, together with the date of the UK’s withdrawal from the EU, the freedom of working there will be over, and blue collar workers will be in the worst position. As a matter of fact, they can count on a two-year-long right of residence in the UK, but only when there will be no British workers willing to work at their posts. Those who have better qualifications can count on the right to stay for three-five years. However, in both cases the government’s policy will be determined by “the needs of Great Britain”, and not the EU citizens’ laws²⁶.

When it comes to the right to study, those with settled status should have access to education in the UK. Britain maintains that current EU students will continue to have access to loans, and those who apply for a course until 2018/19 will be allowed to stay to complete their studies. Qualifications gained before the divorce will continue to be recognized. However, it is unclear what will happen to students once they have completed their studies.

As far as healthcare is concerned, according to the British government, those with settled status should have access to treatment in the UK. Concerning social benefits and pensions, the UK would allow EU nationals to send welfare payments to family members who reside abroad, and the UK has pledged to index-link EU nationals’ pensions, as well as would continue paying pensions to British citizens

²² J. Rankin, R. Mason, Brexit:Brexit: May ... op. cit.

²³ J. Henley, How do ...,op. cit.

²⁴ E. Zalan, Citizens’ rights ..., op. cit.

²⁵ J. Rankin, R. Mason, Brexit:Brexit: May ... op. cit.

²⁶ J. Bielecki, Wielka Brytania: Obcy niemile widziani, „Rzeczpospolita”, 06.09.2017, www.rp.pl/brexit/309069881-wielka-brytania-obcy-niemile-widziani.html [access: 14.09.2017].

living in the EU, but that will no longer be guaranteed by EU law²⁷.

EU leaders warn that EU citizens would lose their voting rights. Although the UK proposes that the right to stand and/or vote in local elections in the country of residence should remain, it does not mention in its proposal whether EU nationals with settled status will be able to vote in local UK elections. The EU objects because this right is derived from EU law and citizenship rights.

When it comes to family reunions, the EU wants broad rights for citizens to bring current and future family members to the UK (even if they are non-EU citizens). In the UK's opinion, however, EU nationals who marry after the Brexit date will lose their right to bring family members to the UK unless they pass a minimum income test (their salary cannot be lower than 18.6 thousand pounds annually), which is required of UK citizens who want to bring in non-EU family members²⁸.

The UK position paper states that family members who are dependent or maintained by a "qualifying" EU citizen in the UK and who live or join them before Brexit will also be able to apply for settled status after five years. It has led to claims that more than three million EU nationals living in the UK will be given the right to live and work in the country after the UK leaves the EU²⁹.

The right to leave and come back may be lost by EU nationals with settled status in the UK, if they leave Britain for more than two years, unless they meet certain requirements³⁰. The EU seems to agree with this position with regards to UK citizens in the EU-27 nations.

As far as the legal status is concerned, the UK is of the opinion that all EU nationals lawfully resident in the UK for at least five years will be able to apply for settled status, and be able to bring in spouses and children. Settled status should allow them to be treated like British citizens in regard to residency entitling them to education, healthcare, benefits and pensions – family reunion is not included, however.

People who have gone through the entire process of gaining permanent UK residency status (often tortures and quite expensive) will have to apply again³¹. However, the British government promises that the administration process of regulating the immigrants' status will be digitalized and as simple as possible (currently the application form for permanent residence has 85 pages). Theresa May emphasized that she expected the same rights for Britons from the other side – the EU³².

In addition, EU nationals will have to hold an identity document, attesting to their settled status. Although the British government does not want to introduce

²⁷ Ibidem.

²⁸ J. Bielecki, *Wielka Brytania ...*, op. cit.

²⁹ K. McCann, Families of EU migrants, who arrive in the UK before Brexit will be allowed to stay, Theresa May reveals, "The Telegraph", 26.07.2017, <http://www.telegraph.co.uk/news/2017/06/26/families-eu-migrants-arrive-uk-brex-it-will-allowed-stay-theresa/> [access: 15.09.2017].

³⁰ J. Rankin, R. Mason, Brexit: May ... op. cit.

³¹ Ibidem.

³² M. Czarnecki, Donald Tusk ..., op. cit.

visas for EU citizens, they will be allowed to come to the UK only if they have a passport. After three or six months they will have to apply for a biometric card of residence without which they will not have an access to e.g., health care. Owing to such registration the authorities will be able to check whether a person has a legal source of income³³.

Those who have been legally resident in the UK for fewer than five years at the time of Brexit will have to apply for temporary status in order to stay, and will be embraced with the so called “grace period” during which they will have to regulate their status. The two years of “grace” aims to help the EU national living or having arrived in the UK before the Brexit deadline giving them extra time to arrange their affairs and status in the UK³⁴.

