

21 February 2018

TF50 (2018) 31 – Commission to EU 27

Subject: Internal EU27 preparatory discussions on the framework for the future relationship: "Mobility"

Origin: European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU

Remarks: These slides are for presentational and information purposes only and were presented to the Council Working Party (Article 50) on 15 February 2018. The contents are without prejudice to discussions on the framework of the future relationship.

In December 2017, the European Council invited the Council (Art. 50) together with the Union negotiator to continue internal preparatory discussions on the scope of the future EU-UK relationship. The slides support those discussions. They are based on the April European Council guidelines which continue to apply in their entirety.

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Internal preparatory discussions on framework for future relationship

Mobility

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

15 February 2018

Key parameters informing the discussion

UK "red lines"

- *"After the UK leaves the EU, free movement will end but migration between the UK and the EU will continue"*
- *"The UK will establish an immigration system that allows the UK to control numbers and encourage the brightest and the best to come to the UK"*

EU 27 guiding principles

- *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 four freedoms of the Single Market are indivisible, and there can be no "cherry-picking"*

UK withdrawal implications for mobility

Phases/scenarios	Aspects to consider
TRANSITION	<ul style="list-style-type: none">• Schengen border crossing• Visa regime• Migration• Trade in services (mobility related aspects)• Social security coordination
FUTURE	
PREPAREDNESS <i>for the UK becoming a third country, including in a no deal scenario</i>	

Transition

If a transition agreement with the UK is reached (*EUCO guidelines 15/12/2017 & Negotiating Directives 29/01/2018*)

UK applies **all acquis and continues to participate in the Internal Market** for a limited period.

Status quo would be maintained in all areas, except for certain rights linked to EU citizenship:

- elections to the European Parliament
- local elections
- Citizens' Initiative

Consequences of the withdrawal of the United Kingdom from the EU

I.

*Default framework:
EU legal migration acquis*

The Single Market

free movement of persons

Scope	EU citizens, EEA nationals and Swiss citizens
Principles	Integrity of the Single Market – 4 freedoms together Development: <ul style="list-style-type: none">• workers, self-employed → all citizens (incl non-active)• rights: Treaties, EU Charter of Fundamental Rights, Directive 2004/38/EC (<i>all citizens</i>), Regulations (EU) 492/2011 (<i>workers</i>) or (EC) 883/2004 (<i>social security</i>) Supremacy and direct effect of EU law
Decision making	Rich " <i>ecosystem</i> " built on EU law with important developments via case law of the Court of Justice
Supervision & enforcement	<ul style="list-style-type: none">• the Commission• the Court of Justice and national courts
Remedies	Compliance, infringement procedures ...

Consequences of the UK becoming a third country

- **End of the Single Market regime:** the Free Movement Directive (2004/38/EC), EU free movement of workers rules (Reg. 492/2011) or the social security coordination rules no longer apply
- **EU citizens moving to UK**
 - ⇒ UK migration rules to apply (*rules for the post-withdrawal period are yet to be defined*)
- **UK nationals moving to EU** considered "*third-country nationals*"
 - ⇒ EU legal migration law will apply
 - ⇒ national law will apply in areas not covered by EU law
- **Default rules on: entry visas and co-ordination of social security schemes** (*to be covered below*)

Consequences of the UK becoming a third country

Who is covered by the EU legal migration acquis?

- Family members – *Directive 2003/86/EC*
- Long-term residents – *Directive 2003/109/EC*
- Single Permit holders – *Directive 2011/98/EU*
- Students and researchers – *Directive (EU) 2016/801 (recast)*
- EU Blue Card holders – *Directive 2009/50/EC*
- Seasonal workers – *Directive 2014/36/EU*
- Intra-corporate transferees – *Directive 2014/66/EU*

Who is NOT covered by the EU legal migration acquis?

Other categories (*self-employed, low and medium skilled economic migrants (except seasonal workers), international service providers (except ICTs), jobseekers, family members of non-mobile EU citizens, retired persons ...*) will be covered by national law, as well as rules on regularisation.

