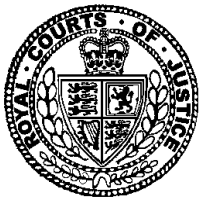

Case No: CO/4193/2021

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

[2022] EWHC 3274 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 December 2022

Before :

MR JUSTICE LANE

- -

Between :

THE KING

ON THE APPLICATION OF

THE INDEPENDENT MONITORING AUTHORITY FOR THE CITIZENS' RIGHTS AGREEMENTS	**Claimant**
- and –	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**
and –	**Interveners**
(1) THE EUROPEAN COMMISSION **(2) THE3MILLION LIMITED**	

- -
- -

Mr Robert Palmer KC, Ms Clíodhna Kelleher (instructed by the IMA Legal Directorate) for the **Claimant**
Mr David Blundell KC, Ms Julia Smyth (instructed by **Government Legal Department**) for the **Defendant**
Mr Nicholas Khan KC, (Legal Service, European Commission) for the **First Intervener**
Written Submissions by Ms Galina Ward KC, Mr Bijan Hoshi and Mr Charles Bishop (instructed by **Public Law Project)** on behalf of the Second Intervener

Hearing dates: 1 and 2 November 2022
Further materials and submissions filed on 17 November 2022

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JUDGMENT

Mr Justice Lane :

A. INTRODUCTION

1. In the light of the result of the referendum held in 2016 on whether the United Kingdom should leave the European Union, the government concluded with the EU on 17 October 2019 an "Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community". The agreement is commonly referred to as the Withdrawal Agreement ("WA").

2. The United Kingdom left the EU on 31 January 2020. During a transition period, ending at 11pm GMT on 31 December 2020, EU law continued to apply in the United Kingdom. This included the law of free movement under Articles 21, 45 and 49 of the Treaty on the Functioning of the European Union ("TFEU") and Directive 2004/38/EC ("the Directive").

3. The nature and scope of EU free movement rights were incompatible with the general system of immigration control in the United Kingdom, contained in the Immigration Acts; in particular, the Immigration Act 1971 ("the 1971 Act"). Section 1 of the 1971 Act provides that those without the right of abode in the United Kingdom are subject to a system of control, as to which section 3 provides for the grant of leave to enter or remain for either a limited or for an indefinite period.

4. Section 7 of the Immigration Act 1988 accordingly provided that a person who was entitled to enter or remain in the United Kingdom by reason of EU law was not subject to the requirements of the 1971 Act concerning leave to enter or remain.

5. Section 7 was repealed with effect from 31 December 2020. After that date, EU citizens cannot rely on a right of free movement to enter or remain in the United Kingdom. They are therefore subject to the 1971 Act, in the same way as anyone else who lacks the right of abode.

6. Importantly, however, Part Two of the WA makes provision for residence rights in respect of "Union citizens who exercise their right to reside in the United Kingdom in accordance with Union law before the end of the transition period and continue to reside there thereafter" (Article 10(1)(a)). The nature of these residence rights is set out in Articles 13 to 17 of the WA, whilst provision for the issuance of residence documents is made by Article 18. This Article confers a power on the host State (for our purposes, the United Kingdom) to require EU citizens, their respective family members and other persons, who reside in its territory in accordance with the conditions sets out in Title II of Part Two, to apply for a new residence status which confers the rights under that Title and a document evidencing such status, which may be in digital form (Article 18(1)).

B. THE CASE IN OUTLINE

7. The defendant considers that she has exercised the power in Article 18(1) by making immigration rules under the 1971 Act, to be found in Appendix EU. The claimant contends that the defendant is, in effect, in breach of her obligations under the WA because those rules produce effects that are at variance with the WA.

8. The claimant was established pursuant to Article 159(1) of the WA. Article 159(1) provides for the implementation and application of Part Two of the WA to be monitored in the United Kingdom by the claimant, "which shall have powers equivalent to those of the European Commission acting under the Treaties to conduct inquiries on its own initiative concerning alleged breaches of Part Two by the administrative authorities of the United Kingdom … [and] to bring a legal action before a competent court or tribunal in the United Kingdom in an appropriate judicial procedure with a view to seeking an adequate remedy".

