

## **Foreword**

This is a study into the possible strategic choices that the City of Amsterdam could take to ensure British residents of Amsterdam are able to continue living in the city after the Brexit process is finalised, and that Britons continue to come to Amsterdam to study. It came about at the request of policy and administrative advisors from IN Amsterdam (formerly Expatcenter Amsterdam, a part of the department of Economic Affairs) and the City of Amsterdam (Directie Bestuursadvisering). These organisations supported and financed the research. We would also like to thank Rita Molenkamp-Szucs and Anneke Grummel for their efforts.

Since the British referendum on 23 June 2016, in which the British public voted to leave the European Union, the City of Amsterdam has found itself confronted with a number of questions and concerns about the possible consequences of such an exit. This includes the legal rights of ‘British Amsterdammers’ to continue living here, as well as the possible effects on the business climate for companies looking to establish in the region. The Amsterdam Metropolitan Area is home to approximately 16,000 economically active British residents, including employees, scientific researchers, entrepreneurs and students. The wish of the City of Amsterdam is that this be an open, international city, and one able to take responsibility for all its inhabitants, including British citizens. As such, Amsterdam strives to take an active stance in the Brexit process and, where possible, influence the outcomes thereof in a manner which meets the concerns of Britons in Amsterdam. These concerns were first aired at a gathering on 18 July 2016, to which Mayor Van der Laan had invited the British community of Amsterdam in response to the result of the British referendum on an EU exit. Around 200 British Amsterdammers were in attendance.

It was also in response to this that a study was requested which would outline possible strategic choices for how to approach the Brexit negotiations. Considering the expertise of the researchers, the focus of the study is very much on aspects around the rights to residency and not around tax and other administrative questions. The study is solely concerned with strategic choices against the backdrop of the Brexit negotiations between the European Union (EU) and the United Kingdom (UK), and is exclusively aimed at the rights to residency of Britons living in Amsterdam before Brexit.

The research was carried out in the period January through May 2017 by Annette Schrauwen, Professor of European Integration at the University of Amsterdam; Tesseltje de Lange, university lecturer and researcher on Administrative and Migration Law at the Law Faculty of the University of Amsterdam; and Jan Kraak, a Master’s student in European Union Law at the Faculty of Law of the University of Amsterdam. The study was comprised of secondary research. There was no empirical research conducted, however use was made of the reports, factsheets and factual data provided by the City of Amsterdam. The research concerned an analysis of existing laws and rules, transitional provisions and standstill clauses within accords that the EU has agreed with other countries. The aim was to distil from these the judicial possibilities around the right for those Britons currently living in Amsterdam to stay after the Brexit process is completed. During the research period, multiple discussions took place concerning the progress of the study and the quality of the content within it. Participants included Rita Molenkamp-Szucs, Wouter van der Heijde, Mark Boekwijt, Anneke Grummel and Yvon Remers of the City of Amsterdam, as well as Jeremy Bierbach, an immigration lawyer from Franssen Advocaten in Amsterdam. These discussions proved of great value when it came to structuring the final research report, for which we are grateful.

## **Reading guide**

The report begins with an overview of the suggestions that arose from the research. The starting point for the suggestions remains that the City of Amsterdam will do its best to ensure that British citizens, as far as possible, keep the same residency rights that they held before Brexit, after the Brexit process is completed. Some suggestions concern a choice influenced by the

possible results of the EU-UK negotiations over the Brexit. Other suggestions concern particular choices that can be made should the negotiations not lead to guarantees for British Amsterdammers. This split can also be found in the list. The suggestions sometimes concern a campaign or lobby at European level (with the Brexit negotiators, the European Commission or the European Parliament), sometimes at national level, and sometimes at local level. The suggestions are ranked according to these levels. A schematic overview of all suggestions follows the list.

The first chapter then sketches the judicial framework of the Brexit negotiations between the EU and the UK. From the judicial framework, it arose that guarantees for residency rights of Britons in Amsterdam 1) need to be sought within an accord between the EU and the UK, as well as 2) within European rules that apply in respect to non-EU citizens and 3) national rules that apply in respect to non-EU citizens. When it comes to guarantees for British students at Amsterdam's universities that is no different. Considering their specific position, the rights of students are looked at in a separate chapter (namely chapter four). The second chapter indicates, on the basis of existing agreements between the EU and other countries, in what ways residency rights can be guaranteed within an accord between the EU and the UK. The third chapter looks at the guarantees that can be found in European law, such as that which applies in regards to non-EU citizens. Finally, chapter five indicates what actions can be undertaken to secure, as far as possible, the safety of residency rights for British Amsterdammers under national law.