As far as the EU position in this matter is concerned, the EU opts for an unconditional lifetime guarantee under EU law for the rights currently enjoyed by those who are based in the UK and their family members. This would mean continued rights to residency, work, establishing a business, access to healthcare, social security and pensions.

The UK and the EU also represent different positions concerning the cut-off point. There is a dispute as to when people must be in the UK to qualify for the settled status. The UK claims that this is the period between 29 March 2017 (when the Article 50 exit procedure was triggered) and the Brexit day, two years later (29 March 2019). All EU nationals in the UK before that date will be able to build up five years’ worth residency time, which is necessary to apply for the settled status. Those who arrive after the cut-off point may stay for a “temporary period”, but will not be guaranteed the settled status. Meanwhile, the EU sees the cut-off point as the date of Brexit – 29 March 2019³⁵.

The next big issue is the matter of the protection of EU immigrants living in the UK irrespective of the fact whether people with the settled status or people waiting for such a status are concerned. The British government believes that all disputes concerning the immigrants’ status in the UK should be settled by local courts, and the rights enshrined in UK law will be enforceable in the British legal system. UK courts will provide legal guarantees for these EU citizens, and the government is ready to put commitments on this in the divorce agreement with the EU. The final divorce agreement will have legal standing in international law. The European Court of Justice (ECJ) will not have jurisdiction in the UK, but the British government has shown a willingness to discuss setting up a new arbitration body. Meanwhile, EU leaders claim that the European Commission should be able to monitor the rights, and the ECJ should have full jurisdiction for an indefinite duration to protect these rights. The EU side wants to ensure the Luxembourg court to play a central role in resolving disputes over citizens’ rights. It is argued that British courts will not be sufficient because they “apply

³³ J. Bielecki, *Wielka Brytania ...*, op. cit.

³⁴ A. Barker, UK’s „grace period” a novel way to tackle Brexit challenges, “Financial Times”, 26.07.2017, <https://www.ft.com/content/73f73f3a-5997-11e7-9bc8-8055f264aa8b> [access: 10.09.2017].

³⁵ E. Zalan, *Citizens’ rights ...*, op. cit.

the laws adopted by British politicians, who are currently unable to give sufficient guarantees for the years to come, let alone for a lifetime”³⁶.

Summarizing the current outcome of the negotiations the main EU negotiator, Michel Barnier, argued that a significant agreement on any key issues concerning Brexit was not achieved. The EU party emphasizes that without resolving the issues of citizen’s rights, financial settlements and the future of the border between Ireland and Northern Ireland, the EU will not proceed to further issues, such as trade relations between the UK and the EU, which is so important for the British party. What is more, if the UK does not manage to conclude an exit agreement creating a “soft landing” for the UK outside the EU, there will be a threat of an automatic exit from the EU after two years from the notification³⁷.

METHOD

To answer the questions raised I conducted a comparative analysis of data provided by the British Office for National Statistics (population of the UK by country of birth and nationality, long-term international migration), the Migration Observatory (migrants in the UK) presenting the structure (population size, population distribution) of the foreign-born population resident in the UK, by country of birth and nationality, including the number of EU and non-EU citizens, as well as top countries of birth and nationality of migrants, their main motives of migration and general trends of long-term international migration.

FINDINGS AND DISCUSSION

Foreign-born population structure in the UK

The size of the foreign-born population resident in the UK, by country of birth, has been increasing over the time period analysed, including the size of EU and non-EU population resident in the UK. In the time period 2014-2016 the number of EU migrants, by country of birth, accounted for respectively 4.7%, 5% and 5.5% of the total population resident in the UK, whereas the number of non-EU migrants accounted for 8.2%, 8.4% and 8.7%, respectively. In the time period analysed the total number of migrants accounted for respectively 14%, 13.3% and 14% of the total UK population (see Table 1). Similarly, the size of the foreign-born population, by nationality, has also been growing over the period of time analysed. Within 2016–2014 the number of immigrants, by nationality, resident in the UK accounted for respectively 13%, 13.3 and 14.1% of the total UK population, including EU citizens equal 4.7%, 5% and 5.5%, respectively, and non-EU citizens – 8.2%, 8.4% and 8.7% (see Table 2)³⁸.

³⁶ See: J. Rankin, R. Mason, Brexit: May ..., op. cit.; E. Zalan, Citizens’ rights ..., op. cit.

³⁷ J. Mikulski, Negocjator ws. Brexitu: Brytyjczycy żądają rzeczy niemożliwych, „Rzeczpospolita”, 31.08.2017, <http://www.rp.pl/Brexit/170839764-Negocjator-ws-Brexitu-Brytyjczycy-zadaja-rzeczy-niemozliwych.html> [access: 01.09.2017].