9. In broad terms, the defendant's relevant immigration rules ("EUSS") operate so as to grant limited leave to remain (five years) under the 1971 Act to those who applied pursuant to Article 18 of the WA for a new residence status, in circumstances where, at the relevant time, the applicant had residence rights under Part Two which did not at that point entitle the applicant to a right of permanent residence, as described in Article 15. The consequence of having time-limited leave to remain is that, following the expiry of that leave, the person concerned will have no lawful status in the United Kingdom, unless that limited leave is extended by operation of law or they are given further leave to remain by the defendant.

10. An applicant who, at the relevant time, had resided legally in the United Kingdom for a continuous period of five years under the conditions mentioned in Article 15 of the WA was granted indefinite leave to remain under the EUSS.

11. The claimant is concerned about the position of those who have been granted limited leave to remain under the EUSS pursuant to Article 18 of the WA, as described in paragraph 9 above. In essence, the claimant submits that a person whose limited leave to remain comes to an end, without further leave being granted, faces serious problems; not least, the consequence which follows under the 1971 Act of being in the United Kingdom unlawfully. The claimant says such an outcome is not permitted by the WA.

12. The claimant is also concerned on behalf of certain citizens of Iceland, Liechtenstein and Norway. On 20 December 2018, the United Kingdom concluded an agreement with those countries: the EEA EFTA Separation Agreement ("SA"). Article 64(1) of the SA conferred upon the claimant the function of monitoring the implementation and application in the United Kingdom of Part Two of the SA. That Part is effectively in the same terms as Part Two of the WA.

13. Swiss citizens are protected under a separate Swiss Citizens Rights Agreement ("SCRA"). The claimant does not have a role in relation to the SCRA, which makes no provision for a monitoring authority. The claimant suggests, however, that there is no reason why the substantive rights of Swiss citizens in the United Kingdom are any different for present purposes than those of EU citizens and EEA EFTA nationals. The defendant does not demur.

14. I should mention at this point that the defendant has been more generous in the EUSS than the WA, in that she has given limited or indefinite leave to EU citizens, on the basis of residence *simpliciter* in the United Kingdom, rather than on the basis of residence in accordance with the conditions applying to the right of free movement. Whilst the claimant acknowledges the defendant's policy in this regard, this does not, in the claimant's view, affect its concerns over the position of the cohort given limited leave.

15. So far, I have referred to the position of EU citizens under the WA and the EUSS. It is the case, however, that Part Two of the WA also confers residence rights on family members, who may or may not be EU citizens: Article 13(2) and (3).

16. Although, for the most part, the written and oral submissions of the parties made specific reference to EU citizens, it is common ground that those submissions should generally be taken as extending to citizens of the other countries I have mentioned; and also to their relevant family members. I have sought to adopt the same approach in this judgment.

17. The European Commission ("the Commission") intervened in this case. Article 162 of the WA provides that:-

> "Where the consistent interpretation and application of this Agreement so requires, the European Commission may submit written observations to the courts and tribunals of the United Kingdom in pending cases where the interpretation of the Agreement is concerned. The European Commission may, with the permission of the court or tribunal in question, also make oral observations. The European Commission shall inform the United Kingdom of its intention to submit observations before formally making such submissions."

18. Having considered the terms on which Saini J granted permission to the claimant to bring this judicial review, and in light of the Judge's observation that the claimant had raised "a real issue as to the potential application of EU law in the interpretation of the WA", the Commission decided that it was appropriate to intervene in the present proceedings to the fullest extent described in Article 162. On behalf of the Commission, Mr Nicholas Khan KC filed written observations on 17 October 2022. At the hearing, I also received oral submissions from Mr Khan.

19. The second intervener is the3million Ltd. This is a not-for-profit organisation formed after the 2016 referendum in order to work on the specific issue of protecting the rights of EU etc citizens living in the United Kingdom, and their families. Despite the objection of the defendant, I permitted the3million Ltd to intervene. I concluded, however, that its intervention should be confined to written submissions, rather than extending to evidence. Written submissions were filed by Ms Galina Ward KC, Mr Bijan Hoshi and Mr Charles Bishop.

20. Before describing the detail of the claimant's challenge, which is supported by both of the interveners, it is necessary to describe the relevant provisions of the WA, the Directive and the EUSS in greater detail. The relevant provisions of each are set out in Annex 1 to this judgment.

