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Recommendation for a

COUNCIL DECISION

**authorising the opening of negotiations for an agreement between the European Union
and the United Kingdom of Great Britain and Northern Ireland on youth mobility**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE RECOMMENDATION

• Reasons for and objectives of the recommendation

On 1 February 2020, the United Kingdom of Great Britain and Northern Ireland ('the United Kingdom') withdrew from the European Union ('Union') and from the European Atomic Energy Community (Euratom).

The arrangements for the withdrawal are set out in the Agreement on the withdrawal of the United Kingdom from the European Union and the European Atomic Energy Community ('the Withdrawal Agreement')¹. The Withdrawal Agreement entered into force on 1 February 2020 and provided for a transition period during which Union law² applied to and in the United Kingdom in accordance with that Agreement. This period ended on 31 December 2020.

During this transition period, the European Union, Euratom and the United Kingdom agreed on a Trade and Cooperation Agreement, which was concluded by the Union on the basis of Council Decision (EU) 2021/689³ and provisionally applied from 1 January 2021⁴. It entered into force on 1 May 2021.

The end of the transition period resulted in the end of free of movement of persons between the Union and the United Kingdom⁵.

In its guidelines of 23 March 2018 on the future relationship with the United Kingdom, the European Council stated that the "*future partnership should include ambitious provisions on movement of natural persons based on full reciprocity and non-discrimination among Member States*"⁶.

However, despite the 2019 European Union-United Kingdom Joint Political Declaration⁷ (which addressed youth mobility), the United Kingdom declined to enter into negotiations on

¹ (OJ L 29, 31.1.2020, p. 7).

² As defined in Article 2 of the Withdrawal Agreement

³ Council Decision (EU) 2021/689 of 29 April 2021 on the conclusion, on behalf of the Union, of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information (OJ L 149, 30.04.2021, p.2).

⁴ Council Decision (EU) 2020/2252 of 29 December 2020 on the signing, on behalf of the Union, and on provisional application of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information (OJ L 444, 31.12.2020, p.2).

⁵ With the exception of Ireland. Ireland remains within the "Common Travel Area" with the United Kingdom.

The question of the treatment of the Union citizens that were residing in the United Kingdom at the end of the transition period (and of the United Kingdom nationals that were residing in the Union at that moment) is addressed in the Withdrawal Agreement.

⁶ EUCO XT20001/18, 23 March 2018, §10.

⁷ Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom (OJ C 34, 31.1.2020, p.1. This Declaration said that "*the Parties agree to consider conditions for entry and stay for purposes such as research, study, training and youth exchanges.*" (§51).

Based on that Declaration, the Commission had included provisions on mobility in the draft agreement submitted to the United Kingdom on 18 March 2020 for the purpose of the negotiations (Draft text of

mobility⁸ during the 2020 negotiations. Consequently, the Trade and Cooperation Agreement does not address the question of mobility of persons between the Parties to the Agreement. The Trade and Cooperation Agreement includes, however, provisions on social security coordination⁹ that support the possibility for mobility of persons under the domestic law of either Party and is therefore an enabler of mobility.

Mobility of persons between the Union and the United Kingdom is now governed by the respective domestic (immigration) rules of the Union (and its Member States) and the United Kingdom (see below). It is now more difficult, resulting in decreased mobility between the Union and the United Kingdom¹⁰. This situation has particularly affected the opportunities for young persons of the Union and the United Kingdom to experience life in each other's territory and to benefit from youth, cultural, educational, research and training exchanges.

In the course of 2023, the United Kingdom approached several (but not all) Member States with the intention of negotiating arrangements on youth mobility, modelled upon the United Kingdom's youth mobility visa scheme. This approach would result in differential treatment of Union nationals. In addition, this approach would not address the main barriers to mobility experienced by young people since the end of the transition period.

An agreement between the Union and the United Kingdom on youth mobility would seek to address some of the main barriers to mobility for young persons posed by current rules applied in the Union and in the United Kingdom (see below). It would be reciprocal, i.e. all Union citizens and all United Kingdom nationals would benefit from it.

