

28 September 2017

TF50 (2017) 17 – Commission to EU 27

Subject: Citizens' rights

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

Remarks: The joint technical note attached summarises the UK and EU positions and compares them following the 4th round of the Art. 50 negotiations

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COMPARISON OF EU/UK POSITIONS ON CITIZENS' RIGHTS – 28/09/2017

The working group completed a mapping of the alignment between the two parties' positions, to prioritise future discussions.

This table summarises the UK and EU positions and compares them. Green indicates convergence, red indicates divergence and yellow indicates where further discussion is required to deepen understanding.

#	TOPIC	DETAIL	EU POSITION	UK POSITION	ISSUES
1	Use of EU law concepts		EU law concepts used in Withdrawal Agreement interpreted in line with CJEU case law as at the point of the UK's withdrawal.	EU law concepts used in Withdrawal Agreement interpreted in line with CJEU case law as at the point of the UK's withdrawal.	
2	Personal scope	EU citizens lawfully resident before the cut off date	Date of UK's withdrawal.	Between the date of A50 trigger and date of exit.	UK to clarify
3			EU citizens resident in accordance with Article 6(1), 7(1)(a) – (c) or (3), 12(3), 14, 16(1) and/or 17 of Directive 2004/38.	EU citizens resident in accordance with Article 6(1), 7(1)(a) – (c) or (3), 12(3), 14, 16(1) and/or 17 of Directive 2004/38.	
			EU citizens resident in accordance with Article 21 TFEU.	EU citizens resident in accordance with Article 21 TFEU. ¹	
4			Both sides agree that more favourable	Both sides agree that more favourable	

¹ Subject to further study of legal scope.

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#	TOPIC	DETAIL	EU POSITION	UK POSITION	ISSUES
			national provisions can apply as per Article 37 of 2004/38.	national provisions can apply as per Article 37 of 2004/38.	
5		Frontier workers	Those who are working as a frontier worker at the specified date fall within the scope of the Withdrawal Agreement for as long as they retain the status of a frontier worker. Such workers retain the rights they currently enjoy to enter and to work in the host country. The rights they enjoy in their country of residence are similarly protected.	Those who are working as a frontier worker at the specified date fall within the scope of the Withdrawal Agreement for as long as they retain the status of a frontier worker. Such workers retain the rights they currently enjoy to enter and to work in the host country. The rights they enjoy in their country of residence are similarly protected.	
6			A UK national or an EU citizen pursuing genuine and effective work as an employed or self-employed person in one or more host states and who resides in another state, unless or until they no longer retain the status of a worker (equivalent to that as defined in the Free Movement Directive) or they cease to work across a frontier in accordance with Articles 45 and 49 TFEU and Reg.492/2011.	A UK national or an EU citizen pursuing genuine and effective work as an employed or self-employed person in one or more host states and who resides in another state, unless or until they no longer retain the status of a worker (equivalent to that as defined in the Free Movement Directive) or they cease to work across a frontier in accordance with Articles 45 and 49 TFEU and Reg.492/2011.	

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#	TOPIC	DETAIL	EU POSITION	UK POSITION	ISSUES
7		Current family members	Irrespective of their nationality, <ul style="list-style-type: none"> ● family members as defined in Article 2 of Directive 2004/38; and ● other family members as defined under Article 3 of Directive 2004/38 who are lawfully resident before the cut-off date in accordance with Article 7(1)(d), 7(2), 16(2) or 17(3) or (4) of Directive 2004/38. EU citizens resident in accordance with Article 21 TFEU.	Irrespective of their nationality, <ul style="list-style-type: none"> ● family members as defined in Article 2 of Directive 2004/38; and ● other family members as defined under Article 3 of Directive 2004/38 who are lawfully resident before the cut-off date in accordance with Article 7(1)(d), 7(2), 16(2) or 17(3) or (4) of Directive 2004/38. EU citizens resident in accordance with Article 21 TFEU.	
8			Residents above will fall within the scope of the Withdrawal Agreement as a family member. Full residence rights (including permanent residence) and rights attached to residence (such as the right of equal treatment and the right to work or to be self-employed) under the agreement of EU/UK family members are maintained and shall continue to do so if they take up employment or self-employment activities.	Rights under the Withdrawal Agreement of EU/UK national family members are maintained irrespective of changes in status (e.g. an EU citizen dependent child becoming a worker).	EU to clarify how to reflect this in the withdrawal agreement.

