

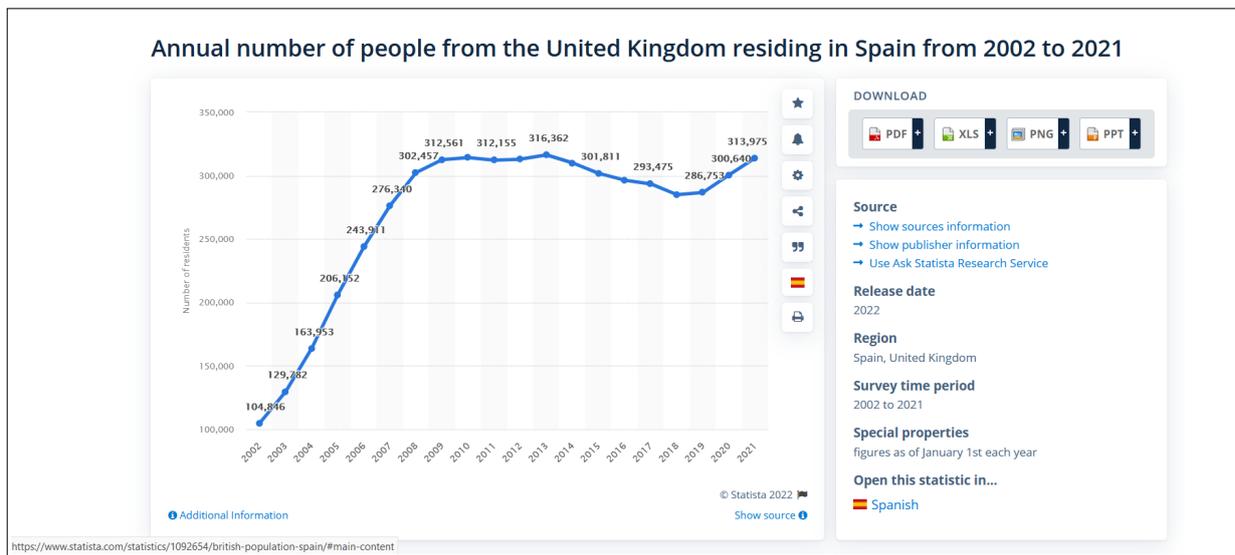
A. Introduction

The withdrawal of the United Kingdom from the European Union has fundamentally changed the architecture of the UK's immigration regime. Throughout its membership of the Union, the UK maintained a two-tier system of immigration under which only highly skilled workers from outside the EU were admitted to the UK, while workers of all skill levels were free to enter from the Member States of the EU. The latter enjoyed free movement rights under the EU Treaties, a cornerstone of the single market. Subject to certain restrictions, the EU free movement regime applied to those who were economically active (workers, the self-employed and services providers) and to the semi-economically active, such as students and retirees, provided they had comprehensive sickness insurance and sufficient resources. Since the 2016 referendum, the British government consistently maintained a pledge to end free movement of persons between the Union and the UK and introduce a controlled migration regime post-Brexit¹.

The pledge has been delivered. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 put an end to free movement and introduced, at least in theory, a one tier system of migration: that all those coming to the UK after 31 December 2020, no matter where they originate from, would be subject to the same rules and would have to apply for a visa to come for the purposes of long term stay or work. The provisions in the Trade and Cooperation Agreement (TCA) on mobility are only to a limited extent more generous than the bare minimum found in the WTO's GATS (General Agreement on Trade in Services). However, there are more generous provisions under the Withdrawal Agreement (WA), broadly mirroring the rights in the Citizens Rights Directive 2004/38, for those EU citizens/UK citizens and their family members who had moved to UK/Spain by 31 December 2020².

There are still a lot of UK nationals living in Spain (c 382,000 in December 2020) and possibly about a million if shorter-term British nationals living in Spain for part of the year are included³. Figure 1 provides an indication:

Fig. 1: Annual number of people from the UK residing in Spain.



Source: Statista.

- 1 For example, in her Lancaster House speech of 17 January 2017, then-Prime Minister Theresa May stated 'As Home Secretary for six years, I know that you cannot control immigration overall when there is free movement to Britain from Europe'. Full text of the speech available at: <https://static.rasset.ie/documents/news/theresa-may-speech.pdf>, accessed 30 August 2019. See also 'Political Declaration Setting Out the Framework for the Future Relationship between the European Union and the United Kingdom', 22 November 2018, XT 21095/18 <https://www.consilium.europa.eu/media/37059/20181121-cover-political-declaration.pdf>
- 2 There are some exceptions to this – for a full discussion, see *The UK-EU Withdrawal Agreement: A Commentary*, edited by Liefländer, T. Kellerbauer, M. & Segnana-Dumitriu, E. (Oxford, OUP, 2021).
- 3 Acosta, D. 'After Brexit could bilateral agreements facilitate the free movement of persons?' *EPC Discussion Paper*, 7 Sept 2021.