C. THE WITHDRAWAL AGREEMENT IN DETAIL

21. The first recital to the WA refers to the "sovereign decision" of the United Kingdom to leave the EU. For the defendant, Mr Blundell KC puts particular emphasis on this recital and on the statement in the fourth recital that "the law of the Union… in its entirety ceases to apply to the United Kingdom from the date of entry into force of this Agreement." For the claimant, Mr Palmer KC emphasises the reference in the sixth

recital to "reciprocal protection for Union citizens… as well as their respective family members, where they have exercised free movement rights before a date set in this Agreement, and to ensure that their rights under this Agreement are enforceable …".

22. Mr Blundell highlights the aim set out in the seventh recital of providing "legal certainty to citizens and economic operators as well as to judicial and administrative authorities in the… United Kingdom …". Mr Palmer contends that the seventh recital is concerned with the separation provisions contained in Part Three of the WA, as opposed to the residence rights in Part Two. I do not consider that much turns on this, since Mr Palmer acknowledges that legal certainty is a general principle of EU law.

23. Mr Blundell emphasises the reference in the 12th and 13th recitals to the aim of securing "an orderly withdrawal of the United Kingdom" from the EU, as well as the statement in the 14th recital that the WA "is founded on an overall balance of benefits, rights and obligations for the Union and the United Kingdom".

24. I turn to the substantive provisions of the WA. Article 4 states that the WA "and the provisions of Union law made applicable by this Agreement shall produce in respect of and in the United Kingdom the same legal effects as those which they produce within the Union and its Member States". As a result, Article 4 confirms that legal or natural persons shall in particular be able to rely "directly on the provisions contained or referred to in this Agreement which meet the conditions for direct effect under Union law".

25. Article 4(3) and (4) contain provisions regarding the interpretation of provisions of the WA "referring to Union law or concepts or provisions thereof".

26. At this point, it is necessary to observe that "Union law" is defined in Article 2. The definition includes the TEU ("Treaty on European Union"), the TFEU, the general principles of Union law and the acts adopted by its institutions etc. Article 6(1) says that, for our purposes at least, Union law "shall be understood as references to Union law, including as amended or replaced, as applicable on the last day of the transition period".

27. Part Two of the WA begins with Article 9. This contains a number of definitions, including "family members".

28. Article 10 is entitled "Personal scope". It states that Part Two shall apply to specified categories of persons, of which the following is relevant for our purposes:-

> "(a) Union citizens who exercised their right to reside in the United Kingdom in accordance with Union law before the end of the transition period and continue to reside there thereafter;".

29. Article 10(1)(e) and (f) bring within scope certain family members.

30. Despite their presence in Annex 1, it is desirable here to set out the following provisions of Article 13 (Residence rights):-

> "1. Union citizens and United Kingdom nationals shall have the right to reside in the host State under the limitations and conditions as set out in Articles 21, 45 or 49 TFEU and in Article

> 6(1), points (a), (b) or (c) of Article 7(1), Article 7(3), Article 14, Article 16(1) or Article 17(1) of Directive 2004/38/EC."
>
> [13(2) and 13(3) concern family members]
>
> …
>
> 4. The host State may not impose any limitations or conditions for obtaining, retaining or losing residence rights on the persons referred to in paragraphs 1, 2 and 3, other than those provided for in this Title. There shall be no discretion in applying the limitations and conditions provided for in this Title, other than in favour of the person concerned."

31. I should mention here that Title II of Part Two encompasses Articles 13 to 29. It is also necessary at this point to explain the provisions of the TFEU and the Directive, which are mentioned in Article 13(1).

32. Article 21 of the TFEU contains the general right of free movement, which is that every Union citizen shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect. Article 45 provides that such freedom of movement entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment. Article 49 prohibits restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State, as well as explaining what is included in the concept of freedom of establishment.

33. Article 6 of the Directive gives Union citizens the right of residence on the territory of another Member State for a period of up to three months, without any conditions or formalities, other than the need to hold a valid identity card or passport. This extends to family members in possession of a valid passport, who are not nationals of a Member State, but who are accompanying or joining the Union citizen.

34. Article 7(1)(a) to (c) confers the right of residence for a period of longer than three months, provided that the EU citizen concerned is a worker or self-employed person in the host Member State, has sufficient resources for themselves and their family members so as not to become a burden on the social assistance system of the host Member State, and has comprehensive sickness insurance cover in that State; or is enrolled as (in effect) a student, having comprehensive sickness insurance as well as providing an assurance that they have sufficient resources for themselves and their family during the period of residence. Article 7(1)(d) confers the right on family members of a Union citizen who satisfy the conditions in points (a), (b) or (c).

