The Thin Edge of the Wedge: Youth Mobility between the EU and the UK?

By Professor Elspeth Guild

On 18 April 2024 the European Commission issued a recommendation for a Council Decision authorising the opening of negotiations for an agreement between the EU and the UK on youth mobility. This is the first time since the signing of the Trade and Cooperation Agreement (TCA) in 2021 that the EU has proposed the conclusion of a legal framework for mobility of persons between the EU and UK. Free movement of persons ceased between the two as from 1 January 2021. Since then there has been a continuing exodus of EU nationals from the UK: 87,000 more EU nationals left the UK than came to it in 2023 (COM(2024)169 p 2). EU national students coming to the UK has dropped by 50%.

In response to this changing landscape of mobility, in 2023 the UK government has been approaching some (but not all) Member States regarding the possible negotiation of youth mobility arrangements based on existing UK national law. This unilateral action has sparked the Commission to seek a negotiating mandate from the Council to block possible bilateral arrangements between the UK and some Member States to the exclusion of others. This is consistent with the Council position adopted on 23 March 2018 that any future partnership between the EU and the UK on mobility of persons should be based on full reciprocity and non-discrimination among Member States.

As a result of the upheaval which the decision to leave the EU caused to the UK political class, including among other things a change of prime minister, while the UK had been interested in youth mobility in 2018, by 2019 the government was no longer willing to include this in the TCA. This has meant that youth mobility between the two has been
regulated by national law in the UK and by a mix of EU and national law in the Member States. The UK has a long standing youth mobility programme limited to young people, nationals of countries specified in the immigration rules, between the ages of 18 to 30 or 18 to 35, depending on what country the person is a national of, and limited to two years. No EU country is included in this category (though Andorra, Iceland, Monaco and San Marino are).

The Commission proposes that a new youth mobility agreement be part of the TCA framework and remains neutral on whether it would be a Union-only or mixed agreement, something to be determined at the end of the negotiations. Similarly, it considers that the legal basis for the agreement would have to be determined only at the end of the negotiations. Neither of these issues is likely to meet with enthusiasm by the Council which may wish a clearer remit to the Commission regarding what can be negotiated. The Commission considers that only a formal agreement between the UK and the EU will achieve the objective in providing legal certainty and addressing the issue of non-discrimination. It states that only a “binding mutual understanding in the form of a formal international agreement” can guarantee legal certainty. Nonetheless, the Commission envisages that the agreement would be supplemental to the TCA and would be part of its single and uniform institutional framework, including rules on dispute settlement.

For young people in the EU and the UK this would be a rather unsatisfactory framework on account of Article 5 TCA. This states that (with a sole exception for social security) “nothing in this Agreement or any supplementing agreement shall be construed as conferring rights or imposing obligations on persons other than those created between the Parties under public international law, nor as permitting this Agreement or any supplementing agreement to be directly invoked in the domestic legal systems of the Parties.” So young people seeking to exercise mobility rights under any new agreement would not be able to rely on such an agreement if it is adopted within this framework. This could only be resolved if Article 5 were also amended to exclude from its scope not only social security but also youth mobility.

The Commission proposes that the scope of the agreement would cover twelve issues. First, the personal scope would be limited to EU and UK citizens between 18 and 30 years. The period of stay would be four years maximum. There would be no purpose limitation on mobility, young people could study, work or just visit if they want to. There would be no quota on this category. The conditions applicable to the category should apply throughout the individual’s stay. Rejection grounds would be specified. The category
would be subject to a prior authorisation procedure (i.e., specific visa to be obtained before arrival). For UK citizens, their mobility would be limited to the one Member State where they had received authorisation (leaving open the question whether the periods for be cumulative or consecutive in different Member States). Equal treatment in wages and working conditions as well as health and safety rules must be respected on the basis of non-discrimination with own nationals. This may also include some aspects of education and training, tax benefits, etc. In particular, equal treatment as regards tuition fees for higher education is planned. This would mean that EU students seeking to study in UK universities under the youth mobility scheme would only pay home student fees which are dramatically cheaper than overseas student fees which are currently applicable. Interestingly, the Commission proposed that this home student fee provision should apply to all EU students in the UK including those who arrive on student visas rather than youth mobility ones. The UK’s ‘healthcare surcharge’ would also be waived for this category. Finally, the conditions for the exercise of family reunification would need to be specified.

The Commission plans that any youth mobility scheme should be without prejudice to other legal pathways for migration and EU rules on permanent or long-term resident status.

For the EU, such a youth mobility scheme between the UK and the EU would add to an already rather complex field of EU competences. The Students and Researchers’ Directive covers conditions of entry and stay for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing. This would certainly cover quite a lot of what is planned for youth mobility. However, the Commission appears not to be keen on using Article 79 (2) (a) and (b) TFEU, the basis of that directive for the purposes of this initiative. One of the reasons is that all the categories of persons covered in that directive need a sponsor (which could be a university, an employer or a training institution) within a Member State who is saddled with a variety of obligations regarding the third country national to ensure that they comply with general immigration conditions. Such a sponsorship approach is not intended by the Commission for UK-EU youth mobility. Further, the Commission’s objective is to achieve reciprocity between the parties and non-discrimination among the Member States and their nationals. This is not an element of the directive. Thus, a new agreement seems to be the preferred approach – the Commission appears to prefer the ‘free movement’ approach rather than the sponsored one. Yet, as mentioned above, if the objective is to provide legal certainty to Europe’s young people regarding moving between the EU and the UK, the TCA does not seem to be an appropriate tool either as it specifically rejects that legal
certainty by denying the right to individuals to rely on its provisions before the authorities or courts of the parties.

At the time of writing, it is unclear how the Council will approach this proposal. There are indications that some Member States may not be enthusiastic (Hungary is one) worrying that their skilled young people may be enticed to go to the UK rather than staying at home. But the majority appears to be very positive towards any move to normalise mobility between the two parties.