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#	TOPIC	DETAIL	EU POSITION	UK POSITION	ISSUES
9			Family members with a retained right of residence who are lawfully resident in accordance with Article 12 and 13 of Directive 2004/38 on the date of the UK's withdrawal will fall within the scope of the Withdrawal Agreement.	Family members with a retained right of residence who are lawfully resident in accordance with Article 12 and 13 of Directive 2004/38 on the date of the UK's withdrawal will fall within the scope of the Withdrawal Agreement.	
10			Rights of EU child to pursue education (Chen/Teixeira) protected for period of child's education.	Rights of EU child to pursue education (Chen/ Teixeira) protected for period of child's education.	
11		Family reunion and future family members post exit	This is an issue of preserving rights under EU law and not an issue of equal treatment. Family members as defined in Directive 2004/38 who accompany or join the EU citizen after the date of withdrawal may continue to benefit from rights of residence under same provisions as current family members. Children born after UK's withdrawal would be able to join their parents as a family member.	<p>Equal treatment as between EU and British citizens as regards applicable rules.</p> <p>Future family members will be subject to the same rules that apply to non-EU nationals joining British citizens, or alternatively to the post-exit immigration arrangements for the EU citizens who arrive after the specified date.</p> <p>Children born to an EU citizen parent with settled status in the UK after the</p>	

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#	TOPIC	DETAIL	EU POSITION	UK POSITION	ISSUES	
				date of withdrawal will be eligible to immediately acquire settled status or British citizenship if born in UK as an independent right holder.		
12	Nature of the agreement	Source	International Treaty which creates obligations which are binding in international law on the Parties.	International Treaty which creates obligations which are binding in international law on the Parties.		
13		Individual enforcement of rights	Directly effective provisions of agreement enforceable through the domestic courts of EU27 and UK. (i.e. individuals can rely directly on Withdrawal Agreement provisions in front of domestic courts to override domestic implementing legislation).	UK to incorporate the Withdrawal Agreement fully into UK law and ensure the UK courts can refer directly to it.	UK to clarify.	
14		Role of CJEU				For discussion in Governance Group
15		Monitoring and oversight	European Commission to monitor compliance.	Commission monitoring body for EU27. UK prepared to consider establishment of an independent monitoring arrangement in the UK.		For discussion in Governance Group
16		Future CJEU case law	CJEU competence as per Article 267	UK courts to be able to take into		For discussion in

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		concerning the withdrawal agreement	TFEU.	account the future CJEU case-law with a view to ensuring consistent interpretation.	Governance Group
17	Residence	Eligibility criteria	Permanent or temporary residence shall be granted under the conditions laid down in the withdrawal agreement with no further discretion.	Permanent or temporary residence shall be granted under the conditions laid down in the withdrawal agreement with no further discretion.	
18		Temporary residence	Temporary residence on the basis of <5 years but have fulfilled the conditions of Article 6 and 7 of Directive 2004/38 – including right to change status (e.g. student to worker).	Temporary residence on the basis of <5 years but have fulfilled the conditions of Article 6 and 7 of Directive 2004/38 - including right to change status (e.g. student to worker).	
19		Continuity of residence	Definition of continuity of residence as per Article 16 (3) and 21 of Directive 2004/38 (i.e. permitted absence of 6 months in any 12 months or 12 months for an important reason e.g. childbirth).	Definition of continuity of residence as per Article 16 (3) and 21 of Directive 2004/38 (i.e. permitted absence of 6 months in any 12 months or 12 months for an important reason e.g. childbirth).	