Current EU legal migration acquis

(applicable by the EU25 to all third country nationals)

Directive	Provides for specific admission conditions?	Sets procedures (<i>applications, deadlines...</i>)?	Provides for equal treatment (<i>with limitations</i>)?	Allows the third-country nationals to bring family members?	Allows intra EU mobility?
Family Reunification	yes	yes	rights granted through the Single Permit Directive	yes (<i>purpose of the Directive</i>)	no
Long Term Residents	yes, conditions for acquiring the status	yes	yes	no	yes
Single application procedure for a single permit to reside and work (<i>Single Permit</i>)	no	yes	yes	no	no
Students and Researchers (<i>also covers trainees, volunteers, school pupils and au pairs</i>)	yes	yes	yes	yes for researchers	yes for students and researchers
EU Blue Card	yes	yes	yes	yes	yes
Seasonal Workers	yes	yes	yes	no	no
Intra-Corporate Transferees	yes	yes	yes	yes	yes

EU law vs current UK rules (examples)

	EU rules	UK rules
Fees	Average € 140	Between £ 230 and 2.676
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 (national minimum income)	Higher income of the sponsor
	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

No reciprocity requirement

- ① There is **no reciprocity requirement** with regard to the rules on treatment of third country nationals in the EU and EU nationals in the respective third country
- ② EU acquis sets out **equal minimum rights of all third country nationals** that can be topped up through bilateral agreements

Consequences of the UK becoming a third country - summary

EU citizens → UK

- Third country nationals
- Will be subject to UK immigration rules (*future UK immigration rules are unknown today*)
- No coordination or equal treatment regarding social security rights/benefits

UK nationals → EU

- Third country nationals
- Will be subject to entry requirements under the Schengen Borders Code
- Will be subject to EU & national legal migration rules
- No coordination regarding social security rights/benefits (*but: some portability rights in relation to pensions*)

Consequences of the withdrawal of the United Kingdom from the EU

II.

Default framework:

*GATS Agreement mode 4 in relation to
service providers*

Consequences of UK withdrawal – GATS fall-back

- Professional mobility remains possible for service providers falling within the Mode 4 categories defined in GATS, for the sectors covered
- For those persons, labour market tests (*"economic needs tests"*) and numerical restrictions could be partially avoided
- Default rules on visas and immigration may present hurdles to trade and may differ between Member States
- Service suppliers and their employers do not benefit from social security coordination or any right to equal treatment
- Labour market rules of individual Member States apply in full
- Lack of recognition (*e.g. of qualifications*) may imply supply of a service only possible based on host state qualifications
- Mobility of persons not fitting within GATS follows the regime applicable to third-country nationals — partly harmonised (*for transferees*) and partly set by individual Member States

What is not in GATS?

What is not covered? *[depth]*

- Any visa or immigration measure, provided it does not nullify or impair the benefits under the agreement
- Labour market rules and standards or any equal treatment provisions
- Social security coordination, nor any equal treatment provisions
- Rules regarding double taxation

