

## **European citizens coming to the UK post-Brexit**

### **Mungo Bovey QC**

1. At present, we have three categories of citizen; UK citizens, EEA citizens and "third country" citizens. In theory, Britain's departure from the EU would leave only two. This paper does not deal with any transitional arrangements made for those already using EU freedom of movement rights.
2. The rules for citizens from third countries vary but the most common requirement is the need for a visa. A visa is an endorsement on a passport indicating that the holder is allowed to enter, leave, or stay for a specified period of time in a country other than that of the passport<sup>1</sup>.
3. Many countries' citizens require a visa for all practical purposes. Most countries impose like for like requirements on British citizens even where this is not really convenient.
4. The European Economic Area (EEA) is the area of free movement of persons, goods, services and capital within the European Single Market. The EEA was established on 1 January 1994 upon entry into force of the EEA Agreement.
5. The EEA includes EU countries<sup>2</sup> and also Iceland, Liechtenstein and Norway. It allows them to be part of the EU's single market. Switzerland is neither an EU nor EEA member but is part of the single market - this means Swiss nationals have

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<sup>1</sup> <https://www.gov.uk/check-uk-visa/y> is the UK Government webpage where you can check if you need a visa to enter the UK

<sup>2</sup> The EU countries are: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.

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the same rights to live and work in the UK as other EEA nationals.

6. EEA citizens do not require visas to enter other EEA countries.
7. EU countries do not negotiate these things individually. Although the origins of EU immigration law are freedom of movement of workers for the purposes of trade, it now extends to all immigration. For example, Council Regulation (EC) No 539/2001 of 15 March 2001 lists 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. So visitors from the listed countries need visas.
8. Only Britain and Ireland have not surrendered sovereignty over immigration control and Regulation 539/2001 does not apply to them<sup>3</sup>.
9. But the UK relationship with many countries is viewed through the prism of our EEA membership; Serbia has been a candidate state since March 2012 but for now, visitors from Serbia require visas. Our relationship with Turkey is also based on EU law.
10. If Britain were to leave the single market, visa-free movement might, but need not, come to an end in relation to the EEA countries.
11. The reciprocal nature of visa requirements may be at the

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<sup>3</sup> Recital (4)

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heart of the question of how things would be after Brexit. To stick with the example of Turkey, that country relies on millions of tourist visitors every year<sup>4</sup> a good proportion from the UK. Their visa requirement simply requires British passport holders to queue up on arrival with \$20. By contrast, a Standard Visitor visa for the UK costs £87 and the British procedures are more designed to keep people out<sup>5</sup>. The differences in substance illustrate the importance that reciprocity has in the minds of those who make these decisions.

12. So the answer to the question of how things would be for EEA citizens coming to the UK after Brexit is much the same as the answer to the question how things would be for UK citizens going to the EU.

13. Moreover, it seems to me that the EU is unlikely to negotiate a different arrangement for different members. The right of free movement is very strong: only in very rare cases can an EU country refuse entry to an EU citizen or family members - for reasons of "public policy, public security or public health". This means the authorities must prove that the individual or family members pose a "genuine, present and sufficiently serious threat". Those refused are entitled to receive this decision in writing, stating all the grounds, and specifying how to appeal and by when.

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<sup>4</sup> 2014: 42 million foreign tourists, making it the 6th most popular tourist destination in the world;

2015: 36.2 million by reason of political tension with Russia and terrorist attacks.

•<sup>5</sup> As well as a current passport or other valid travel identification all visitors must provide evidence that they can support themselves during the trip such as bank statements or payslips from the last 6 months.

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14. It follows that the requirements for visitors from France and Denmark will be the same as those imposed for Romania and Bulgaria. Although Ireland was a free travel area before it joined the Common Market with Britain, it is not clear on what basis exceptional arrangements might be made in that regard.