## **Overview of the recommended strategic choices to ensure British residents of Amsterdam can continue living in the city after Brexit, and to preserve Amsterdam as an attractive centre of study for British students**

**The overview differentiates between actions aimed at the negotiations between the EU and the UK (p. 2-5) and actions to guarantee rights in case the negotiations do not result in guarantees (p. 6-11)**

**The overview distinguishes three levels at which action can be undertaken:**

### **European**

- by lobbying Brexit negotiators
- by lobbying the European Commission

### **National**

- by lobbying the Dutch legislator

### **Local**

- through personal action
- by lobbying universities and other institutes of higher education

# Negotiations EU-UK

## 1. Actions at the EU level – Context of the Brexit negotiations

- Try to make residency rights of Britons in the EU (and of EU citizens in the UK) a preliminary and separate topic in the negotiations.
- Establishing Britons' position in the withdrawal agreement would be preferable with a view to validity. Any transition agreement is likely to have an expiry date, which the withdrawal agreement does not have.

# Negotiations EU - UK

## Actions at the EU level – content of the Brexit negotiations

### Guarantees for the rights to residency for British residents of Amsterdam

*Promote wherever possible that the withdrawal agreement includes provisions that are comparable to the provisions in the EEA Agreement regarding the free movement of people, including the mechanism that ensures the swift application of any expansion of the rights to free movement – via jurisprudence or legislation – to Britons. Given the British government's stance as set out in the Whitepaper, it seems advisable to not pursue the application of such provisions to all Britons too rigorously, but to argue that such provisions should in any case apply to Britons residing in the EU (Amsterdam) at the time of the Brexit.*

*If it proves impossible to persuade the UK to include a mechanism that ensures the more or less automatic application of developments in jurisprudence and legislation within the EU regarding the free movement of people, so that no agreement can be reached on a reciprocal policy for citizens already residing in the EU or (conversely) the UK, then the 'Swiss' solution can be advocated. Provisions comparable to those in the agreement with Switzerland could be made applicable to Britons residing in the EU at the time of the Brexit, coupled to the establishment of a Joint Committee to discuss the consequences of new developments for Britons in the EU and for EU citizens in the UK.*

*If it proves impossible to agree to a policy with the UK that ensures that developments in jurisprudence and legislation regarding the free movement of people within the EU can be discussed jointly, so that no agreement can be reached on a reciprocal policy for citizens already residing in the EU or UK, respectively, then a policy could be considered as in the Association, which does not guarantee the right to entry but does provide for a stepwise increase in the rights for those who were admitted previously. This means, in effect, that the rights of Britons residing in the EU (and of EU citizens in the UK) are 'frozen': they have the right to temporary residence (with family members) according to the system provided for by directive 2004/38 which can be converted into permanent residence after a legal stay of five years. Such a rule can be brought before the national judge in the EU, and the Court is competent to rule on its interpretation.*

# Negotiations EU - UK

Actions at the EU level – content of the Brexit negotiations  
Guarantees for residency rights of future generations/offspring of British residents of Amsterdam

Negotiations result in residency rights for Britons

•A policy could be considered as contained in directive 2004/38 that gives permanent residency rights to children after five years. If this is not feasible, then the EU-Turkey Association could be considered where the offspring of legally resident Turks receive residency rights coupled to their duration of stay or the completion of a professional education. The rights of Turkish family members under Resolution 1/80 aim to ensure that they can consolidate their position in the state where they reside and build up an autonomous life there.