³⁸ British Office for National Statistics, Population of the UK by country of birth and nationality, 2017a, <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/datasets/populationoftheunitedkingdombycountryofbirthandnationality> [access: 01.09.2017].

Table 1. Population resident in the UK, by country of birth, 2014-2016

year	total	UK	non-UK	EU	non-EU
2014	63686	55375	8277	3025	5252
2015	64265	55642	8569	3183	5387
2016	64727	55554	9152	3537	5616

Source: British Office for National Statistics, *Population of ...*, 2017.

Table 2. Population resident in the UK, by nationality, 2014–2016

year	total	UK	non-UK	EU	non-EU
2014	64727	58710	5998	3572	2425
2015	64265	58655	5567	3159	2215
2016	63686	58312	5344	2938	2406

Source: British Office for National Statistics, *Population of ...*, 2017.

The number of migrants, by country of birth and nationality, resident in the UK has been increasing over the time period analysed, whereas the number of non-EU immigrants exceeds almost twice the number of EU immigrants resident in the UK.

In the time period 1993-2017 the size of the foreign-born population in the UK increased from about 3.8 million to over 8.7 million in 2015 (see Table 3, Figure 1)³⁹. The number of foreign-born people in the UK increased in almost every year, although there were some slight decreases in 1997 and 2007. Over the time period 1993 to 2015, the highest growth in the foreign-born population occurred between 2005 and 2008. This period coincides with the significant inflow of migrants from Central and Eastern Europe (CEE) following the EU enlargement in 2004.

Looking at the distribution of foreign-born population resident in the UK, it can be argued that although the numbers of both female and male migrants have increased over the entire time period analysed, women have constituted a small majority of the UK's migrant population since 1993. In 2015, 52% of the foreign-born population were women (see Table 3, Figure 1)⁴⁰.

Table 3. Foreign-born population resident in the UK, by gender, 1993-2015

year	total	men	women
1993	3823023	1811442	2011601
1995	4128738	1922758	2205980
1997	4124358	1926325	2198033
1999	4301519	2026372	2275147
2001	4723449	2254458	2468991
2003	5043509	2401376	2642133
2005	5698063	2732816	2965247
2007	6514048	3174380	3339668

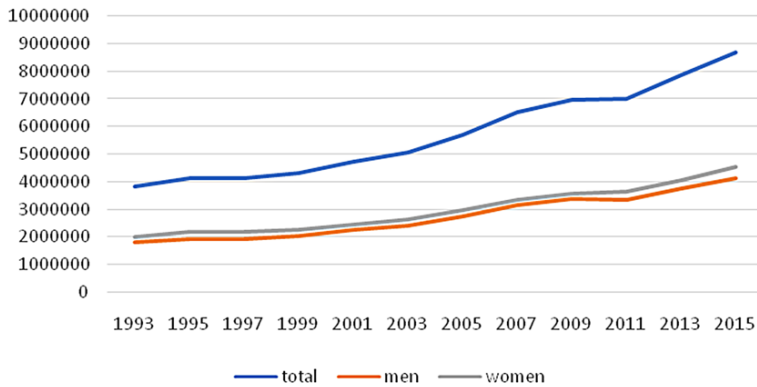
³⁹ Migration Observatory, *Migrants in the UK: An Overview*, 2017, <http://www.migrationobservatory.ox.ac.uk/resources/briefings/migrants-in-the-uk-an-overview/> [access: 05.09.2017]

⁴⁰ Ibidem.

2009	6952170	3394380	3557790
2011	7010115	3370688	3639427
2013	7844756	3773674	4071082
2015	8679075	4143034	4536041

Source: Migration Observatory, *Migrants in ...*, 2017.

Figure 1. Foreign-born population resident in the UK, by gender, 1993-2015



Source: Own study based on data presented by Migration Observatory, *Migrants in ...*, 2017.

Analysing the size of foreign-born population resident in the UK for the top ten most common countries of birth in the time period 2014-2016, it can be argued that Poland (911,000 people), India (833,000) and Pakistan (534,000) are the main three foreign countries of birth that constitute the biggest group among the foreign-born population in the UK. Other countries, such as: Ireland, Romania, Germany, Bangladesh, South Africa and China are also among top-ten countries of birth of migrants in the UK. Italy (201,000) is in the last place among the top ten most common places of birth (see Table 4, Figure 2)⁴¹.