35. Article 7(3) makes provision in certain circumstances for a person who is no longer a worker or self-employed person to retain that status; e.g. because they are temporarily unable to work as a result of illness or accident.

36. Article 14 enables Union citizens and their family members to have the right of residence provided for in Article 6, as long as they do not become an unreasonable burden on the social assistance system of the host Member State.

37. Article 16 confers the so-called right of permanent residence upon Union citizens who have resided legally for a continuous period of five years in the host Member State. This right of permanent residence is not subject to the conditions provided for in Chapter III (i.e. Articles 6 to 15).

38. It is to be noted that Article 16(4) provides that, once acquired, the right of permanent residence shall be lost only through absence from the host Member State for a period exceeding two consecutive years. Under the WA, as we shall see, the right of permanent residence conferred by Article 15 of that Agreement is lost only through absence from the host state for a period exceeding five consecutive years.

39. Article 17 of the Directive enables certain persons to acquire the right of permanent residence before the completion of a continuous period of five years, by reason of retirement or permanent incapacitation.

40. Article 15 of the WA confers a right of permanent residence:-

> "1. Union citizens and United Kingdom nationals, and their respective family members, who have resided legally in the host State in accordance with Union law for a continuous period of 5 years or for the period specified in Article 17 of Directive 2004/38/EC, shall have the right to reside permanently in the host State under the conditions set out in Articles 16, 17 and 18 of Directive 2004/38/EC. Periods of legal residence or work in accordance with the Union law before and after the end of the transition period shall be included in the calculation of the qualifying period necessary for acquisition of the right of permanent residence.
>
> 2. Continuity of residence for the purposes of acquisition of the right of permanent residence shall be determined in accordance with Article 16(3) and Article 21 of Directive 2004/38/EC.
>
> 3. Once acquired, the right of permanent residence shall be lost only through absence from the host state for a period exceeding 5 consecutive years".

41. So far as concern the references in Article 15 of the WA to provisions of the Directive which I have not described above, Article 16(3) of the Directive explains that the continuity of residence shall not be affected by temporary absences not exceeding a total of six months in a year; or by absences of a longer duration for other specified reasons or "important reasons", of which pregnancy, childbirth and serious illness are amongst the examples given.

42. Article 18 of the Directive provides for the acquisition of the right of permanent residence by family members of a Union citizen to whom Articles 12(2) and 13(2) apply, if those family members satisfy the conditions therein, and have resided legally for a period of five consecutive years in the host Member State.

43. Article 21 of the Directive states that continuity of residence may be attested by any means of proof in use in the host member State; but that it is broken by any expulsion decision duly enforced against the person concerned.

44. I can now return to the WA. Article 16 of the WA was the subject of much discussion in the written and oral submissions of the parties in the present case. Article 16 provides as follows:-

> "Union citizens and United Kingdom nationals, and their respective family members, who before the end of the transition period resided legally in the host State in accordance with the conditions of Article 7 of Directive 2004/38/EC for a period of less than 5 years, shall have the right to acquire the right to reside permanently under the condition set out in Article 15 of this Agreement once they have completed the necessary periods of residence. Periods of legal residence or work in accordance with Union law before and after the end of the transition period shall be included in the calculation of the qualifying period necessary for acquisition of the right of permanent residence".

45. I have mentioned that Article 18 of the WA confers a power on the host state to require Union citizens and UK nationals and their family members to apply for a new residence status conferring the rights under Title II of Part Two. This power enables the United Kingdom and Member States to give effect to the citizens' rights contained in Part Two by means of a "constitutive scheme", whereby the rights in question must be conferred by the grant of residence status. This contrasts with a "declaratory scheme", under which the rights under Title II arise automatically upon the fulfilment of the conditions necessary for their existence. Under a declaratory scheme, documentation confirming the right may be sought and provided. Such documentation, however, is not a prerequisite to the enjoyment of the right.

46. The United Kingdom has chosen to adopt a constitutive scheme by exercising the power in Article 18(1) of the WA. So too have about half of the EU Member States.

47. Article 18(1) provides as follows:-

> "1. The host State may require Union citizens or United Kingdom nationals, their respective family members and other persons, who reside in its territory in accordance with the conditions set out in this Title, to apply for a new residence status which confers the rights under this Title and a document evidencing such status which may be in a digital form."