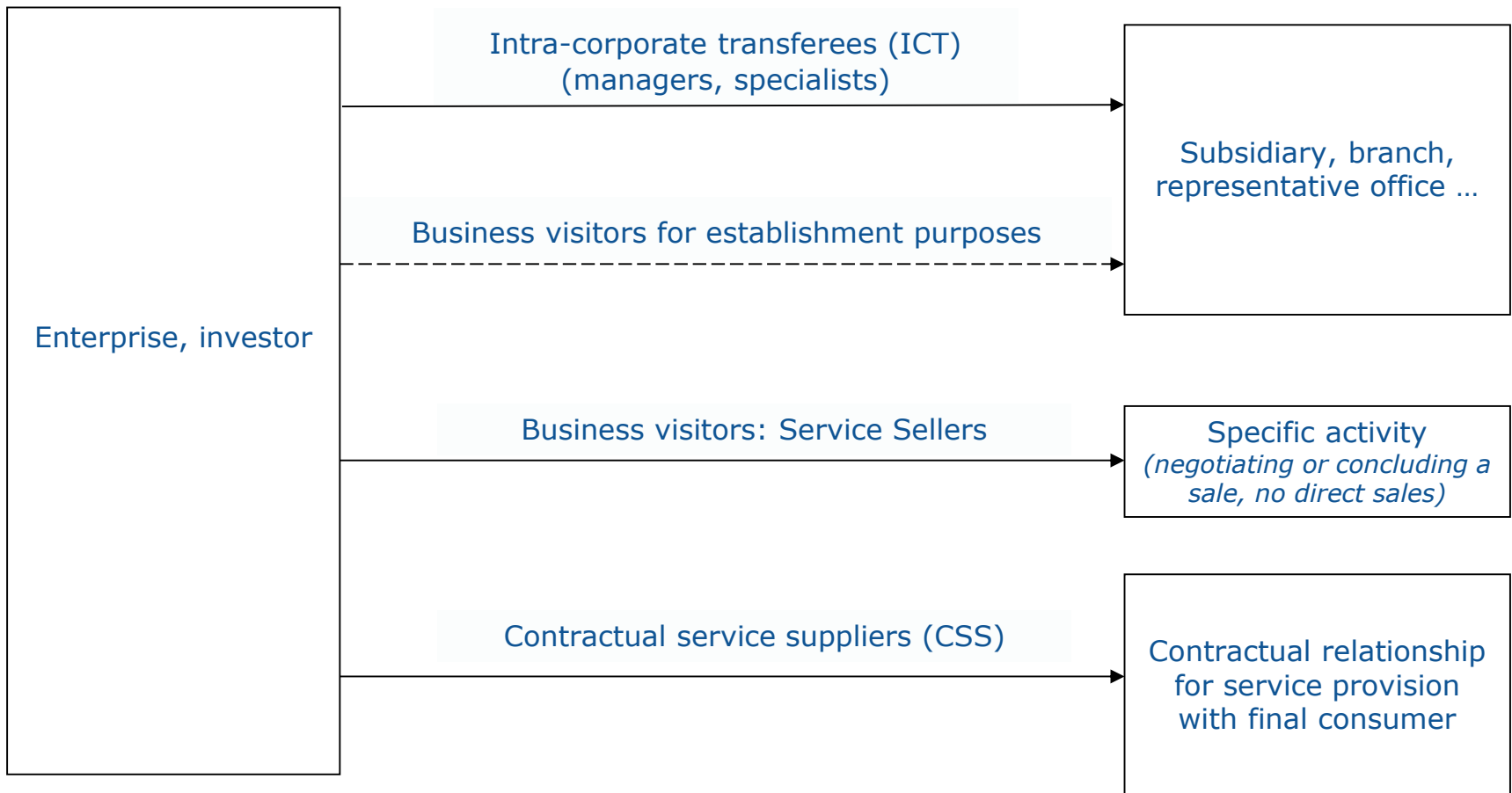
Who is not covered? *[width]*

- Recently recognised categories of skilled service providers (*trainees, independent professionals, various short-term business visitors*)
- Service providers with low- and medium-level qualifications
- Subcontracting or employment-agency type work
- Anyone who is not a service provider or an investor (*e.g. jobseekers, workers, students*)

GATS – key provisions on Mode 4

- General Agreement on Trade in Services (GATS) applies to all 164 WTO members
- It covers the entry and temporary presence of natural persons for business purposes — so-called Mode 4
 - Covers all service sectors
 - Defines each category of persons
 - Specifies limited duration of stay
 - Parties can schedule "reservations", horizontally and per sector
 - Prevents "economic needs tests" (*"labour market tests"*) (*subject to reservations*)
 - Prevents numerical restrictions (*subject to reservations*)
- It sets only few limits on policy choice, leaving Parties the right to regulate
- No direct effect

Mobility categories in GATS



What does Mode 4 under GATS cover?