Current rules applied in the Union and in the United Kingdom:

In respect of the Union, the mobility of United Kingdom nationals is governed, since the end of the transition period, by the following rules and policies:

- The Union has a set of legal instruments applicable to third country nationals in the legal migration area. In some cases, they regulate conditions of entry and residency for certain categories of third country nationals: the most relevant ones would be the Blue Card Directive¹¹, the Directive on students, trainees and researchers¹², and the Single Permit Directive¹³.

⁸ the Agreement on the New Partnership with the United Kingdom, UKTF(2020)14, 18 March 2020: https://commission.europa.eu/publications/draft-text-agreement-new-partnership-united-kingdom_en.

⁹ "Mobility" in the sense of the envisaged agreement implies the residence of a natural person, i.e. a non-temporary stay. Thus, the envisaged agreement does not address matters of travel facilitation, nor does it address the temporary provision of services through the presence of a natural person in the territory of the other Party.

¹⁰ See Article 488 to 491 and the Protocol on Social Security Coordination of the Trade and Cooperation Agreement.

¹¹ In the year ending in June 2023, 87000 more Union citizens left the United Kingdom than arrived.

¹² Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, (OJ L 382, 28.10.2021).

¹³ Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (OJ L 132, 21.5.2016, p. 21).

¹⁴ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (OJ L 343, 23.12.2011, p.1).

- United Kingdom nationals can visit the Union visa-free for a maximum period of 90 days in a 180-day period (the possibility to undertake paid activities during that period depends on national law)¹⁴.

In respect of the United Kingdom:

- The United Kingdom currently runs a “country-blind” immigration system providing for different visa paths for students and certain workers, (notably researchers and academics, skilled workers¹⁵, health care workers and seasonal workers for the agricultural sector), as well as for volunteers in certain cases. There is no specific visa path for au pairs.
- Union citizens can visit (i.e. no training or work) the United Kingdom visa-free for a period of up to six months¹⁶.

Moreover, the United Kingdom has declined so far to associate to Union programmes in the areas of youth, culture and education, such as Erasmus+ or Creative Europe (culture strand), thereby reducing opportunities for youth, education and cultural exchanges¹⁷. Furthermore, students from the Union are now subject to very high tuition fees applicable to foreign students when seeking to undertake studies (in particular higher education and doctoral studies) in the United Kingdom compared to the fees paid by domestic students. They also have more difficult access, or no access, to related benefits (e.g. scholarship, student loans). This is also the case for doctoral students going to the United Kingdom as part of a Horizon Europe project (under the Marie Skłodowska-Curie Actions)¹⁸. The result is a decline in the number of Union students in the United Kingdom¹⁹.

Young people who wish to perform traineeships, internships or apprenticeships in the United Kingdom as part of their Union education programmes, beyond the difficulties in finding the appropriate visa path, face the particular difficulty that their traineeship, internship or apprenticeship is considered “work” by the United Kingdom and therefore subject to the minimum wage rule. Yet, there is an exception from that rule for traineeships, internships, or apprenticeships (“work placements”) carried out as part of United Kingdom education study programmes²⁰.

¹⁴ Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

¹⁵ Above a minimum pay threshold, provided that the job is in a list of eligible occupations and that the British employer has been approved by the Home Office (and therefore that employer is able to issue a certificate of sponsorship for the visa applicant).

¹⁶ Visit the UK as a Standard Visitor: Overview - GOV.UK (www.gov.uk)

¹⁷ While the United Kingdom is associated to the Horizon Europe Programme as of 1 January 2024 under the conditions established in the Trade and Cooperation Agreement, that Agreement does not include provisions guaranteeing the mobility of researchers, but only a “best efforts” clause in that regard. See Article 712(1) and (2) of the Trade and Cooperation Agreement.

¹⁸ In addition, doctoral candidates and researchers moving to the United Kingdom under a Horizon Europe project (in particular under the Marie Skłodowska-Curie Actions) do not currently benefit from any specific facilitation as regards their entry and stay and are faced with high visa fees and health surcharges.

¹⁹ 50 % decrease in Union citizens enrolling in United Kingdom universities between 2020 and 2022. Cf. European Parliament, *Resolution of 23 November 2023 on the implementation of the EU-UK Trade and Cooperation Agreement* (2022/2188(INI)), §148.