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#	TOPIC	DETAIL	EU POSITION	UK POSITION	ISSUES
20		Permanent residence	Conditions for acquiring permanent residence as per Article 16 of Directive 2004/38 (5 years of continuous and lawful residence as a worker/self employed person, student, self sufficient person, or family member thereof), with periods of lawful residence prior to withdrawal date included in the calculation of the five year condition.	Conditions for acquiring permanent residence as per Article 16 of Directive 2004/38 (5 years of continuous and lawful residence as a worker/self employed person, student, self sufficient person, or family member thereof), with pre-cut off date lawful residence included in the calculation of the five year condition.	
21			Conditions for acquiring permanent residence as per Article 17 Directive 2004/38 (e.g. retired people, permanent incapacity).	Conditions for acquiring permanent residence as per Article 17 Directive 2004/38 (e.g. retired people, permanent incapacity).	

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#	TOPIC	DETAIL	EU POSITION	UK POSITION	ISSUES
22		Loss of permanent residence	<p>Loss of permanent residence status after absence for a period exceeding two consecutive years.</p> <p>Under current EU law beneficiaries can come back after an absence of more than two years as family members and regain a right of residence in accordance with Articles 7(1)(d) and 7(2) of Directive 2004/38.</p> <p>Member States are not obliged, either under Article 16 or other provisions of Directive 2004/38, to terminate permanent residence status whenever two years of absence are exceeded.</p> <p>Continuity of residence as per Article 16 (3) for beneficiaries having resided in the host state for less than five years.</p>	<p>UK considers that the application of the loss of residence after 2 years of absence will be inadequate in some circumstances to protect citizens' rights.</p> <p>UK considers that the agreement should include agreed provisions that are more generous rather than this being left to the discretion of EU27 and the UK. UK is prepared to offer more generous arrangements for instance based on the concept of "strong ties" (e.g. students abroad for studying, overseas posting).</p> <p>This should also be seen in the context of the offer for a guaranteed right of return for those who have acquired permanent residence status (see box on Further free movement).</p>	EU to clarify.

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23		Further free movement rights	UK nationals in scope of withdrawal agreement only have protected rights in the state(s) in which they have residence rights on exit day, without prejudice to Social Security rights. Conditions for return as provided under EU law – See box "Loss of permanent residence".	UK nationals in scope who move within EU27 after the specified date should keep all existing rights; also for cross-border activity begun after the specified date. The UK is prepared to offer a guaranteed right of return for those who have acquired permanent residence status. This offer is subject to addressing the question of further free movement of UK nationals across the EU27.	
24		Criminality committed pre exit	Restrictions due to public security, policy or health as per Directive 2004/38.	Restrictions due to public security, policy or health as per Directive 2004/38.	
25		Criminality committed post exit	Restrictions due to public security, policy or health as per Directive 2004/38, based on individual assessment.	Expulsion for post-exit activity assessed under UK immigration rules.	

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26		Administrative procedures - general	As per Directive 2004/38 current EU position is that documents are declaratory.	Obtaining status will enable those protected by this agreement to vouchsafe their unique status in a way which is convenient to them and employers/service providers and enjoy all the associated rights in the future. UK will not have discretion to refuse status other than for reasons allowed by the withdrawal agreement. Administrative procedures will be streamlined. Sufficient time will be given (2 years) and a proportionate approach will be taken in respect of any EU citizen who fails to apply by the end of this period.	
27		Current holders of permanent residence certificate	Citizens shall be considered legally resident even if they do not hold a residence document evidencing that right.	Streamlined process and reduced or no costs for current holders of permanent residence documents to exchange for updated UK documentation. This will simply entail verification of ID, a criminality check and confirmation of ongoing residence, in recognition of the fact that they have already been through a process assessing their	