48. Article 18(1) then sets out a number of conditions "for such a residence status".

49. Sub-paragraph (a) tells us that "the purpose of the application procedure" is to verify whether the applicant is entitled to the residence rights and, where that is the case, the applicant "shall have a right to be granted the residence status and the document evidencing that status".

50. Sub-paragraph (b) is as follows:-

> "(b) the deadline for submitting the application shall be not less than 6 months from the end of the transition period, for persons residing in the host State before the end of the transition period. For persons who have the right to commence residence after the end of the transition period in the host State in accordance with this Title, the deadline for submitting the application shall be 3 months after their arrival or the expiry of the deadline referred to in the first subparagraph, whichever is later".

51. Sub-paragraph (c) provides for an automatic extension by one year of "the deadline for submitting the application referred to in point (b)", where the Union or the United Kingdom, as the case may be, has notified the other that technical problems have prevented registration of applications /issuing the certificates.

52. Sub-paragraph (d) states that "where the deadline for submitting the application referred to in point (b) is not respected by the persons concerned", the authorities are to assess "all the circumstances and reasons" for this, and they must allow such persons to submit an application "within a reasonable further period of time if there are reasonable grounds for the failure to respect the deadline".

53. There are fourteen further sub-paragraphs in Article 18(1). Before me, particular attention was drawn to sub-paragraph (n):-

> "(n) for cases other than those set out in points (k), (l) and (m), the host State shall not require applicants to present supporting documents that go beyond what is strictly necessary and proportionate to provide evidence that the conditions relating to the right of residence under this Title have been fulfilled;".

54. Sub-paragraph (k) specifies what the host State may require by way of documentation from Union citizens. Sub-paragraphs (l) and (m) do the same in respect of the various categories of family members.

55. Article 18(2) states:-

> "2. During the period referred to in point (b) of paragraph 1 of this Article and its possible one-year extension under point (c) of that paragraph, all rights provided for in this Part shall be deemed to apply to Union citizens or United Kingdom nationals, their respective family members, and other persons residing in the host State, in accordance with the conditions and subject to the restrictions set out in Article 20".

56. Article 39 explains that the persons covered by Part Two enjoy the rights provided for in the relevant Titles of that Part "for their lifetime, unless they cease to meet the conditions set out in those Titles".

57. Finally, Article 158 of the WA enables the court or tribunal considering a case commenced at first instance within eight years from the end of the transition period to request the Court of Justice of the European Union to give a preliminary ruling on a question concerning the interpretation of Part Two of the WA. In such an eventuality,

the CJEU has jurisdiction to give the preliminary ruling, the legal effects of which, "shall be the same as the legal effects of preliminary rulings given pursuant to Article 267 TFEU in the Union and its Member States."

D. THE EUSS

58. I turn to the EUSS. EU1 explains how the Appendix sets out the basis on which an EEA citizen and their family members will, if they apply under it, be granted indefinite leave to enter or remain or limited leave to enter or remain. Broadly speaking, EU2 and EU11 provide for a person to be given indefinite leave to enter or remain where (inter alia) the application is made by the required date (30 June 2021) and the person concerned has a documented right of permanent residence, without any supervening event having occurred.

59. EU3, by contrast, provides for an applicant to be granted five years' limited leave to enter or remain where the applicant does not meet the eligibility requirements for indefinite leave under EU11 but meets the eligibility requirements for limited leave in accordance with EU14. One of the conditions which brings a person within EU14 is that they are "not eligible for indefinite leave to enter or remain under paragraph EU11 of this Appendix solely because they have completed a continuous qualifying period of less than five years".

60. In both cases, an application may fall to be refused on grounds of suitability in accordance with EU15 or EU16.

61. EU4 provides that where a person has been granted limited leave to enter or remain, they must continue to meet the eligibility requirements for that leave which they met at the date of application; or meet other eligibility requirements for limited leave in accordance with EU14 or EU14A.

62. Section 33(2A) of the 1971 Act explains that a person is "settled in the United Kingdom" if they are "ordinarily resident there without being subject under the immigration laws to any restriction on the period for which [they] may remain". Thus, a person with limited leave to remain is not settled, whereas a person with indefinite leave to remain is settled.

63. The letters sent by the defendant to those who have been granted limited leave under EU3 state that such leave "is also referred to as **pre-settled status**" (original emphasis).