Mode 4 Category	Key elements of the definition	Length of stay	Sectors covered
Transferees	Intra-corporate transfer of managers (<i>senior position</i>) or specialists (<i>essential uncommon knowledge</i>)	Up to 3 years	All GATS services sectors, subject to reservations
Visitors: establishment	Senior position, purpose – setting up a company, no remuneration in the host country, not providing a service themselves	Up to 90 days	All GATS services sectors, subject to reservations
Visitors: sales	Negotiating or concluding a specific sale. Not selling goods or services directly to the public, no remuneration in the host country	Up to 90 days	All GATS services sectors, subject to reservations
Contractual service suppliers	Employment by foreign enterprise who has a contract with a client in host country, university degree, qualifications, 3 years of experience, remuneration in the host country	Up to 3 months per year	Limited sectorial coverage (<i>enumerated</i>), subject to reservations

Future: existing models and rules & specific issues for consideration

I.

Existing models of cooperation with third countries, including mobility

	Business persons	Self-employed	Workers	Family members	Students	Researchers	All other categories	Scope of different models visualised *
GATS	★	★	★	★	★	★	★	Provides a definition
	★	★	★	★	★	★	★	Prevents quotas
FTA	★	★	★	★	★	★	★	No economic needs test
	★	★	★	★	★	★	★	Provides rules on visa/migration
	★	★	★	★	★	★	★	Has labour market rules
	★	★	★	★	★	★	★	Social security coordination
Single Market								

(*) For illustrative purposes; the grid is not identifying individual policies

Mobility arrangements in existing models

EEA

- Includes all four freedoms, including free movement of persons and services
- Full equal treatment with nationals
- Social security coordination
- Subject to EFTA Court and a supra-national governance structure

Switzerland

- Free movement of workers, self-employed and non-active persons
- Service provision limited to 90 days per calendar year
- Full equal treatment with nationals
- Social security coordination
- Linked by guillotine clause to other agreements
- Unsatisfactory governance mechanism, to be upgraded

Turkey

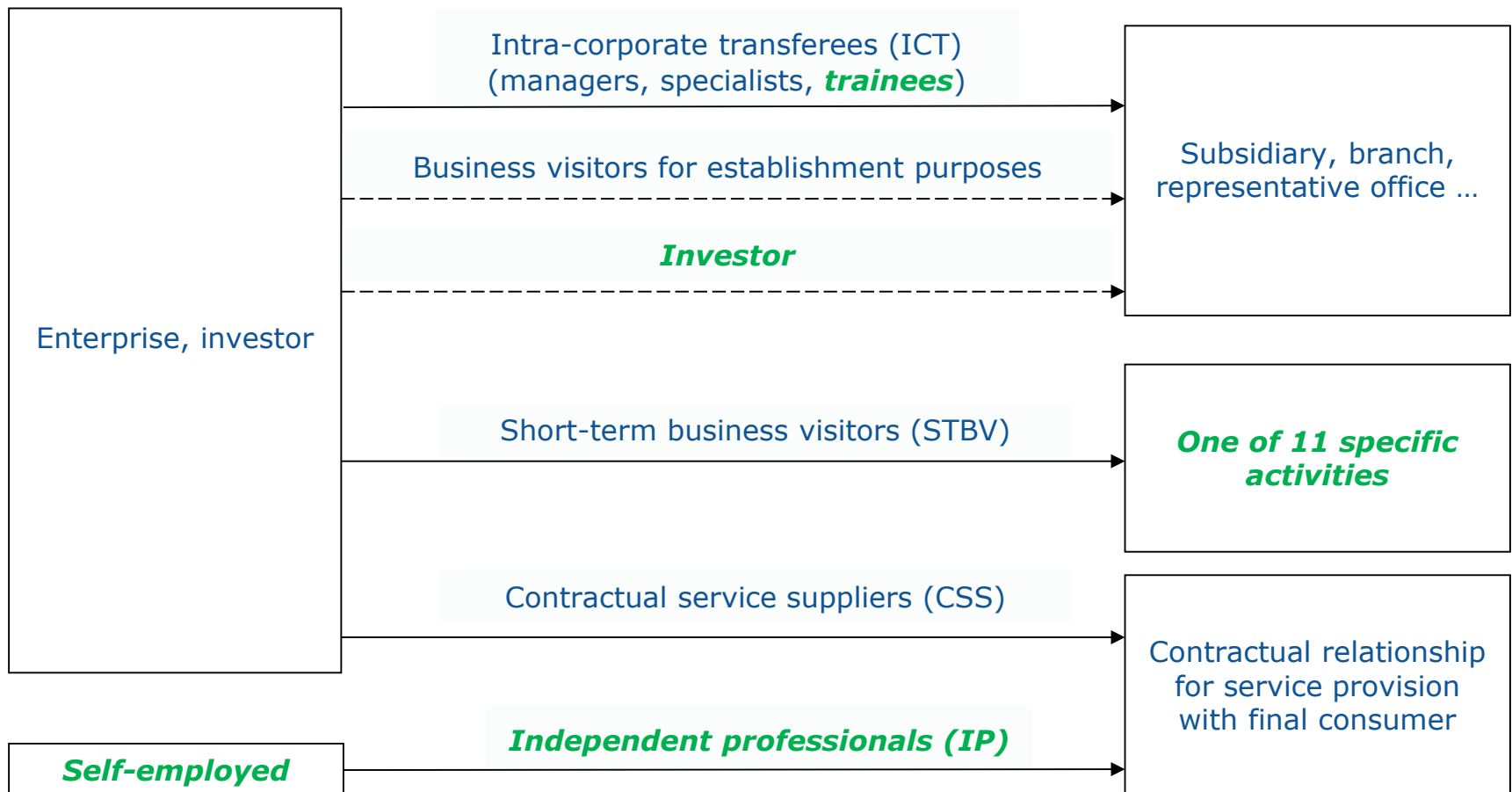
- Confers rights to workers already in the EU
- Standstill effect
- Limited rights for service providers
- Equal treatment as regards working conditions
- Limited social security coordination