²⁰ <https://www.gov.uk/employment-rights-for-interns>

- **Consistency with existing policy provisions in the policy area**

The Union is generally committed to supporting the establishment of frameworks to facilitate exchanges between young people across the European continent, with a view to increasing people-to-people contacts, bringing people together and reinforcing ties. The Union is also interested in young people in the Union acquiring skills and developing talent, including across borders and beyond the Union²¹.

As stated above, the Union has legislation applicable to third country nationals coming from third countries in the legal migration area. This legislation regulates conditions of entry and residency for certain categories of third country nationals – for example for purposes such as research, studying or training but also for certain work.

The Union, however, has not developed international agreements with European neighbours covering mobility of young persons beyond the case of the European Economic Area Agreement (which extends the single market, including as regards free movement of persons, to Norway, Iceland and Liechtenstein through incorporation of Union rules into the European Economic Area Agreement) and the agreement on free movement of persons with Switzerland²². The latter agreement notably includes a provision on non-discrimination on the grounds of nationality in respect of the persons of one Party who work or are lawfully resident in the territory of the other Party and it makes a limited number of provisions of Union law applicable in the relationship between the Parties.

Many Member States have schemes or programmes for youth mobility covering a limited period of time (often referred to as “working holiday” visas or youth mobility schemes), with certain countries outside Europe. These programmes/schemes are generally limited to solving the question of obtaining a visa/work permit but do not necessarily address issues such as university tuition fees or equal treatment to nationals. They are often also limited in terms of permissible volumes of admission.

- **Consistency with other Union policies**

The Trade and Cooperation Agreement includes provisions on social security coordination, which are an important enabler for, and a supplement to, any possible agreement on mobility between the Parties.

The Trade and Cooperation Agreement contains rules on the entry and temporary stay of natural persons for business purposes (e.g. provision of services). These rules address instances of temporary presence for a specific purpose and cannot achieve the objectives foreseen by this recommendation (which imply taking up residence).

The Union carries out actions to support, coordinate and supplement the actions of the Member States in the areas of education, vocational and researchers’ training, youth and culture – such as through specific programmes (e.g. Erasmus+, Creative Europe (culture strand), Marie Skłodowska-Curie Actions under the Horizon Programme) which are open to the participation of third countries, subject to compliance with the appropriate conditions.

²¹ The Union also seeks to attract skills and talent on a permanent basis. Cf. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Attracting skills and talent to the EU*, COM(2022)657, of 27.4.2022. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Skills and talent Mobility*, COM(2023)715, 15.11.2023.

²² Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (OJ L 114, 30.4.2002, p.6).

2. LEGAL ELEMENTS OF THE RECOMMENDATION

• Legal basis

The procedural legal basis for the Council decision authorising the opening of negotiations on an agreement between the Union and the United Kingdom on youth mobility is Article 218(3) and (4) of the Treaty on the Functioning of the European Union (TFEU).

The substantive legal basis for the agreement on youth mobility can only be determined at the end of the negotiations. In principle, the area of freedom, security and justice is an area of shared competence between the Union and the Member States. Articles 79(2)(a) and (b) TFEU empowers the Union to adopt measures on the conditions of entry and residence of third country nationals seeking to legally reside in a Member State (including for the purpose of family reunification) and the Union has already acted in respect of some categories of persons (see above)^{23 24} – without prejudice to the right of Member States to determine volumes of admission of third country nationals coming to their territory in order to seek work.

The definitive nature of the agreement (i.e. Union-only or mixed agreement) can only be established once the negotiations are concluded.

• Subsidiarity (for non-exclusive competence)

Only a Union level approach will ensure that all Member States are treated equally in respect of mobility of persons to the United Kingdom, which is one of the key considerations of the 2018 European Council guidelines in this area.

A Union level approach could also more easily try to give effect to the ambition requested by the European Council and add value compared to the *status quo*, in terms of: an absence of quotas for beneficiaries; the avoidance of discretionary visa application procedures; the length of the mobility period within the eligibility period; the breadth of the purposes of stay; the possibility for beneficiaries to be accompanied by close family members; Union citizens benefiting from equal treatment compared to United Kingdom nationals in a number of cases.

