

Free Movement of Persons within the EU

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Lecture outline

- Global context, historical comparison
- Categories of persons (from the EU law perspective)
- EU citizenship and citizens' rights
- the Schengen Area
- Free movement of citizens, requirements and restrictions thereto
- Workers within the EU and their rights
- Freedom of establishment („free movement of entrepreneurs“)

Global Context

- Generally, being a citizen of a State allows you to freely leave and enter the territory of that State (x few restrictions)
- There is no right to enter any other States' territory, no freedom to move and reside abroad in contemporary world
- States strictly control and impose various restrictions on admission of foreigners
- Few exceptions: short-term visits (tourists, businessmen, politicians, artists), research and academic purposes – generally welcomed
- States focus on restriction of mass migration, long-term or permanent residence of non-citizens
- Treatment of „troublesome foreigners“

- there have always been migration flows throughout the world over the history... only the reasons and background differed
- economical, political, social, religious inducement
- being a problem for economically strong (wealthy), democratic, and politically stable countries
- Emigration is free (dictatorships, communist regimes!) x immigration is strictly controlled and limited

A control tool? VISAs.

- an instrument for controlling and imposing limits upon migration
- Assesed (granted/ denied) on individual (personal-investigation) basis by consular/ diplomatic missions of a host state
- States may agree on mutual visa-free régime for their citizens
- limited only to short-term stays (countries willingly welcome tourists..)
- Long-term stays (>90 days) – subject to more complicated procedures (workers, entrepreneurs, students)
 - x **asylum seekers** (often missused)

The EU is „one of a kind“...

- All EU citizens can now move freely among MS and reside in a MS of their own choice (regardless the reasons)
- only few requirements to be met ...
- Free movement of individuals is not only an economic freedom (historical context), but also perceived as a political freedom
- Whereas there is a far-reaching liberalization in trade of goods world-wide (the EU is not so unique in this aspect), no comparable liberalization of migration exists elsewhere

Categories of „persons“ under EU Law

– Natural persons (individuals)

- pursuing an economic activity
 - *dependant* (workers) => **free movement of workers** (art. 45 TFEU)
 - *independent* (self-employed persons) => **freedom of establishment** (art. 49 TFEU)
- “all and the rest“ (without an economic activity in the host MS) = all EU citizens
=> **free movement of EU citizens** (art. 20 TFEU)

– Legal persons

- pursuing an economic activity => **freedom of establishment** (art. 49 *et seq* TFEU)
- no economic activity = no special status or rights under EU Law

The EU Citizenship

- Until late 1980s, the free movement of individuals was perceived exclusively as an economic freedom (x consumption of services)
- Late 1980s/early 1990s – EC measures that extended the free movement to students, pensioners, people living on rents
- 1993 – The Maastricht Treaty => **EU citizenship** (a citizen of any of the MS is automatically, ipso facto a citizen of the EU)
- Auxiliary nature
- MS continue to exclusively determine conditions and administrative procedures / practice in order to obtain the national citizenship

EU Citizens' Rights

- Art. 20 TFEU (Arts. 39-46 EU Charter of Fundamental Rights!)
 - To move and reside freely within the territory of MS
 - To vote and to stand as a candidate in elections to the European Parl. in the MS in which the reside
 - To vote and to stand as a candidate at municipal elections in the MS in which the reside
 - Diplomatic protection in a third country by diplomatic authorities of any MS (on the same basis as nationals of that MS)
 - Citizens initiative and right to petition the EP, right to apply to the EU Ombudsman
 - Equality of (official) languages

- „National treatment in the host MS“ = principle of non-discrimination based on nationality (art. 18 TFEU)

