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What will happen to our British friends who reside in France after Brexit?

Theresa May said that she is in favor of the preservation of expatriates' rights provided that an agreement on "reciprocal rights" is reached.

In fact, it is highly likely that the British Government will impose work permit restrictions. In that case, and as the principle of reciprocity will apply, British citizens will need a visa to work in France.

The future of expatriates will most certainly be used as a bargaining chip during the withdrawal negotiations and chances are high that what happens to them will be decided at the last minute, in 2019, when UK's withdrawal from the European Union will become effective.

Let us hope, at least, that our leaders will work out efficient agreements to impair as little as possible the free movement of

people between the United Kingdom and France, in particular with respect to business immigration.

On January 17, 2017, British Prime Minister Theresa May outlined the main objectives of the forthcoming UK's exit from the European Union. Concerning immigration, emphasis was placed on the control of migration flows from Europe to the United Kingdom.

Theresa May declared *"Brexit must mean control of the number of people who come to Britain from Europe"*.

With such a statement, one can easily understand the concerns felt by the French community in the UK and, conversely, by the English community residing in France.

It should be noted that as many as 185,000 British nationals currently live in the French territory!

To date, nothing has been decided yet. As such, an optimistic person could thus consider that anything is still possible and conceivable!

WHAT ARE THE RULES CURRENTLY APPLICABLE TO BRITISH CITIZENS STAYING IN THE FRENCH TERRITORY?

British citizens are currently free to stay and to engage in employed or self-employed activities in France. There is no obligation to hold a residence permit or a work permit.

- Conditions of entry and residence in France:
 - have a valid passport,
 - not being a threat to public order.
- Right to exercise a professional activity: British citizens have the right to exercise a professional activity in the same conditions as French nationals, irrespective of the duration of such activity.

The same applies for stays in France in the context of a provision of services or on secondment.

IMPORTANT INFORMATION: These rules apply to nationals of the European Economic Area ("EEA"), i.e. the EU Member States, Iceland, Norway and Lichtenstein.

WHAT SHOULD WE EXPECT POST-BREXIT?

Theresa May said that she is in favor of the preservation of expatriates' rights provided that an agreement on "reciprocal rights" is reached.

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In other words, the future of expatriates will most certainly be used as a bargaining chip during the withdrawal negotiations and chances are high that what happens to them will be decided at the last minute, in 2019, when UK's withdrawal from the European Union will become effective.

In an ideal scenario where the UK would join the EEA, the principle of free movement of people would be maintained. This would also offer another benefit: The coordination of social security schemes would remain unchanged.

However, taking into account the speeches delivered by Theresa May and her Government on the control of migration flows, this scenario is unlikely, if not already abandoned.

In addition to the above scenario where the UK would join the EEA, known as the "Norway" model, other alternative scenarios that already exist could be implemented, including:

- The "Swiss" model: Negotiation of a set of bilateral agreements (benefit: Preservation of the free movement of goods. A complicated option, however. Switzerland has currently entered into more than one hundred agreements);
- The "Canadian" model: Negotiation of a free trade agreement similar to the one between the EU and Canada (it being specified that the agreement known as "CETA" was adopted on February 15, 2017, after 7 years of negotiations...);
- The "Turkish" model: Negotiation of a customs union (all barriers are maintained expect negotiations on customs tariff for trade exchanges).

Yet, it seems that to date none of these models is held satisfactory by the British Government.

The British Government explained that it wished a new solution that would enable it (i) to control immigration to Britain from the EU, (ii) to have a wide access to the European goods and services market, (iii) to conclude new trade agreements with third countries. In this context, does the British Government want to "have its cake and eat it too"?

There are two possibilities:

- Either the United Kingdom succeeds in negotiating an agreement under which it remains within the single market, and, in that case, the free movement of people could be maintained. This scenario is hardly plausible.
- Or the British Government imposes work permit restrictions. In that case, and as the principle of reciprocity will apply, British citizens will need a visa to work in France.

In short, if the free movement of persons is impaired, British citizens established in France could very well be subject as from 2019 to the rules applicable to third country citizens.

RULES CURRENTLY APPLICABLE TO THE NATIONALS OF THIRD COUNTRIES TO THE EEA

If the United Kingdom rejects all of the aforementioned existing models, it will be considered as a third country to the EU and/or EEA.