FTA

- Service providers and investors, not workers
- Binds existing provisions
- Visa, immigration, labour market carve-out
- No equal treatment provisions
- No social security coordination
- No direct effect
- Disagreements on mobility provisions subject only to State-to-State dispute settlement

Mobility categories in recent EU FTAs

Green/italics: improvements as compared to GATS



What does the Mode 4 chapter of a typical FTA cover?

Green/italics: improvements as compared to GATS

Mode 4 Category	Key elements of the definition	Length of stay	Sectors covered
Transferees	Intra-corporate transfer of managers, specialists <i>or trainee employees</i> . University degree required for trainees.	Up to 3 years (mgr/spec), <i>up to 1 year (trainee)</i>	All sectors committed under investment liberalisation, subject to reservations
Visitors: establishment	Senior position, purpose – setting up a company, no remuneration in the host country, not providing a service themselves	Up to 90 days	All sectors committed under investment liberalisation, subject to reservations
<i>Investors</i>	<i>Establish, develop or administer an investment; substantial capital</i>	<i>Up to 1 year</i>	<i>All sectors committed under investment liberalisation, subject to reservations</i>
Short-term business visitors	Limited <i>list of allowed activities (purchase, sales, installation, maintenance, training, market research...)</i> . Not selling goods or services directly themselves, no remuneration in the host country.	Up to 90 days	<i>All sectors covered by the agreement (i.e. also non-services), subject to reservations</i>
Contractual service suppliers	Employment by foreign enterprise who has a contract with a client in host country, university degree, qualifications, 3 years of experience, remuneration in the host country	<i>Up to 6 months (1 year in CETA, Japan)</i>	Limited sectorial coverage (enumerated), subject to reservations
<i>Independent professionals</i>	<i>Self-employed, obtained a bona fide contract, university degree, professional qualifications, 6 years of experience</i>	<i>Up to 6 months (1 year in CETA, Japan)</i>	<i>Limited sectorial coverage (enumerated), subject to reservations</i>

How does an FTA improve on GATS?