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#	TOPIC	DETAIL	EU POSITION	UK POSITION	ISSUES
				qualifying residence period.	
28		Administrative procedures – criminality checks	EU position is that criminality checks cannot be conducted systematically.	UK position is that systematic criminality checks on applicants necessary to assess criminality/conduct criteria in application. UK intends to ask applicants to declare criminality.	
29		Administrative procedures – smooth and streamlined	As per EU 27 individual administrative procedures.	UK presented initial thinking on a streamlined, user-friendly, digital application process, which draws on existing government data to minimise the burden of documentary evidence required. UK content to continue to consult EU on proposed procedures and also to maintain a dialogue with the EU on any changes in procedures affecting UK nationals in the EU.	
30		ID requirements for documentation as a beneficiary of the withdrawal agreement	As per Directive 2004/38 –valid passport or ID card.	UK position is to verify identity of applicant through passport (preferred) or ID card, as permitted by EU rules. Biometric information (photo) may be required.	

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31		Fees for documentation	Free of charge or for a charge not exceeding that imposed on nationals for issuing of similar documents.	Free of charge or for a charge not exceeding that imposed on nationals for issuing of similar documents.	
32		Procedural safeguards and judicial redress	Articles 15 and 30-32 of Directive 2004/38: Notification of decisions and procedural safeguards.		UK to clarify
33		Associated Rights	Equal treatment within the limits of Article 24 of Directive 2004/38 and rights of workers, self-employed, students and economically inactive citizens with respect to social security, social assistance, health care, employment and self-employment, education (including higher education) and training, social and tax advantages (Articles 18, 45 and 49 TFEU, Regulation 492/2011).	Equal treatment within the limits of Article 24 of Directive 2004/38 and rights of workers, self-employed, students and economically inactive citizens with respect to social security, social assistance, health care, employment and self-employment, education (including higher education) and training, social and tax advantages (Articles 18, 45 and 49 TFEU, Regulation 492/2011).	
34		Voting rights	Member states are free to give voting rights to third country nationals regardless of the withdrawal agreement.	UK wants to protect in the withdrawal agreement existing rights of UK/EU citizens to vote and/or stand in local elections in their host state.	

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35		Duration of rights	Life-long protection for the right holder as guaranteed by the withdrawal agreement.	Life-long protection for the right holder as guaranteed by the withdrawal agreement.	
36	Social security coordination	Personal scope	Persons within the personal scope of Regulation 883/2004 as covered in Article 2 who on exit day are or have been subject to the legislation of an EU27 Member State for UK nationals, or UK legislation for EU27 citizens, and EU27 and UK nationals within the personal scope of the agreement by virtue of residence. ²	Persons within the personal scope of Regulation 883/2004 as covered in Article 2 who on exit day are or have been subject to the legislation of an EU27 Member State for UK nationals, or UK legislation for EU27 citizens, and EU27 and UK nationals within the personal scope of the agreement by virtue of residence. ²	
37		Past residence and work	EU and UK citizens having worked or resided in the EU27/UK in the past shall, for the purposes of aggregation of periods of social security insurance, including rights flowing from such periods, in accordance with Regulation 883/2004 be covered by the Withdrawal Agreement.	EU and UK citizens having worked or resided in the EU27/UK in the past shall, for the purposes of aggregation of periods of social security insurance, including rights flowing from such periods, in accordance with Regulation 883/2004 be covered by the Withdrawal Agreement.	

² This includes stateless persons and refugees (Article 2(2) of Regulation 883/2004. Moreover, as regards other third country nationals, both sides to consider how to address their contributions in the withdrawal agreement.

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#	TOPIC	DETAIL	EU POSITION	UK POSITION	ISSUES
38		Past and future contributions – Aggregation under the Withdrawal Agreement	Contributions both before and after exit in the EU27 and the UK will be recognised for those covered by the Withdrawal Agreement.	Contributions both before and after exit in the EU27 and the UK will be recognised for those covered by the Withdrawal Agreement.	
39		Equal treatment	Equal treatment under the conditions set out in EU law.	Equal treatment under the conditions set out in EU law.	
40		Benefits	All those referred to in Regulation 883/2004.	All those referred to in Regulation 883/2004.	
41		Benefits – export of pensions	Lifetime export of uprated pension.	Lifetime export of uprated pension.	
42		Benefits – export of other benefits	Lifetime export under conditions in Regulation 883/2004.	Guarantee export if exporting that benefit on the specified date, and guarantee parity with UK nationals if not.	
43		Healthcare – material scope	The rules for healthcare will follow Regulations 883/2004 and 987/2009.	The rules for healthcare will follow Regulations 883/2004 and 987/2009. For instance, responsibility for funding healthcare lies with the competent authority for State Pensions.	