Table 4. Foreign-born population in the UK, for top 10 most common countries of birth (in thousands), 2014-2016

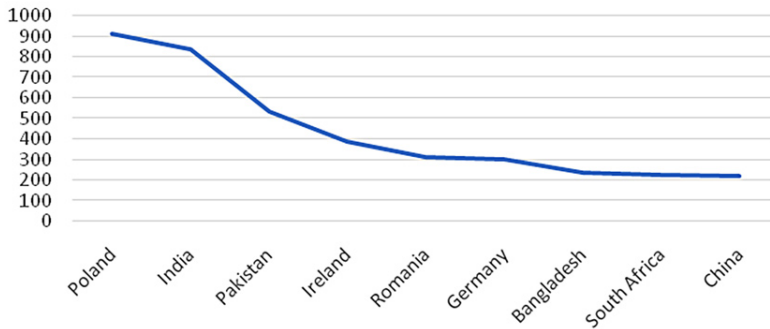
	2014		2015		2016	
	country	total	country	total	country	total
1	India	793	Poland	831	Poland	911
2	Poland	790	India	795	India	833
3	Pakistan	523	Pakistan	503	Pakistan	534
4	Ireland	383	Ireland	382	Ireland	389
5	Germany	301	Germany	286	Romania	310
6	Bangladesh	212	Romania	220	Germany	300
7	South Africa	201	Bangladesh	217	Bangladesh	238

⁴¹ British Office for National Statistics, *Population of ...*, op. cit.

8	China	196	South Africa	200	South Africa	225
9	USA	187	Nigeria	199	China	220
10	Nigeria	178	China	197	Italy	201

Source: British Office for National Statistics *Population of ...*, 2017.

Figure 2. Foreign-born population in the UK, for top 10 most common countries of birth (in thousands), 2016



Source: Own study based on data presented by British Office for National Statistics, *Population of ...*, 2017

When it comes to the analysis of the size of foreign-born population resident in the UK, for the top ten most common countries of nationality, it can be argued that Polish (1,002,000) and Indian (362,000) citizenships are also the main foreign nationalities in the UK, with Poles being the largest group of foreign citizens in the time period analysed 2014-2016 (see Table 5, Figure 3)⁴².

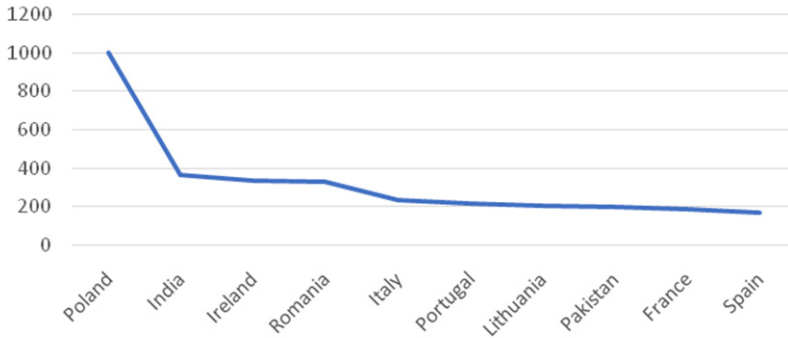
Table 5. Foreign-born population in the UK, for top 10 most common countries of nationality (in thousands), 2014-2016

	2014		2015		2016	
	country	total	country	total	country	total
1	Poland	853	Poland	916	Poland	1002
2	India	365	India	362	India	362
3	Ireland	331	Ireland	332	Ireland	335
4	Pakistan	210	Romania	233	Romania	328
5	Romania	175	Portugal	219	Italy	233
6	Portugal	175	Italy	192	Portugal	213
7	Italy	170	Pakistan	187	Lithuania	203
8	France	160	Lithuania	170	Pakistan	195
9	Lithuania	155	France	165	France	183
10	USA	153	USA	161	Spain	165

Source: British Office for National Statistics, *Population of ...*, 2017.

⁴² British Office for National Statistics, *Population of ...*, op. cit.

Figure 3. Foreign-born population in the UK, for top 10 most common countries of nationality (in thousands), 2016



Source: Own study based on data presented by British Office for National Statistics, *Population of ..., 2017*.

After having analysed the structure of the foreign-born population in the UK, for the top 10 most common countries of both birth and nationality it can be argued that although EU nationals constitute the lion's share of migrants in the UK, including Poles with the biggest share, non-EU nationals have also a significant share in the total number of foreign-born population resident in the UK. Regarding the population structure in the time period 2014-2016, it can be argued that the substantial restrictions would affect mainly Poles and Romanians concerning the ten countries which acceded the EU in 2004, and they would also hit Ireland, Germany, France, Italy and Spain.

Main reasons for migration

Analysing the main reasons for migration, such as: work related, formal study, accompany/join and other reasons in the time period 2014–2016, it can be argued that the main reason for migration of all foreign-born people resident in the UK is to accompany or join their family members as a spouse or dependent on a UK citizen, or a spouse or dependent of someone coming to the UK (see Table 6)⁴³.