E. INTERPRETING THE WA

64. This claim is about the interpretation of the WA. The WA is an international treaty. As such, the relevant interpretative principles are those contained in the Vienna Convention on the Law of Treaties 1969; in particular, Articles 31 (general rule of interpretation) and 32 (supplementary means of interpretation). Article 31(1) provides that a treaty is to be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty, in their context and in the light of the treaty's object and purpose. That is an essentially objective exercise.

65. Although Article 31(2) and (3) require consideration to be given to agreements and the like between the parties, these provisions are not relevant to the present case, since

neither the claimant nor the defendant (or the interveners) seek to rely upon any agreement or accepted instrument.

66. Article 32 provides that recourse may be had to supplementary means of interpretation, including the preparatory work on the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of Article 31; or to determine the meaning, when the Article 31 exercise leaves that meaning ambiguous or obscure, or would lead to a result which is manifestly absurd or unreasonable. As I shall explain, the defendant seeks to rely in this regard on e-mail exchanges and information documents (including from the Commission), created both before and after the WA was signed. Mr Blundell told me, however, that the defendant did so in order to confirm what she says is the correct interpretation deriving from the Article 31 analysis, rather than because of any ambiguity, obscurity or absurdity in the terms of the WA.

67. Article 33 of the Vienna Convention is headed "Interpretation of Treaties authenticated in two or more languages". Article 33(1) states that where a treaty has been authenticated in two or more languages (which is the case with the WA) the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail. For the Commission, Mr Khan informed me that the WA has been authenticated in the official languages of the EU. The WA, was, however, negotiated between the EU and the United Kingdom by officials communicating in English.

68. Relying upon Anthony Aust: *Modern Treaty Law and Practice* (2013) chapter 13, Mr Blundell submits that the determination of the ordinary meaning of a treaty cannot be undertaken in the abstract but only in the context of the treaty and in the light of its object and purpose. It is plain, moreover, that "context" for the purposes of Article 31 has a broader meaning than it would ordinarily bear in the context of a domestic interpretation.

69. In Revenue and Customs Commissioners v Anson [2015] UKSC 44, Lord Reed had this to say about Articles 31 and 32:-

> "56. Put shortly, the aim of interpretation of a treaty is therefore to establish, by objective and rational means, the common intention which can be ascribed to the parties. That intention is ascertained by considering the ordinary meaning of the terms of the treaty in their context and in the light of the treaty's object and purpose. Subsequent agreement as to the interpretation of the treaty, and subsequent practice which establishes agreement between the parties, are also to be taken into account, together with any relevant rules of international law which apply in the relations between the parties. Recourse may also be had to a broader range of references in order to confirm the meaning arrived at on that approach, or if that approach leaves the meaning ambiguous or obscure, or leads to a result which is manifestly absurd or unreasonable."

70. More recently in the Supreme Court, Lord Briggs and Lord Leggatt stated at paragraph 16 of their judgment in Basfar v Wong [2022] 3 WLR 208 that the provisions of an

international treaty enacted into United Kingdom law fall to be interpreted "not by applying domestic principles of statutory interpretation, but according to the generally accepted principles by which international conventions are to be interpreted as a matter of international law… those principles are set out in the Vienna Convention on the Law of Treaties 1969."

F. GIVING EFFECT TO THE WITHDRAWAL AGREEMENT

71. The WA is given legal effect in the United Kingdom as a result of section 7A of the European Union (Withdrawal Act) 2018, which was inserted by section 5 of the European Union (Withdrawal Agreement) Act 2020. Section 7A provides that all rights created or arising by or under the WA are to be without further enactment given legal effect in the United Kingdom and to be recognised in domestic law; and that every enactment is to be read and have effect subject to the recognition of those rights. To similar effect, section 7B gives domestic legal effect to rights arising under the SA and the SCRA.

72. Sections 7A and 7B are "relevant separation agreement law", as provided in section 7C of the 2018 Act. Section 7C(1) provides that any question as to the validity, meaning or effect of any relevant separation agreement law is to be decided, so far as applicable, in accordance with the WA etc.

73. The interpretation of the WA is dealt with in Article 4(3) of the WA, which provides that its provisions which refer to EU law or to concepts of provisions thereof are to be interpreted and applied in accordance with the methods and general principles of EU Law.