Except otherwise agreed upon, the terms of Law n°2016-174 of March 7, 2016 on rules and regulations applicable to foreigners should apply:

- British employees will need a work permit to work in France. Visa and work permit will have to be applied for at the same time.
 - There exists a **one-year** renewable “employee” residence permit available to employees who have entered into an employment contract for an indefinite term.
 - Employees hired under a fixed-term employment contract, whatever the duration of such contract, can apply for the “temporary worker” residence permit. The duration of that permit is similar to that of the employment contract.
 - After an initial year in France under a legal immigration status, foreign workers can obtain a multi-year residence permit^[1]. This permit includes a specific mention that indicates the situation of the foreign worker:
 - The “Talent passport” mention (for highly qualified employees, investors, researchers and artists);
 - The “seasonal worker” mention (this permit is issued for a maximum of 3 years and allows stays of a maximum of 6 months per year);
 - The “ICT Seconded Worker” mention (ICT stands for Intra-Company Transfer) (this residence permit concerns employees working abroad for a company and seconded in France to hold a high level position or to provide an expertise within a company belonging to the same Group as her/his employer. This residence permit is issued for a maximum of 3 years).

Conclusion:

⇒ The multi-year residence permit introduced by the Law of March 7, 2016 for third country nationals should be extended to British employees after one year of legal residence in France.

⇒ The “Talent passport” residence permit will probably be the appropriate solution for business immigration from the United Kingdom.

But:

⇒ In most cases, a labor market protection regime (*opposabilité de la situation de l'emploi*)^[2] applies, which means that priority is given to the French labor market.

In practice, this means that French companies wishing to hire British employees will have to demonstrate that:

- Either they are searching in a branch of activity where the labor market protection regime does not apply,
- Or they have already - unsuccessfully - tried to find on the French labor market a profile that matches the employment position to be filled.

WHAT WILL HAPPEN TO PENSIONERS RESIDING IN FRANCE?

Currently, British pensioners benefit from the freedom of movement. In addition, they are covered by a bilateral agreement between France and the United Kingdom, the National Health Service, that provides for the coverage of all medical expenses in the EEA countries. Their medical expenses are thus reimbursed by the UK public health service.

As a result of Brexit:

- British pensioners may lose the benefit of this medical coverage.
- They will have to carry out the formalities to apply for a permanent residence permit.

RECOMMENDATIONS TO COMPANIES TO ANTICIPATE BREXIT

Our key recommendations to manage the situation of British employees already residing in France and the situation of those whose secondment in France is contemplated in the short-term are as follows:

- i. Appoint an individual or a team of individuals to follow-up employment, social security and immigration issues. This will ensure that each staff member, wherever located, will receive the same consistent message, which will, in turn, give them confidence that the group knows what it is doing and what needs to be done as UK is getting closer and closer to Brexit;
- ii. Review and adapt the global mobility policies taking into account the potential repeal of Community legislation (in particular regarding pension scheme since EU Regulations will cease to apply);
- iii. Establish the cartography ("talents", high level profiles, trainees, etc.) of British employees usually hired by the group French entity(ies) (in order to better identify what type of visa will need to be applied for in the future);
- iv. As the 2019 deadline approaches, set up a file for each relevant employee, as per the French rules and regulations applicable to foreigners^[3].

To conclude, between now and 2019, companies must remain patient, anticipate and prepare to file visa applications. However, they should also remain confident: We can legitimately expect that UE and UK leaders will be able to work out suitable arrangements for business immigration issues.

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After all, on January 17, 2017, Theresa May, addressing to the ambassadors of the 27 EU Members states invited to Lancaster, did exclaim *"You will still be welcome in this country as we hope our citizens will be welcome in yours."* Phew... There is still room for hope!

[1] Some temporary residence permits do not entitle to subsequently apply for a multi-year permit. These are residence permits with the mentions "visitors", trainees" or "temporary workers").

[2] This protection regime means that the employment situation in France can be used as a ground for refusal to issue a residence permit to a third-country national.

[3] If the United Kingdom gives up and/or restricts the freedom of movement, companies wishing to recruit international talents will have to apply the provisions of any new Regulation related to immigration and visa.

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