⁴³ British Office for National Statistics, *Population of ..., op. cit.*

Table 6. Foreign-born population in the UK, by main reason for migration, 2014–2016

main reason for migration	total			EU			non-EU		
	2014	2015	2016	2014	2015	2016	2014	2015	2016
work related*	2263	2434	2764	1353	1460	1690	910	974	1074
formal study**	1092	1141	1094	304	315	326	788	825	768
accompany/ join***	3286	3644	3286	997	1091	1229	2289	2554	2831
other****	1594	1293	1196	354	296	279	1240	996	917

*the category *work related* includes those respondents who arrived in the UK for employment reasons; ***formal study* – those who arrived in the UK for study reasons; ****accompany/join* – those who arrived in the UK as a spouse/dependent of a UK citizen, or as a spouse/dependent of someone coming to the UK; *****other* – those who arrived in the UK to either get married/form a civil partnership, to seek asylum, as a visitor or for other stated reasons.

Source: British Office for National Statistics, *Population of ...*, 2017.

However, when it comes to EU nationals the main reason for migration is work related, whereas in the case of non-EU nationals the reason is to accompany their family members. The study reason appears to be the least significant when it comes to arriving in the UK among the aforementioned ones. Therefore, the restrictive migration policy would most affect those EU nationals who arrived in the UK to find employment. On one hand, it will create more workplaces for Britons, on the other hand, however, it will deprive them of a productive workforce. In the case of non-EU nationals, finding employment is a less significant reason to arrive in the UK than to accompany or join family members. In general terms, those migrants who arrive in the UK as a spouse or dependent of a UK citizen, or a spouse or dependent of someone coming to the UK would be most threatened by migration restrictions imposed. Moreover, citizens' rights of those migrants who arrived to the UK to accompany or join their family members, as the largest group of migrants resident in the UK, might be most threatened after Brexit.

Long term international migration

Although the size of foreign-born population resident in the UK has been rising over the last years, net migration has fallen to its lowest level for 3 years (see Table 7, Figure 4)⁴⁴. Total net migration that amounted to 246,000 in March 2017 was by 81,000 lower than in March 2016, and by 90,000 lower than in March 2015. Similarly, net migration of EU nationals as well as non-EU nationals has also been falling (see Table 7, Figure 5, Figure 6).

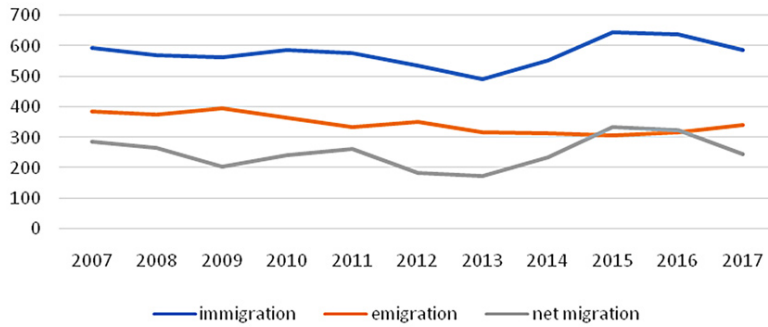
⁴⁴ British Office for National Statistics, Provisional long-term international migration estimates, 2017b, <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/datasets/migrationstatisticsquarterlyreportprovisionalallongterminternationalmigrationltimeestimates> [access: 05.09.2017].

Table 7. Long-term international migration (in thousands), 2007–2017

Immigration			
time	total	EU	non-EU
June 2007	595	192	326
June 2008	571	184	306
June 2009	563	183	292
March 2010	587	172	318
March 2011	578	169	317
March 2012	536	166	290
March 2013	493	170	246
March 2014	552	213	260
March 2015	644	270	290
March 2016	638	267	288
March 2017	588	248	266
Emigration			
time	total	EU	non-EU
June 2007	387	70	119
June 2008	375	96	110
June 2009	397	121	118
March 2010	365	115	119
March 2011	336	92	102
March 2012	352	90	112
March 2013	318	75	102
March 2014	316	83	104
March 2015	308	86	90
March 2016	317	86	90
March 2017	342	122	86
Net migration			
time	total	EU	non-EU
June 2007	287	122	208
June 2008	268	88	196
June 2009	205	62	174
June 2010	244	72	196
June 2011	263	79	222
March 2012	184	76	185
March 2013	175	95	145
March 2014	236	130	156
March 2015	336	184	200
March 2016	327	178	193
March 2017	246	127	110

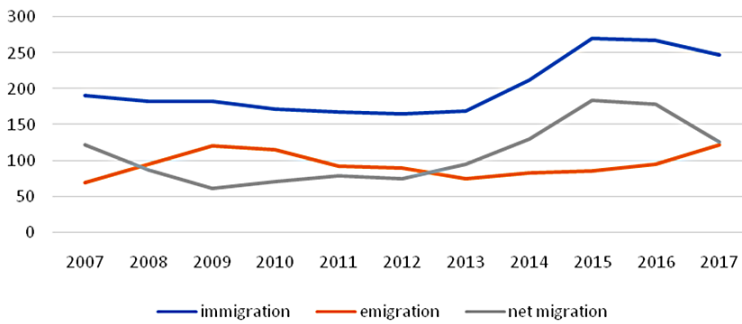
Source: British Office for National Statistics, *Long-term international ...*, 2017.