The Schengen Area

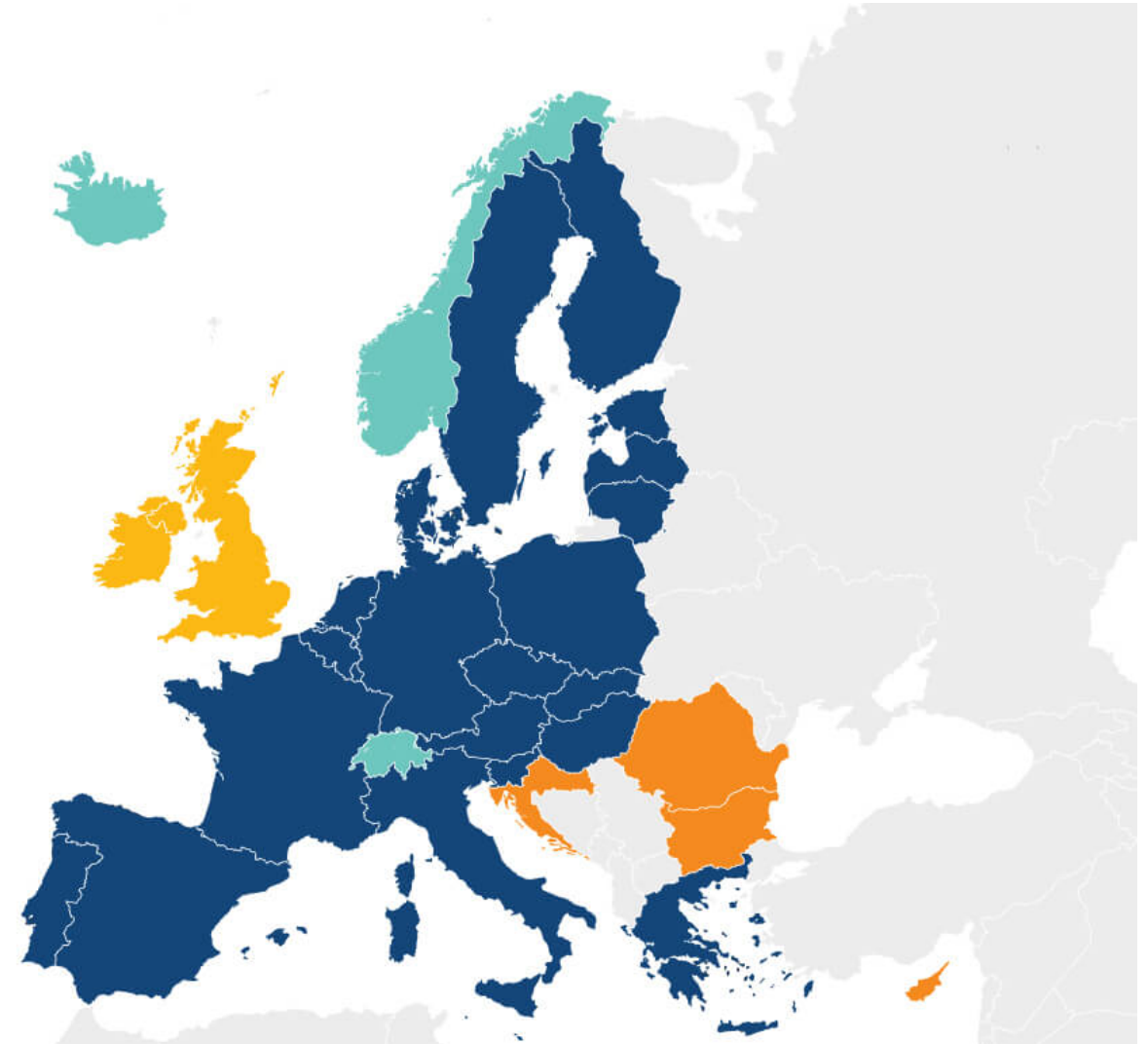
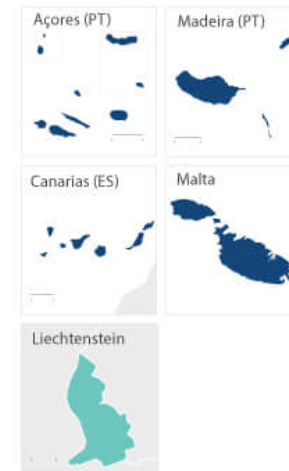
- „*Area of Freedom, Security, and Justice*“
 - **Freedom** = free movement of citizens, no border controls at internal borders, common migration, visa, and asylum policies
 - **Security** = strict external border controls, police cooperation, administrative and judicial cooperation in criminal matters
 - **Justice** = rules for determining applicable law and court jurisdiction in cross-border civil law cases, recognition and enforcement of foreign judgements in civil and commercial matters („*European Private International Law*“)
- 1985 – Schengen Agreement, 1990 – Implementing Convention
- 1995 – implementation
- 1993 – Maastricht - 1999 – Amsterdam– 2009 - Lisabon

26 countries

- EU but
 - GB, IRL
 - HR, RU, BG, CY
- From outside EU
 - NO, IS, CH, LI

Schengen Area

- Schengen Area (EU)
- Schengen Area (non-EU)
- Schengen candidate country (EU)
- EU country outside Schengen Area



„The Schengen Area of Freedom“

– Inner aspect

- Free movement of individuals – EU citizens, as well as third-country nationals, no internal border checks; internal borders may be legally crossed at any point, any time
- - does not affect the respective State authorities powers within the MS territory (spot-checks)

– Outer dimension

- Common migration and visa policy + asylum policy
 - Strict, two-step checks at external borders (including inland international airports)
 - An EU citizen is „home“ in the entire Schengen area
 - External borders may be crossed only at border-crossing point within the indicated opening hours
- **Schengen Borders Code** – Regulation of the EP + C (EU) No. 2016/399

EU Citizens residency rights

- Directive 2004/38
- **Short-term stay** – up to 3 months
 - Subject to having a valid ID, there are no requirements
 - Tourists are welcomed – they subject to simple evidence in hotels,
- **Long-term stay** – over 3 months
 - **Requirements**

Right to permanent stay – after 5 yrs

Accompanying Family Members

- Art. 2 para. 2 of the 2004/38 EC Directive
 - Spouse
 - Partner (registred partners/same-sex marriages)
 - Children
 - Parents, grandparents
- Third-country nationals; host MS may admit other relatives
- Auxiliary, subsidiary rights (dependent on the status of the EU citizen)
- Right to follow the EU citizen and to reside with him/her in the host MS, right to economic activity, integration in social life, acces to healthcare, education, etc

Restrictions upon free movement

- Public policy and security
- Threat to public health

- Proportionality!

Free movement of workers (Art. 45 TFEU)

- Who is a „worker“ ?
- What rights does the Treaty confer?
- Principle of non-discrimination
- To whom is the provision addressed? (direct effect)
- Exercise of public power (Case 14/79 Commission vs Belgium „Public Service“)

Freedom of establishment (Art. 49 et seq TFEU)

- „free movement of entrepreneurs“ – both self-employed individuals and companies
- Problem with legal persons
- Exercise-of-public-power (official) exemption (Art. 51 TFEU)
- Restrictions – justified by reasons of public order, security or health + proportionate

Language requirements and the principle of non-discrimination

- Provided that the requirement of knowledge of a particular language (including the level of knowledge, proof, examination) must **be proportionate** to the nature of a particular profession and the capability to its good exercise, as well of **non-discriminatory nature**
- It cannot be means of disguised discrimination