Negotiations result in a special status for Britons

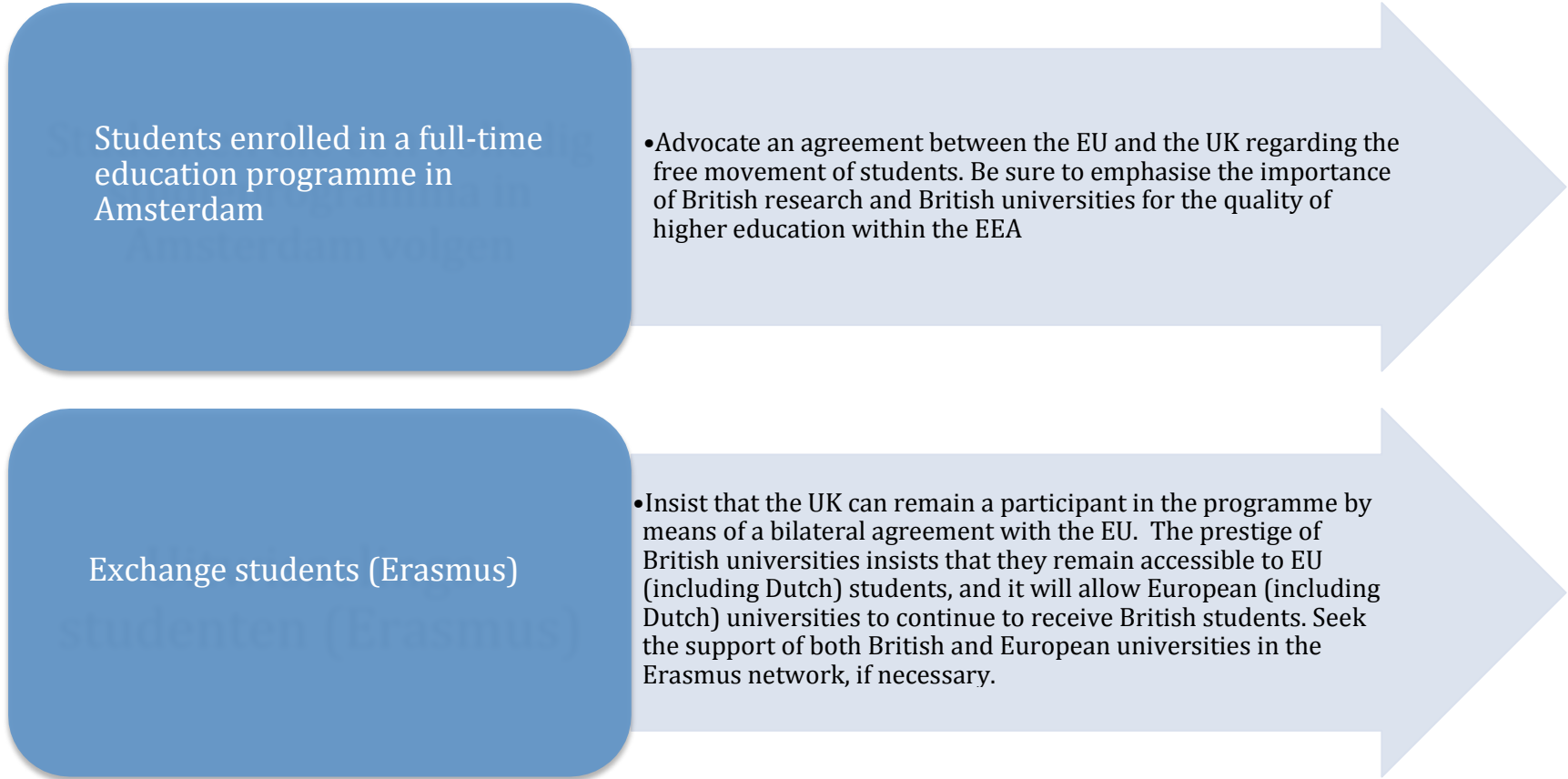
•Future generations don't necessarily need to receive the same special status (e.g. an associated citizenship), as long as the policy ensures a solid basis for their further autonomous stay.

Negotiations result in a stand-still provision that freezes Britons' residency rights

•Also in case of a stand-still provision that freezes the rights of Britons residing in the Union at the time of the Brexit, the possibility of a continued autonomous stay for future generations should be taken into account.

# Negotiations EU – UK

## Actions at the EU level – content of the Brexit negotiations British students in Amsterdam



# Guarantees separate from the result of EU – UK negotiations

Actions at the EU level

Guarantees for the rights to residency for British residents of Amsterdam

## Guarantees for residency rights for non-EU citizens via EU directives

- *Lobby the European Commission to propose a transition directive that allows Britons to appeal to EU directives regulating residency rights for non-EU citizens even before Brexit is concluded.*



# Guarantees separate from the result of EU – UK negotiations

## Actions at the national level

These recommended actions can be pursued simultaneously. They are especially important if agreements between the EU and UK do not guarantee residency rights. **It is however important to start lobbying in time**, if the transition from European to national residency rights is to occur seamlessly to the moment of Brexit.

*Lobby the national government to relax the conditions contained in the directive that apply to referees and family members where it concerns British family members of non-EU citizens or of Dutch citizens, or for British families.*

*Lobby the national government to relax its application to Britons of the conditions that apply to obtain the status of long-term resident as contained in directive 2003/109 where possible (civic integration exams, income requirements), and optionally to grant a national residence permit for long-term stay.*

*Take care to preserve the exemption regarding the civic integration obligation for holders of the Blue Card (and their family members).*

*Take care that the national government does not subject (British) researchers to limitations in terms of family supplements, grants and tax benefits.*

*Take care to preserve the exemption regarding the civic integration obligation for researchers (and their family members).*

# Guarantees separate from EU – UK negotiation results

## Actions at the national level

These recommended actions can be pursued simultaneously. They are especially important if agreements between the EU and UK do not guarantee residency rights. **It is however important to start lobbying in time**, if the transition from European to national residency rights is to occur seamlessly to the moment of Brexit.