Figure 4. Long-term international migration (in thousands), total number of migrants, 2007-017



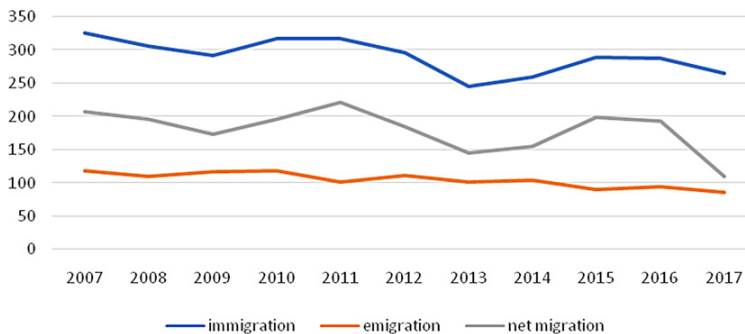
Source: Own study based on British Office for National Statistics, *Long-term international ...*, 2017.

Figure 5. Long-term international migration (in thousands), EU migrants, 2007-2017



Source: Own study based on British Office for National Statistics, *Long-term international ...*, 2017.

Figure 6. Long-term international migration (in thousands), non-EU migrants, 2007-2017



Source: Own study based on British Office for National Statistics, *Long-term international ...*, 2017.

The falling figure of net migration in recent years may indicate “Brexodus” of EU citizens, which began in the wake of the Brexit vote. Leaving the UK by the EU nationals resident in the UK could result from the fact that they lacked quarantine that their citizens’ right to stay would be obeyed.

CONCLUSIONS

Triggering the Brexit procedure entails a number of economic, political and social consequences for both the UK and the EU. As a result, negotiations to leave have been conducted, which are to determine the terms of the UK’s exit from the EU, as well as the nature of the future of the UK-EU relations. The main issues connected with Brexit concern the citizens’ rights, financial settlements, future of the border between Ireland and Northern Ireland, as well as other issues such as: Euratom, trade in goods, current EU procedures and judicial cooperation.

One of the burning issues of Brexit negotiations is defining the status of nearly 3.5 million EU citizens resident in the UK and 1.2 million Britons based in the EU. For the EU resolving the issue of the citizens’ rights is the top priority of the Article 50 negotiations. The UK also expresses its concern about this issue. The British government has assured that no single EU citizen or their family members, who live legally in the UK, will be forced to leave. The EU citizens who have been living in the UK for five years will be given a new “settled status”, which will allow them to be treated like British citizens in terms of residence and access to education, health care and pensions. However, despite the fact that immigrants from the EU will be ensured the same entitlements to social benefits as Britons are, the proposal is said not to meet the EU expectations since it deprives the EU citizens of a number of rights they had before Brexit.

The issue of the status of migrants and their rights is of key importance since the number of migrants, by country of birth and nationality, resident in the UK has been increasing, including both EU migrants and non-EU migrants.

Regaining control over immigration was the main postulate of Brexit supporters; David Cameron is believed to fail in the referendum because he could not obtain substantial concessions on these issues, whereas Theresa May insists on imposing substantial restrictions. The “scars” caused by the liberal approach to citizens of the ten countries that acceded the EU in 2004 seem to still remain in Westminster. Jack Straw, the former UK Foreign Secretary admitted that it was a “spectacular mistake” not to realise that open door approach towards the new EU Member States would “prompt a migration rise”⁴⁵. Theresa May considered preventing an unexpected influx of immigrants connected with the change of the migration policy after Brexit by proposing migration restrictions.

However, a closer analysis of the structure of the foreign-born population in the UK according to the top ten most common countries of both birth and nationality indicated that migration restrictions proposed by the British government may not necessarily be effective. Although, EU nationals constitute the biggest share of

⁴⁵ A. Barker, UK’s „grace ..., op. cit.

migrants in the UK, non-EU nationals have also a significant share in the total number of foreign-born population resident in the UK (India is placed as the second, just after Poland). Concerning the top ten most common EU countries of birth, migration policy would most affect migrants from Poland, Ireland, Romania, Germany, and Italy. When it comes to nationality, Polish, Irish, Romanian, Italian, Portuguese, Lithuanian, French and Spanish citizens are those which would be hit most by the migration restrictions. Undisputedly, Polish citizens' status and rights would be most threatened after Brexit, as they constitute the lion's share of migrants in terms of both country of birth and nationality. Moreover, the restrictive migration policy would most affect those EU nationals who arrived in the UK to find employment there in the first place, and in the second place those who arrived in the UK to join their family members as a spouse and/or children of a UK citizen, or a spouse and/or children of somebody arriving to the UK. Furthermore, new regulations concerning citizens' rights would hit women most since they constitute the bigger share of foreign-born population resident in the UK.