There are a significant number of British tourists who go to Spain each year. Before Covid, there were approximately 18 million a year.

Fig. 2: Annual number of UK tourists in Spain.

Number of residents of the United Kingdom who traveled to Spain from 2010 to 2020
(in millions)



Source: Statista.

Fig. 3: Number of Spanish nationals in the UK.

Number of Spanish nationals resident in the United Kingdom from 2008 to 2021
(in 1,000s)



Source: Statista.

There were approximately 206,000 Spanish residents in the United Kingdom in 2021. The question is whether there is scope for the minimal arrangements currently in place for Spanish-British relations in respect of mobility to be improved upon. There is no chance that in the near or medium term, free movement will be reintroduced in the UK across the EU-27, not least because the EU would no doubt insist that free movement rights would need to be enjoyed as part of a package with membership of the internal market which would mean respecting a role for the enforcers of the single market, namely the Commission and the Court of

Justice. However, in the right political circumstances, there may be appetite for bilateral agreements between the UK and Spain, given that Spain and the UK do have close ties and reciprocal migration interests. As Acosta points out⁴:

Spain is the most important EU destination for British emigrants, and British migrants residing in Spain constitute the latter's third-largest non-national population. In turn, the UK is the most important migrant destination for Spanish nationals worldwide, who represent the fifth-largest migrant group from the EU.

Legally, migration is a matter mainly of domestic competence (albeit that there maybe political pressure from the EU on Member States not to enter into bilateral arrangements⁵) and EU states have agreements on mobility with third countries (see e.g. Andorra and Spain/France; Andorra/Portugal⁶). As Alemmano and Kochenov point out⁷:

... EU law has virtually nothing to say about access to work and residence rights in the territory of EU Member States by third-country nationals who are not family members of EU citizens and who do not fall within the scope of strictly delimited groups, whose residence is regulated by EU law, like the Blue Card holders, for instance. ... This is superb news for UK citizens, since it means that any EU Member State (or EEA country, or Switzerland) can decide to open up its territory for UK nationals willing to settle and work there and stop discriminating them with no breach of EU law or the UK-EU Agreement. Such a state's right is enshrined in International law, and UK citizens already benefit from such rights in the Republic of Georgia, in one example, by a unilateral decision of the latter – as well as on the Svalbard archipelago in northern Norway via a multilateral treaty framework.

There are areas relating to mobility issues where the EU could lay claim to competence, especially in respect of professional qualifications (albeit what qualifications are necessary in order to practise a particular profession may still be regarded as a matter of domestic competence).

In this report I have been asked to consider what may be possible in a UK-Spain mobility agreement. In order to assess this I will first consider the arrangements for migration post Brexit, principally under the Trade and Cooperation Agreement (TCA) and the effect on even temporary migration (section B) and the position on migration to the UK (section C) before going on to consider the possible enhancements to the UK/EU rules in the light of what has been agreed in other Treaties (section D). Section E concludes.

B. An overview of the arrangements post Brexit for EU and UK citizens

1. Introduction

In accordance with its red lines, the UK's two-tier immigration system has ended. Mobility rules post-Brexit have resulted in a three-layered system of rights (see Figure 4). First, there are EU citizens who have arrived in the UK *before* the end of transition period (31 December 2020) and who are covered by the EU Settlement Scheme under the Withdrawal Agreement. They will continue to enjoy rights akin to those of EU citizens. Those who travel to the UK *post*-transition period will fall into one of the following two categories: (i) those

4 Acosta, D. 'After Brexit could bilateral agreements facilitate the free movement of persons?' EPC Discussion Paper, 7 Sept 2021.

5 See e.g. <https://www.consilium.europa.eu/en/meetings/european-council/2021/05/24-25/>

6 Convénio entre a República Portuguesa e o Principado de Andorra relativo à entrada, circulação, estadia e estabelecimento dos seus nacionais. Available at: <https://app.parlamento.pt/webutils/docs/doc.pdf?path=6148523063484d364c793968636d356c6443397a-6158526c637939595447566e4c305276593356745a57353062334e4a626d6c6a6157463061585a684c7a413159545577596a526b-4c5467314e6a49744e446469595331684e6a597a4c545a6b4e6d5a694d7a6b314f5449355979356b62324d3d&fich=05a50b4d-8562-47ba-a663-6d6fb395929c.doc&inline=true>

7 'Mitigating Brexit through Bilateral Free-Movement of Persons'. *Verfassungsblog on matters constitutional*. Available at: <https://verfassungsblog.de/mitigating-brexit-through-bilateral-free-movement-of-persons/>