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#	TOPIC	DETAIL	EU POSITION	UK POSITION	ISSUES
44		Healthcare – personal scope	<p>Persons whose competent state is the UK and are in the EU27 on exit day (and vice versa) – whether on a temporary stay or resident – continue to be eligible for healthcare reimbursement, including under the EHIC scheme, as long as that stay or residence position continues.</p> <p>The withdrawal agreement also covers entitlement to healthcare reimbursement under the S1 scheme that arises by virtue of past residence or work, in accordance with the personal scope of the agreement in relation to social security rights.</p> <p>It will also protect the position of people who are undertaking a course of treatment started before the withdrawal date for the duration of that treatment course, irrespective of residence.</p>	<p>Persons whose competent state is the UK and are in the EU27 on exit day (and vice versa) – whether on a temporary stay or resident – continue to be eligible for healthcare reimbursement, including under the EHIC scheme, as long as that stay or residence position continues. Operational implications of this scope require further consideration.</p> <p>This includes, for instance, EU27 citizens working in the UK on exit day (and vice versa for UK nationals in the EU27); EU27 pensioners living in the UK on exit day (and vice versa); and EU27 nationals studying in the UK on exit day (and vice versa).</p> <p>The withdrawal agreement also covers entitlement to healthcare reimbursement under the S1 scheme that arises by virtue of past residence or work, in accordance with the personal</p>	

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				<p>scope of the agreement in relation to social security rights.</p> <p>It will also protect the position of people who are undertaking a course of treatment started before the withdrawal date for the duration of that treatment course, irrespective of residence.</p>	
45		Coordination principles apart from export	All other coordination principles of Regulation 883/2004.	All other coordination principles of Regulation 883/2004.	
46		Administrative cooperation	Cooperation between national authorities as set out in Regulation 883/2004 and 987/2009.	Cooperation between national authorities as set out in Regulation 883/2004 and 987/2009.	
47			For rights and obligations set out in Regulations 883/2004 and 987/2009 on the coordination of social security systems, a mechanism should be established to decide jointly on the incorporation of future amendments to those regulations in the withdrawal agreement.	For rights and obligations set out in Regulations 883/2004 and 987/2009 on the coordination of social security systems, a mechanism should be established to decide jointly on the incorporation of future amendments to those regulations in the withdrawal agreement.	

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#	TOPIC	DETAIL	EU POSITION	UK POSITION	ISSUES
48	Professional qualifications	Personal scope	The rights of EU27 persons resident in the UK before the withdrawal date and vice versa as well as frontier workers.	The rights of EU27 persons resident in the UK on the specified date and vice versa as well as frontier workers.	
49				Right to have a professional qualification recognised should not be tied to residency.	
50		Equal treatment	Full equal treatment with national professionals (Articles 45 and 49 TFEU) where professionals are resident in the UK before the withdrawal date and vice versa.	Full equal treatment with national professionals (Articles 45 and 49 TFEU) where professionals are resident in the UK on the specified date and vice versa.	
51				Relevant equal treatment with national professionals for those who are neither frontier workers nor resident on the specified date.	
52	Material scope	To be grandfathered: > decisions on recognition of EU 28 qualifications granted before the withdrawal date either in the UK or in any other EU 27 under Title III of Directive 2005/36 (PQD), Article 10 of Directive 98/5/EC (lawyers practising under host title) and Article 14 of	To be grandfathered: > decisions on recognition of EU 28 qualifications granted before the withdrawal date either in the UK or in any other EU 27 under Title III of Directive 2005/36 (PQD), Article 10 of Directive 98/5/EC (lawyers practising under host title) and Article 14 of		