Parallel negotiations by Member States neither guarantee that the United Kingdom would be interested in reaching an agreement with each Member State nor would they guarantee that Member States would be treated equally to one another by the United Kingdom.

• Proportionality

The Union's action does not go further than what is necessary to achieve the policy objective of facilitating mobility of young persons between the Union and the United Kingdom. It would provide young Union citizens with a clear, simple and cost-effective path for mobility to the United Kingdom. This would bring clarity to the citizens concerned in contrast to the current situation whereby several parallel visa paths to the United Kingdom exist. These paths are limited (e.g. they impose quotas, short time limitations, no accompanying family members,) and expensive (high visa fees, healthcare surcharge). It would also seek to

²³ According to Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and the TFEU, Denmark will not be able to participate in the envisaged agreement. Therefore, all references to Union citizens in this recommendation shall be understood as not including Danish nationals, and references to Member States as destination countries under the envisaged agreement shall not be understood as including Denmark. The specific situation of Denmark could be addressed in a separate, subsequent agreement replicating the content of the EU-United Kingdom agreement.

²⁴ In respect of Ireland, the provisions of Protocol No 21, annexed to the Treaty on European Union and the TFEU, apply. In any case, the agreement should be without prejudice to Ireland's arrangements under the "Common Travel Area".

specifically address the main hurdles for young Union citizens (e.g. in respect of education tuition fees or of work placements as part of Union studies) which other options (such as the United Kingdom Youth Mobility Scheme) do not address.

An agreement between the Union and the United Kingdom is the most suitable instrument for achieving the objective as it would address the question of non-discrimination among Union nationals from the outset.

- **Choice of the instrument**

A ‘soft law’ instrument, such as an administrative Memorandum of Understanding, would not be sufficient to provide legal certainty to young persons as regards the possibilities for youth mobility between the Union and the United Kingdom. Only a binding mutual understanding in the form of a formal international agreement on youth mobility between the Union and the United Kingdom would guarantee this legal certainty.

3. BUDGETARY IMPLICATIONS

The proposed agreement has no budgetary implications.

4. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

With this recommendation, the European Commission invites the Council of the European Union to authorise the opening of negotiations for an agreement between the European Union and the United Kingdom on youth mobility²⁵, to nominate the European Commission as Union negotiator and to address directives to the negotiator and designate a committee in consultation with which the negotiations must be conducted.

The envisaged agreement does not amount to conferring to United Kingdom nationals the benefits of the fundamental freedom of movement enjoyed by Union citizens.

The envisaged agreement on youth mobility should be guided by the following parameters:

- The personal scope is limited to young Union citizens and United Kingdom nationals, e.g. 18-30 years of age;
- The period of stay is limited to a reasonable timeframe (e.g. 4 years);
- Mobility is not purpose-bound, i.e. it can be exercised for different purposes: to work, study, do trainings/internships (including in the context of a Union education programme), research, volunteer, other activities or just visiting/travelling during the period of stay;
- Mobility is not subject to quota;
- Common admission conditions apply and the beneficiary complies with these conditions throughout the period of stay;
- Relevant grounds for rejection of the applications;

²⁵ The following would be excluded: entry and temporary presence of natural persons to provide services (“GATS mode 4”) and the rules on travel facilitation/border crossing (e.g. passport vs. identity card; use of e-gates) or on visa-free travel for short-term visits.

- Verification of compliance with the conditions and of absence of grounds for rejection are carried out by the relevant national authorities in an admission procedure prior to exercising mobility.
- The mobility to the Union is only exercised in the Member State that admitted the United Kingdom national, i.e. the admission by one Member State does not allow for “intra-Union” mobility to another Member State²⁶;
- The treatment of beneficiaries is equal to nationals, at least in respect of working conditions, including pay and dismissal as well as health and safety at the workplace, freedom of association, certain aspects of education and vocational training, tax benefits, in so far as the person is a tax resident, and advice services afforded by employment offices;
- Equal treatment is also provided in respect of tuition fees for higher education. This also applies to beneficiaries of other visa paths;
- The United Kingdom “healthcare surcharge” is waived for Union beneficiaries;
- Conditions for the exercise of the right to family reunification with the beneficiaries.