- **Additional categories** of service providers and investors, as well transferees' spouses
- **Longer duration** of stay
- **Fewer reservations** in the schedule (*so, fewer possibilities to introduce labour market tests*)
- **Additional sectors** opened up to contractual service suppliers
- Substantial number of **permitted activities for short-term business visitors**
- **No prior authorisation obligations for short business visits**, except if it is a formality or it is listed in the schedule
- **In practice**, for Mode 4, even an ambitious FTA like CETA does not result in markedly better treatment than what is already accorded unilaterally. The added value is in "binding" (*to prevent backsliding*) and in transparency.
- **Most favoured nation clause** does not apply to Mode 4 (but CETA has it for measures affecting the "stay" (*not the entry*) of persons covered) ²⁴

What cannot be done through a typical EU FTA?

What is not covered? *[depth]*

- Any visa or immigration measure, provided it does not nullify or impair the benefits under the agreement
- Labour market rules and standards or any equal treatment provisions
- Social security coordination, nor any equal treatment provisions
- Rules regarding double taxation

Who is not covered? *[width]*

- Service providers with low- and medium-level qualifications
- Subcontracting or employment-agency type work
- Anyone who is not a service provider or an investor (*e.g. jobseekers, workers, students*)

Future: existing models and rules & specific issues for consideration

Ila.

*Specific mobility related issues:
visa regime*

Consequences of the UK becoming a third country – default

For EU citizens visiting the UK:

- ① uncertainty about future UK visa regime applicable to EU citizens
- ② the current UK visa-free regime allows a longer period of stay than Schengen (*6 months vs 90/180 days under Schengen*)
- ③ the current UK visa-free regime does not allow for studies (*over 30 days*) or paid and unpaid work

Consequences of the UK becoming a third country: default

For UK citizens:

EU Visa Regulation (539/2001) – short-term stays (*90/180 days*) in EU Member States (*excluding Ireland*) and Schengen Associated countries:

- 2 annexes:
 - **Annex 1:** list of **visa-required** countries / territories
 - **Annex 2:** list of **visa-free** countries / territories
- **No 'default rule' on classification in Annex 1 or 2** → political decision and legislative amendment is needed
- **Exception:** even for visa-free nationals, Member States can require visa for persons '*carrying out a **paid activity** during their stay*'

Preparedness

- **Annex I or Annex II based on full reciprocity and non-discrimination**
- **Cf. reciprocity mechanism** in Regulation (EC) No 539/2001
- **Length** of visa-free stay - 90 days in any 180-day period (*Schengen standard rule*) vs 6 months (*UK standard rule*)
- Exception for **paid activity or studies**

Future: existing models and rules & specific issues for consideration

11b.