Although the number of foreign-born population resident in the UK has been rising, the net migration has been falling, even more EU and non-EU migrants are leaving the UK. According to the latest data, between March 2016 and March 2017 only 7,000 more immigrants from Poland and seven other countries which acceded the EU in 2004 arrived to the UK, than left it. In this period the net emigration from the entire EU amounted to 127,000 people. Thus, restrictions prepared by Theresa May will hit mainly immigrants from Poland, Romania and Bulgaria, as well as Spain, Greece and Italy. The regulations do not necessary have to be effective since in the discussed period, net immigration to the UK from countries outside the EU amounted to 179,000 people⁴⁶. The negative trend of net migration may result from the fact that the status and rights of migrants have not been assured sufficiently.

The Article 50 negotiations have not brought solutions to the main issues of Brexit, including citizens' rights, which are of top priority, so far. The negotiations are not supposed to proceed to the issues related to trade, which are so important for the UK, unless the key issues are not resolved. The UK cares for maintaining a possibly unlimited access to the European internal market, and aspires to retain its position as a financial hub. However, to do so the UK needs to achieve an agreement with the EU. If there is no significant progress in negotiations, the UK may not be able to conclude an agreement, which may lead to the automatic exit from the EU. Consequently, if citizens' rights are not properly guaranteed by the British government, the economically damaging "Brexodus" will continue, and skilled and hard-working EU nationals will be still leaving and, therefore, weakening the British economy.

⁴⁶ J. Bielecki, *Wielka Brytania: ...*, op. cit.

Bibliography

- Barker A., UK's „grace period” a novel way to tackle Brexit challenges, “Financial Times”, 26.07.2017, <https://www.ft.com/content/73f73f3a-5997-11e7-9bc8-8055f264aa8b> (access: 10.09.2017)
- Bielecki J., Wielka Brytania: Obcy niemile widziani, „Rzeczpospolita”, 06.09.2017, www.rp.pl/brexit/309069881-wielka-brytania-obcy-niemile-widziani.html (access: 14.09.2017)
- British Office for National Statistics, Population of the UK by country of birth and nationality, 2017a, <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/datasets/populationoftheunitedkingdomby-countryofbirthandnationality> (access: 01.09.2017)
- British Office for National Statistics, Provisional long-term international migration estimates, 2017b, <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/datasets/migrationstatisticsquarterlyreportprovisionallongterminternationalmigrationltimeestimates> (access: 05.09.2017)
- Consilium Europa, Remarks by President Donald Tusk after an informal meeting of 27 heads of EU state and government, 29.06.2016, <http://www.consilium.europa.eu/pl/press/press-releases/2016/06/29-tusk-remarks-informal-meeting-27> (access: 05.09.2017)
- Consilium Europa, UE i Wielka Brytania po referendum z 23 czerwca 2016, 2016, <http://www.consilium.europa.eu/pl/policies/eu-uk-after-referendum/> (access: 09.09.2017)
- Czarnecki M., Donald Tusk o ofercie Londynu w sprawie praw imigrantów po brexicie: „Poniżej oczekiwań”, „Gazeta Wyborcza”, 23.06.2017, <http://wyborcza.pl/7,75399,22000176,donald-tusk-o-ofercie-londynu-w-sprawie-praw-imigrantow-po-brexicie.html> (access: 05.09.2017)
- Henley J., How do citizens' rights affect Brexit negotiations?, “The Guardian”, 27.07.2017, <https://www.theguardian.com/politics/2017/jun/19/how-do-citizens-rights-affect-brexit-negotiations> (access: 01.09.2017)
- McCann, K., Families of EU migrants, who arrive in the UK before Brexit will be allowed to stay, Theresa May reveals, “The Telegraph”, 26.07.2017, <http://www.telegraph.co.uk/news/2017/06/26/families-eu-migrants-arrive-uk-brexit-will-allowed-stay-theresa/> (access: 15.09.2017)
- Michalak A., Wiceszef MSW Wielkiej Brytanii: Chcemy, żeby obywatele UE zostali po Brexicie, „Rzeczpospolita”, 13.09.2017, <http://www.rp.pl/Brexit/170919610-Wiceszef-MSW-Wielkiej-Brytanii-Chcemy-zeby-obywatele-UE-zostali-po-Brexicie.html> (access: 15.09.2017)
- Migration Observatory, Migrants in the UK: An Overview, 2017, <http://www.migrationobservatory.ox.ac.uk/resources/briefings/migrants-in-the-uk-an-overview/> (access: 05.09.2017)
- Mikulski J., Negocjator ws. Brexitu: Brytyjczycy żądają rzeczy niemożliwych, „Rzeczpospolita”, 31.08.2017, <http://www.rp.pl/Brexit/170839764-Negocjator-ws-Brexitu-Brytyjczycy-zadaja-rzeczy-niemozliwych.html> (access: 01.09.2017)
- Oakeshott I., Woolf M., Japan warns UK not to leave Europe, “The Sunday Times”, 21.07.2013, http://www.thesundaytimes.co.uk/sto/news/uk_news/National/article1290626.ece (access: 01.09.2017)
- Rankin J., Mason R., Brexit: May offering EU workers in UK ‘second-class citizenship’