The envisaged agreement should be a supplementing agreement to the Trade and Cooperation Agreement²⁷. Thus, the envisaged agreement should be part of the same single and uniform institutional framework as the Trade and Cooperation Agreement, of which the rules on dispute settlement form an integral part.

The envisaged agreement should be without prejudice to the Union *acquis* and national rules providing legal migration pathways, i.e. it should provide for an additional migration path next to existing ones in either Party, where available.

The envisaged agreement should be without prejudice to the Union and Member States’ rules for acquiring permanent/long-term resident status.

The envisaged agreement should be without prejudice to:

- the rules on social security coordination set out in the Trade and Cooperation Agreement;
- the rules on double taxation;
- the rules on the control of persons crossing the borders of the Parties, including travel facilitations by either Party;
- the rules requiring registration of the national of the other Party within a given timeframe upon arrival.

Additionally, the negotiations of the envisaged agreement could be usefully complemented by parallel discussions on the possible participation of the United Kingdom in Union programmes in the area of youth, education and culture such as the Erasmus+ programme and the Creative Europe (culture strand) programme. The association of the United Kingdom to

²⁶ Without prejudice to Article 21 of the Convention implementing the Schengen Agreement of 14 June 1985 (OJ L 239, 22.9.2000, p. 19).

²⁷ Article 2(1) of the Trade and Cooperation Agreement.

any such programme could be done in accordance with the procedure provided for in the Trade and Cooperation Agreement, pursuant to Article 218(9) TFEU.²⁸

²⁸ The possible association of the United Kingdom to Union programmes is provided for in Article 710 of the Trade and Cooperation Agreement: Protocol I to that Agreement could be amended for that purpose by a decision of the Specialised Committee on Participation in Union Programmes referred to in Article 8(1)(s) of the Trade and Cooperation Agreement.

COUNCIL DECISION

authorising the opening of negotiations for an agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland on youth mobility

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) The Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (the ‘Trade and Cooperation Agreement’)²⁹ applies since 1 January 2021. It is, next to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (the ‘Withdrawal Agreement’)³⁰, the cornerstone for bilateral relations between the European Union (the ‘Union’) and the United Kingdom of Great Britain and Northern Ireland (‘the United Kingdom’).
- (2) While the Trade and Cooperation Agreement provides for social security coordination that supports mobility of persons under the domestic law of either Party, it does not address mobility *per se*, i.e. the possibility for a national of one Party to reside or stay in the territory of the other Party. The Trade and Cooperation Agreement also contains rules on the entry and temporary stay of natural persons for business purposes which, however, only address instances of temporary presence for a specific purpose (e.g. provision of services).
- (3) Rather, mobility between the Union and the United Kingdom is now governed by the respective domestic (immigration) rules of the Union (and its Member States) and the United Kingdom. This has resulted in decreased numbers of persons exercising mobility between the Union and the United Kingdom. It has particularly affected the opportunities for young persons of the Union and the United Kingdom to gain experience abroad in each other’s territory and to benefit from youth, cultural and educational and research and training exchanges.
- (4) In the course of 2023, the United Kingdom approached several (but not all) Member States with the intention to negotiate bilateral arrangements on youth mobility, modelled upon the United Kingdom’s youth mobility visa scheme. This would result in differential treatment of Union citizens. Moreover, this approach would not address the main barriers to mobility experienced by young people.
- (5) Negotiations should therefore be opened with a view to concluding a supplementing agreement, within the meaning of Article 2 of the Trade and Cooperation Agreement,

²⁹ (OJ L 149, 30.4.2021, p. 10).

³⁰ (OJ L 29, 31.1.2020, p. 7).

with the United Kingdom of Great Britain and Northern Ireland in the area of youth mobility,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate, on behalf of the Union, with the United Kingdom of Great Britain and Northern Ireland, an agreement on youth mobility.

Article 2

The negotiating directives are set out in the Annex to this Decision.

Article 3

The negotiations shall be conducted in consultation with the [name of the special committee to be inserted by the Council].

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*