G. THE CASE FOR THE CLAIMANTS AND THE INTERVENERS

74. I can now turn to the details of the grounds of challenge, brought by the claimant and supported by the Commission and by the3million Ltd. The claim concerns those individuals who have been granted five years' limited leave to enter or remain; or who may be granted this in the future (this second group being likely to be small). The claimant contends that the grant of limited leave to this "limited leave" cohort fails to comply with the United Kingdom's obligations under the WA and the SA. Such individuals may lose their pre-settled status, along with all the rights which accompany it, for reasons which the WA and the SA do not permit.

75. The way this may happen is as follows. An individual with limited leave to remain for five years must make a fresh application within that period, either for indefinite leave to remain (i.e. settled status) under the EUSS, once they meet the requirements for the grant of that status, or for a further period of limited (pre-settled) leave. Should they fail to do either, the effect of the 1971 Act is that they will become unlawfully present in the United Kingdom. As a result, they will be exposed to serious consequences, affecting their right to live, work and access social security support.

76. It is estimated that the total number of those granted pre-settled status up to 30 September 2021 is approximately 2.2 million. The total number of individuals liable to be affected by the consequences of being unlawfully present in the United Kingdom is the subset of those individuals with pre-settled status who subsequently fail to make a second application for leave.

77. The earliest point in time at which an individual with pre-settled status will be exposed to these consequences of the 1971 Act is August 2023, which is five years from the earliest grants of pre-settled status by the defendant.

78. The claimant argues that the right of residence conferred by the WA (and the SA), once obtained, does not expire unless it is lost, pursuant to the terms of those Agreements. By granting limited leave to remain under the 1971 Act to those with pre-settled status, the defendant has failed to give effect to the rights conferred by the WA and SA in respect of persons not having the right of permanent residence, because the limitation on leave (with the consequences just mentioned if the individual does not actively secure the grant of further leave from the defendant) constrains the right of residence created by the WA. I shall call this the first issue.

79. The claimant also contends that the right of permanent residence under Article 15 accrues automatically, once the conditions for obtaining it have been fulfilled by the individual concerned. Whilst there can be no objection to an administrative procedure by which EU citizens must make an application for recognition of the right of permanent residence, supported by evidence that the relevant conditions have been fulfilled, the claimant says it is unlawful for the defendant to withdraw a right of continued residence beyond five years by reason of a failure of an individual to make any such application. I shall call this the second issue.

80. On the first issue, the claimant relies upon Article 13 of the WA; in particular, Article 13(4), whereby the host State "may not impose any limitations or conditions for obtaining, retaining or losing residence rights on the persons referred to in paragraphs 1, 2 and 3, other than those provided for in this Title".

81. As for the right of permanent residence, the claimant points to Article 15 of the WA, in which it is stated that Union citizens and their family members who have resided legally in the host state in accordance with Union law for a continuous period of five years or for the period specified in Article 17 of the Directive "shall have the right to reside permanently in the host State" subject to the conditions set out in Articles 16 to 18 of the Directive.

82. The claimant acknowledges that Article 18 of the WA provides for the United Kingdom to employ a constitutive scheme for giving effect to the WA. The claimant contends, however, that the adoption of a constitutive scheme by the defendant cannot excuse the defendant's actions. Article 4(1) of the WA provides that the provisions of Union law made applicable by it shall produce in respect of and in the United Kingdom the same legal affects as those that they produce within the Union and its Member States. Article 4(2) requires the United Kingdom to ensure compliance with Article 4(1) through domestic legislation "including as regards the required powers of its judicial and administrative authorities to disapply inconsistent or incompatible positions". Similar provision is made in Article 4 of the SA.

83. The constitutive scheme for which provision is made in Article 18 of the WA provides, the claimant says, for the making only of a single application. The defendant has wrongly interpreted the WA as entitling the United Kingdom to require an EU citizen to make two applications for relevant residence status, whereby the first application results in the grant of limited leave (pre-settled status) if the five year residence period is not yet completed. The claimant says there is nothing in the WA to permit the United

Kingdom to require a second application from the holder of limited leave, either to extend that limited leave or to upgrade it to indefinite leave to remain, failing either of which the underlying right of residence conferred by the WA is lost.