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#	TOPIC	DETAIL	EU POSITION	UK POSITION	ISSUES
			Directive 2006/43/EC (approved statutory auditors).	Directive 2006/43/EC (approved statutory auditors).	
53			> decisions on recognition of 3rd country qualifications which have been assimilated to EU qualifications after 3 years of exercise in the EU28 which first recognised them	> decisions on recognition of 3rd country qualifications which have been assimilated to EU qualifications after 3 years of exercise in the EU28 which first recognised them	
54			> on-going recognition procedures to be completed under the rules applicable before the withdrawal date (both EU and third-country recognitions) including ongoing compensatory measures to obtain recognition under Title III of Directive 2005/36 (PQD), Article 10 of Directive 98/5/EC (lawyers practising under host title) and Article 14 of Directive 2006/43/EC (approved statutory auditors).	> on-going recognition procedures to be completed under the rules applicable before withdrawal date (both EU and third-country recognitions) including ongoing compensatory measures to obtain recognition under Title III of Directive 2005/36 (PQD), Article 10 of Directive 98/5/EC (lawyers practising under host title) and Article 14 of Directive 2006/43/EC (approved statutory auditors).	

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55			EU to clarify on the basis of the list provided by the UK.	Continued recognition of other professional qualifications, including of EU-wide licenses and certificates, which are recognised throughout the EU without a recognition decision under relevant EU law*.	
56			To the extent that there is no recognition decisions before withdrawal date or ongoing recognition procedures at withdrawal date, this issue is outside the scope.	<p>PQs that have been obtained, or are in the course of being obtained, but the citizen hasn't been through or begun the process of having their qualification recognised, can be recognised after withdrawal date.</p> <p>The material scope includes Title II of Directive 2005/36(PQD) as well as lawyers practicing under home title (not requiring any recognition decision) under Directive 77/249 and Article 2 of Directive 98/5/EC (lawyers – services and establishment under home title) as well as conditions related to qualifications specified in Article 3 of Directive 2006/43 (Statutory Audit Directive).</p>	

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#	TOPIC	DETAIL	EU POSITION	UK POSITION	ISSUES
57		Territorial scope	The effects of grandfathered recognition decisions limited to the issuing State – no subsequent single market rights (second establishment – cross-border provision of services) under EU law, and no grandfathering of recognition decisions in States other than the State where the UK national is residing or working as a frontier worker.	The right to have a qualification recognised and right to practise a profession should apply across UK and all EU 27 states.	
58	Other economic rights	Personal scope	The rights of EU27 residents in the UK before the withdrawal date and vice versa.	The rights of EU27 residents in the UK on the specified date and vice versa.	
59		Rights	Individuals shall maintain all their rights, including equal treatment, under Articles 21, 45 and 49 TFEU, and under Directive 2004/38, Regulation 492/2011 as in associated rights.	Protect the rights of individuals under relevant provisions of EU law, including the rights under Article 49 TFEU in the State of residence or frontier work (e.g. the right to set up and manage an undertaking, the right to equal treatment in the participation in the capital of EU companies or firms).	

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60		Territorial scope	Agreement to be confined to UK citizens residing or frontier working in a EU27 Member State and vice versa at the time of withdrawal.	Economic rights for UK nationals resident or frontier working in the EU27 extend across all EU27 Member States.	

- * Directive 86/653/EEC (self-employed commercial agents)
 Directives 74/556/EEC and 74/557/EEC (self-employed persons and intermediaries engaging in the trade and distribution of toxic products)
 Directive 2003/59/EC (drivers of certain road vehicles for the carriage of goods or passengers)
 Regulation 1071/2009 (road transport operators)
 Regulation 216/2008 (commercial pilots and air traffic control officers)
 Regulation 1321/2014 (maintenance engineers, aviation)
 Directive 2007/59/EC (train drivers)
 Directive 2008/106/EC (seafarers)
 Regulation 1099/2009 (slaughtermen)
 Regulation 1/2005 (those transporting animals)
 Regulation 517/2014 (those handling fluorinated gases)