*Lobby the Dutch government to create a special position for Britons residing in the Netherlands with regard to a possible obligation to depart, as a result of the return directive. Based on this directive, the Netherlands can proceed to grant residency rights based on national law.*

*Lobby the Dutch government to create a transition regulation that explicates that Britons residing in the Netherlands have residency rights by analogy with Article 8 under g) of the Aliens Act 2000 (lawful stay pending the decision on an application for a residence permit).*

*Request that the Dutch government investigates whether a special (temporary) regulation can be implemented that considerably shortens the decision-making term for residence permit applications made by Britons.*

*Try where possible to achieve that any limitations for non-EU citizens contained in directives are not applied to Britons.*

*Insist with the Dutch legislator that British students do not pay the institution's tuition fee but the statutory tuition fee. This can be achieved either through an amendment to the Higher Education Act or through bilateral agreement with the UK.*

*Lobby the national government to make it easier to have more than one nationality. It is not recommended to limit this plea to British applicants with a view to the principle of equality.*

# Guarantees separate from EU – UK negotiation results

## Actions at the national level

These recommended actions can be pursued simultaneously. They are especially important if agreements between the EU and UK do not guarantee residency rights. **It is however important to start lobbying in time**, if the transition from European to national residency rights is to occur seamlessly to the moment of Brexit.

*Lobby the national government for (a restoration of) a decentralised approach to integration and so gain control over the decision whether British residents of Amsterdam have fulfilled their civic integration obligation.*

*Advocate an amendment to article 20, first clause of the Aliens Act 2000 by adding that the State Secretary of Security and Justice is authorised:*

*(d) to formally grant a permanent residence permit to an alien whose EU permanent residence permit has been nullified as a result of the Brexit.*

*Lobby the national government to qualify Britons as knowledge migrants as soon as they meet the lowest income criterion for knowledge migrants with a ‘residence history’ in the Netherlands.*

*Lobby the national government to make an exception for Britons (during a certain period following Brexit) with regard to the job market test as described in the Aliens Employment Act, so that they can continue their stay in the Netherlands as a knowledge migrant.*

*Lobby the Dutch government to grant a residence permit on the basis of national law to Britons residing in the Netherlands at the time of the Brexit who do not qualify for a continued stay in the Netherlands on other grounds.*

# Guarantees separate from the EU – UK negotiations results

## Actions at the local level

These recommended actions can be pursued simultaneously. They are especially important if agreements between the EU and UK do not guarantee residency rights. **It is however important to start lobbying in time**, if the transition from European to national residency rights is to occur seamlessly to the moment of Brexit.

*Engage Amsterdam institutes of higher education in a discussion on the institution's tuition fee, to see whether they are willing to reduce this.*

*The City of Amsterdam can encourage and support British students (and this could also apply for other non-EU citizens) to attain the state language exam NT2, also if they are attending an English-language education programme in the Netherlands. If they wish to stay in the Netherlands after completion of the programme, they will already fulfil this demand, which will facilitate naturalisation and other national residence-related procedures.*

*Inform British residents of Amsterdam about the possible civic integration obligation after the Brexit and offer them the option of voluntarily fulfilling the civic integration obligation **already now**, to prevent any delay or uncertainty after the Brexit.*

*The City of Amsterdam can offer (almost) all permanently settled British residents of Amsterdam assistance in attaining the state language exam NT2, as preparation for a possible naturalisation request or civic integration obligation once they have stopped being EU citizens, but also as a means to improve their co-living with other (migrant) population groups in Amsterdam.*

# Guarantees separate from the EU – UK negotiations results

## Actions at the local level

These recommended actions can be pursued simultaneously. They are especially important if agreements between the EU and UK do not guarantee residency rights. **It is however important to start lobbying in time**, if the transition from European to national residency rights is to occur seamlessly to the moment of Brexit.

*Inform Britons about the impending prolongation of the required term of residence for naturalisation, so that they are not confronted with a seven-year requirement which they do not yet fulfil when they wish to apply for naturalisation around the actual moment of the Brexit.*

*Inform British residents of Amsterdam about the option to already apply for a permanent residence permit now, if they can demonstrate to have resided in the Netherlands for at least five years.*

***If it appears that not a single transition regulation will be agreed upon, inform Britons in time – so, before the Brexit - about the obligation to request a change to their residency rights in time.***

***If it appears that no transition regulations will apply, offer entrepreneurial Britons assistance in preparing an application as a self-employed entrepreneur and – if the municipality’s assessment is part of the decision-making procedure – advocate that British entrepreneurs are granted a residence permit if that seems reasonable to the City of Amsterdam.***