*Specific mobility related issues:
social security*

Introduction: current rules

Regulation (EC) No 883/2004

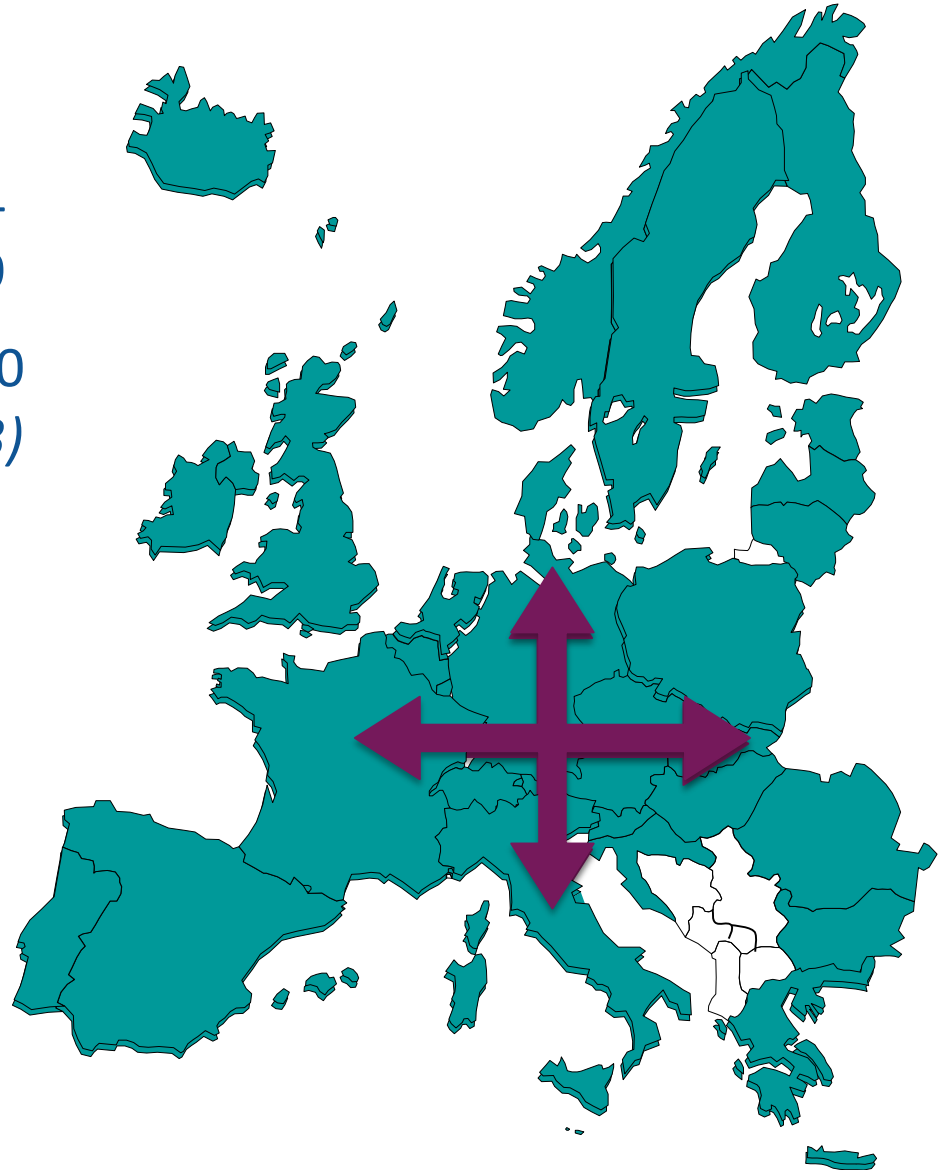
Regulation (EC) No 987/2009

Regulation (EU) No 1231/2010
(*Regulation (EC) No 859/2003*)

Ensure free movement
within 32 countries

Coordination,
not harmonisation

Administrative Commission



Current rules: core principles

- **Equal treatment with nationals**
- **Only legislation of one country applies**
= no gap in coverage or double-contribution
- **Aggregation**
= adding together past insurance periods
- **Export of cash benefits**
- **Wide personal and material scope**

Default: no social security coordination agreement

Third country nationals coming to the EU

- ① are subject to the social security legislation of the receiving Member State
- ② if they are in a situation involving two Member States – the coordination rules apply within the EU

Export of benefits within EU

Aggregation of EU periods

Equal treatment ...

EU citizens going to a third country

- ① are subject to the social security legislation of the third country

Existing agreements: full social security coordination agreement

Agreements on **the European Economic Area** and with **Switzerland**

- consist in the application of **the current EU rules** – for all social security branches
- **update mechanism** - changes to the EU rules are then taken on board in the Agreements by amending their Annexes
- status of observers in the Administrative Commission

Existing agreements : limited social security coordination agreement

Exists for:

Albania

Algeria

Bosnia and Herzegovina

**Former Yugoslav Republic of
Macedonia**

Israel

Montenegro

Morocco

San Marino

Serbia

Tunisia

Turkey

No standard agreement

*Only provisions with direct
effect currently apply*

Existing agreements : limited social security coordination agreement

Main issues

- ① Export of pensions (sometimes other benefits, like those for accidents of work or occupational diseases) to and from the third countries
- ② Aggregation of periods concluded by the third country nationals in different EU Member States (but not of periods concluded in a third country)
- ③ Equal treatment provided in some agreements

Social security coordination - preparedness

Documents issued for a period beyond the specified date certifying that:

- *a person is covered by a social security legislation (A1)*
- *a person is entitled to unforeseen medical care (EHIC)*

They have declaratory nature and cannot maintain rights not protected by the Withdrawal Agreement and/or a future agreement

Summary

