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UKTF (2020) 10 – Commission to EU 27

Subject: Internal EU27 preparatory discussions on the future relationship: "Mobility of persons"

Origin: European Commission, Task Force for Relations with the United Kingdom

Remarks: These slides are for presentational and information purposes only and were presented to the Council Working Party (Article 50) on 20 January 2020. The contents are without prejudice to discussions on the future relationship.

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Internal preparatory discussions on
future relationship

Mobility of persons

AD HOC WORKING PARTY ON ARTICLE 50 (*Seminar mode*)

20/01/2020

General introduction

If UK withdraws with agreement on 31 January 2020:

Transition period of 11 months for:

- 1. adoption of negotiating directives;**
- 2. conduct of negotiations;**
- 3. signature/conclusion and entry into force of future partnership by 1 January 2021**

=> *Complex and politically sensitive negotiations*

=> *Possibility of a "cliff edge" as of 1 January 2021*

Purpose of the seminar series

- Respect established EU principles and objectives:

- 1. European Council (Art. 50) guidelines on the framework for the future EU-UK relationship, 23 March 2018;**
- 2. Revised Political Declaration agreed with the UK government on 17 October 2019, setting out the framework for the future relationship between the EU and the UK.**

- Preparing the negotiating directives

- Take into account Member States' views

- Commission will present the recommendation after UK withdrawal

→ no surprises

→ allow for swift adoption

Part 1. Mobility of persons

Starting point: European Council (Art. 50) Guidelines (23 March 2018)

10. The future partnership should include **ambitious provisions on movement of natural persons, based on full reciprocity and non-discrimination among Member States**, and related areas such as coordination of social security and recognition of professional qualifications [...] taking into account that the UK will be a third country outside Schengen [...]

7. [...] any agreement with the United Kingdom will have to be **based on a balance of rights and obligations**, and ensure a level playing field. **A non-member of the Union, that does not live up to the same obligations as a member, cannot have the same rights and enjoy the same benefits as a member.**

The European Council recalls that the four freedoms are indivisible and that there can be no "cherry picking" through participation in the Single Market based on a sector-by-sector approach [...]

Starting point: Political Declaration

IX. MOBILITY

48. Noting that the United Kingdom has decided that the principle of **free movement of persons** between the Union and the United Kingdom will **no longer apply**, the Parties should establish mobility arrangements, as set out below.

49. The mobility arrangements will be based on **non-discrimination** between the Union's Member States and **full reciprocity**.

50. In this context, the Parties aim to provide, through their domestic laws, for **visa-free travel for short-term visits**.

51. The Parties agree to consider conditions for **entry and stay** for purposes such as **research, study, training and youth exchanges**. [...]

53. In line with their applicable laws, the Parties will explore the possibility to facilitate the crossing of their respective borders for legitimate travel.

54. Any provisions will be without prejudice to the Common Travel Area (CTA) arrangements as they apply between the United Kingdom and Ireland. [...]

4. The future relationship will be based on a balance of rights and obligations, taking into account the principles of each Party. [...] while respecting the result of the 2016 referendum including with regard to [...] the **ending of free movement of people between the Union and the United Kingdom**.

Starting point: Political Declaration

IX. MOBILITY

57. These arrangements would be in addition to commitments on **temporary entry and stay of natural persons for business purposes in defined areas** as referred to in Section III of this Part. Those commitments should not be nullified by the right of either Party to apply their respective laws, regulations and requirements regarding entry, stay and work.

III. SERVICES AND INVESTMENT

B. Market access and non-discrimination

30. The arrangements should allow for the **temporary entry and stay of natural persons for business purposes** in defined areas.