- MEPs, “The Guardian”, 10.07.2017, <https://www.theguardian.com/politics/2017/jul/09/brexit-may-offering-eu-workers-in-uk-second-class-citizenship-meps> (access: 01.09.2017)
- Schäfer H.B., Radwan A., Brexit poker – czyli o tym, kto ma lepsze karty w negocjacjach ustąpieniowych (Art. 50 TUE), *AllerhandWorking Paper* 16/2016, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2840666 (access: 10.09.2017)
- Słojewska A., Brexit: Flegmatyczne negocjacje, „Rzeczpospolita”, 30.08.2017, <http://www.rp.pl/Brexit/308309887-Brexit-Flegmatyczne-negocjacje.html#ap-2> (access: 05.09.2017)
- Young A., Brexit, Article 50 and the ‘Joys’ of a Flexible, Evolving, Un-codified Constitution, U.K. Const. L. Blog, 01.06.2016, <https://ukconstitutionallaw.org/2016/07/01/alison-l-young-brexit-article-50-andthe-joys-of-a-flexible-evolving-un-codified-constitution> (access: 01.09.2017)
- Zalan E., Citizens’ rights: where EU and UK differ, *EUobserver*, 31.08.2017, <https://euobserver.com/uk-referendum/138823> (access: 01.09.2017)

Summary: The paper investigates the issue of Brexit and its consequences for the citizens’ rights of migrants, especially those from the European Union (EU), who live, work or study in the United Kingdom (UK). The objective of the paper is to identify and analyse the EU’s and the UK’s position towards the issue of EU migrants who arrived in the UK. An attempt is made to answer the question what Brexit means for approximately 3.2 million Europeans currently based in the UK and nearly 1.2 million Britons living on the continent. The paper also raises a question which countries would be most affected by possible restrictions concerning the UK’s migration policy after the divorce. The empirical part of the paper comprises a comparative analysis of the structure of the foreign-born population living in the UK, by birth and nationality, and aims at illustrating the analysed issues. The paper contributes to the economic literature by presenting different standpoints concerning the position of foreign-born people living in the UK after Brexit. It will also facilitate the understanding of possible consequences of triggering Article 50 negotiations in a political, economic and social dimension.

Key words: Brexit, Art. 50 negotiations, citizens’ rights, migration policy, settled status

DYSKUSJA NA TEMAT PRAW OBYWATELI UNII EUROPEJSKIEJ PO BREXICIE

Streszczenie: Artykuł porusza kwestię Brexitu i jego konsekwencji dla praw obywateli, szczególnie Unii Europejskiej (UE) mieszkających, pracujących lub uczących się w Wielkiej Brytanii. Jego celem jest prezentacja i analiza stanowisk UE i Wielkiej Brytanii wobec kwestii traktowania obywateli UE w Wielkiej Brytanii. Artykuł stanowi próbę odpowiedzi na pytanie, co Brexit znaczy w praktyce dla około 3,2 milionów obywateli UE obecnie przebywających w Wielkiej Brytanii i 1,2 miliona Brytyjczyków żyjących w pozostałych państwach członkowskich. Ponadto odpowiada na pytanie, którzy obywatele UE najdotkliwiej odczują restrykcje związane z polityką migracyjną prowadzoną po wyjściu Wielkiej Brytanii z UE. Część empiryczna artykułu zawiera analizę porównawczą struktury populacji urodzonej poza granicami Wielkiej Brytanii,

ze względu na urodzenie i narodowość i służy do zobrazowania omawianych kwestii. Artykuł przyczynia się do rozwoju literatury przedmiotu prezentując różne stanowiska odnośnie przyszłości obywateli UE w Wielkiej Brytanii po Brexicie a także umożliwia zrozumienie skutków ekonomicznych, politycznych i społecznych, jakie pociągnie za sobą wszczęcie negocjacji ustąpieniowych na mocy art. 50 TUE.

Słowa kluczowe: Brexit, negocjacje ustąpieniowe, prawa obywateli, polityka migracyjna, status osoby osiedlonej