80. [...] the United Kingdom will be a **non-Schengen third country that does not provide for the free movement of persons**

Baseline situation on EU side after transition period

National rules and EU legal migration acquis applies

(shared competence between EU & Member States)

EU legal migration Directives¹ cover these categories of third-country nationals (TCNs):

- Family members of lawfully residing third-country nationals
- Highly-skilled workers ("EU Blue Card")
- Intra-corporate transferees (ICTs)
- Seasonal workers
- Students, researchers, trainees and volunteers in the European Voluntary Service
- School pupils, other volunteers, au pairs (optional rules)
- Long-term residents (stays longer than 5 years in the same Member State)
- Single Permit + equal treatment rights for those authorised to work (including those covered by national law)

Member States are free to regulate other categories of TCNs not covered by EU law, for instance:

- Low and medium-skilled workers (other than seasonal workers)
- Self-employed
- Job seekers
- Retired people

Schengen Rules regulate entry to and exit from the Schengen Area including short stays of 90 days in a 180/day period (Schengen Convention, Schengen Borders Code, Visa Regulation, in time Entry Exit System and European Travel Information and Authorisation System)

¹ Not applicable in IE and DK;

Note: Member States may always set "volumes of admission" (= quota) for economic migrants (employed and self-employed) coming from a third country in order to seek work in their territory (Article 79(5) TFEU)

Differences between EU rules vs current UK rules (examples)

	EU rules	UK rules
Fees for permits	Average € 140	Between £ 152 and 3.250.-
Income requirement for consolidated status after 5 years	Stable and regular resources (national minimum income)	At least £ 35.000
	No economic needs test	Economic needs test
Family reunification	Stable and regular resources for the sponsor (national minimum income)	Set income of the sponsor (in most cases higher than EU)
	Optional language test	Compulsory language test
	Residence permit at least 1 year	Permits less than 1 year
Intra-corporate transferees	No financial resources requirement	Financial resources requirement
	No labour market test	Labour market test
	Up to 3 years	Up to 5 years
	No possibility for consolidated status	Possibility for consolidated status
Students	Case by case financial resources	Fixed financial resources

Part 2. Social Security Coordination

Starting points:

European Council (Art. 50) Guidelines (23 March 2018)

10. *The future partnership should include ambitious provisions on movement of natural persons, based on full reciprocity and non-discrimination among Member States, **and related areas such as coordination of social security** and recognition of professional qualifications. [...]*

Political Declaration

48. *Noting that **the United Kingdom has decided that the principle of free movement of persons** between the Union and the United Kingdom **will no longer apply**, the Parties should establish mobility arrangements, as set out below.*

50. *[...] the Parties aim to provide, through their domestic laws, for visa-free travel for short-term visits.*

51. *The Parties agree to consider conditions for entry and stay for purposes such as research, study, training and youth exchanges*

52. *The Parties also agree to **consider addressing social security coordination in the light of future movement of persons.***

57. *[...] commitments on temporary entry and stay of natural persons for business purposes*

**Baseline situation
after the transition period**

EU social security coordination rules continue to apply fully or partially

=> to persons falling under the personal scope of the WA at the end of the transition (as long as they continue to meet the conditions therein)

EU social security coordination rules will no longer apply

=> to persons moving after the end of the transition period

Social security coordination for future movements

- *The UK decided to stop the free movement of persons*
- On the basis of mobility arrangements (e.g. linked to the right of entry and stay of specific categories of persons) social security coordination could include:
 - rules on applicable legislation
 - healthcare
 - equality of treatment
 - aggregation and assimilation of facts
 - export of cash benefits

Part 3. Civil Justice

Starting points:

European Council (Art. 50) Guidelines (23 March 2018)

10. [...] In this context, **options for judicial cooperation in matrimonial, parental responsibility and other related matters could be explored**, taking into account that the **UK will be a third country outside Schengen** and that such cooperation would **require strong safeguards** to ensure full respect of **fundamental rights**.

Political Declaration

55. To support mobility, the Parties confirm their commitment to the **effective application of the existing international family law instruments** to which they are parties. The Union notes the United Kingdom's intention to accede to the 2007 Hague Maintenance Convention to which it is currently bound through its Union membership.

56. The Parties will **explore options for judicial cooperation in matrimonial, parental responsibility and other related matters**.

Civil Justice – Family Law Matters

Covered by relevant international conventions, such as :

- *1980 Hague Convention on the Civil Aspects of International Child Abduction*
- *1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children*
- *2007 Hague Convention on Child Support and Other Forms of Family Maintenance*
- *1970 Hague Convention on the Recognition of Divorces and Legal Separations*

Conclusions

- The UK has made it clear that it has **no ambition for specific arrangements on mobility** of persons with the EU.
- Any arrangement in this field will have to respect the principles of **reciprocity** and **non-discrimination**.
- The Political Declaration **links future mobility and social security coordination**.