84. The application permitted by Article 18(1) is intended to establish if the applicant is entitled to "the rights" under Title II. Mr Palmer emphasises the use of the plural. If the application is successful, those "rights" are conferred on the applicant. At this point, the claimant says that the "rights" in question include, in the case with which we are concerned, the rights of residence conferred by Article 13 and the contingent right to acquire the permanent right of residence in accordance with Article 15. Upon satisfying the conditions in that Article, the status of permanent residence is acquired automatically. In this regard, the claimant seeks to draw a parallel with the right of permanent residence contained in Article 16 of the Directive, as explained by the CJEU in Dias (case C-325/09 (at paragraph 57)), where the Court emphasised that a period of five years' continuous legal residence confers on an EU citizen "the right of permanent residence with effect from the actual moment at which [the period of continuous legal residence in question is] completed".

85. The Commission considers that the right of permanent residence under Article 16 of the Directive and the right of residence under Article 7 of the Directive are both expressions of the status of legal residence and are not different in nature. The right of permanent residence regulated by Article 16 is a right of legal residence without the conditions imposed by Article 7(1). The term "permanent residence", according to the Commission, does not refer to a residence right of a different nature or to a different residence status but, rather, to the specific conditions of exercise of the rights and of retention of the status of legal residence for EU citizens qualifying for that particular right of residence.

86. The Commission submits that permanent residence under Article 15 of the WA is governed by the same rules and logic as permanent residence under the Directive. Article 15(1) of the WA essentially replicates Article 16(1) of the Directive. Both state in terms that a person who has been legally resident for a continuous period of five years "shall have" the right of permanent residence.

87. The Commission is clear that the prohibition contained in Article 13(4) of the WA on imposing any limitations or conditions for obtaining, retaining or losing residence rights applies both to substantive provisions, such as the duration of the WA status and to procedural requirements, such as the need for a new application. Article 39 of the WA is clear: beneficiaries enjoy the rights provided in the relevant Titles of Part Two of the WA for as long as they meet the relevant conditions. Thus, absent a change in circumstances, protection is life-long. Just as with legal residence under the Directive, the residence status under the WA can be lost only in situations for which express provision is made in the WA. The WA does not provide any other way for a host State to revoke a person's WA beneficiary status or treat that status, or a right attached to it, as having been lost.

88. As for the effects of the United Kingdom's decision to adopt a constitutive scheme, the Commission considers that what are conferred by the new residence status in Article 18(1) are all the rights granted in Title II of Part Two; namely, the rights provided for in Articles 13 to 29 of the WA, which include the right of non-permanent residence and that of permanent residence. There is, therefore, only one new residence status under

the WA: that of WA beneficiary, to which all the relevant rights are attached. Different rights will be relevant at different times, depending on the personal situation of the beneficiary. Although every eligible person who successfully goes through the application process will be granted WA beneficiary status, the Commission considers that one beneficiary may have a non-permanent right of residence at the moment of conferral, whilst another may have already acquired the right of permanent residence. One beneficiary may have a residence right as a student, another as a worker, and yet another as a non-economically active person. Their status under the WA, however, is the same.

89. Accordingly, the Commission considers that the difference between the declaratory and constitutive residence schemes lies merely in how access is given to WA beneficiary status. Once such status has been obtained, the rights attached to it operate in the same way, under both schemes.

90. The Commission argues that this result follows not only from the express wording of Article 18(1) but also from the fact that Article 18 makes provision for only one application for each person concerned. Once the obligation on a person under Article 18(1) to "stand up and be counted" by applying for WA beneficiary status has been discharged, and they have been granted the "new residence status", the person concerned cannot be required to make a new application, once they have accumulated the necessary five years of legal residence, in order to obtain permanent residence under Article 15. Nor can they lose their beneficiary status if they fail to do so. Pre-settled and settled status under the EUSS cannot constitute two different statuses under the WA but must merely be understood to reflect whether, at the time of application, the person concerned had or had not yet acquired the right of permanent residence. By reason of Articles 13(4) and 39 of the WA, a pre-settled status holder's residence right must not expire but must continue to exist for as long as the pre-settled status holder meets the relevant residence conditions. The defendant's requirement that a person apply for settled status before pre-settled status expires amounts to an additional condition for retaining residence rights, contrary to Article 13(4).

91. In its written submissions, the3million Ltd argues that the defendant's stated aim of avoiding uncertainty as to the legality of an individual's residence, which otherwise would require the host State to undertake repeated checks as to the individual status, has to be seen in the light of the defendant's decision to grant leave under the EUSS by reference to residence in the United Kingdom *simpliciter* at the expiry of the transition period, rather than residence in the exercise of EU Treaty rights. The3million Ltd say this means that persons "already do not know whether they are considered by the defendant to have WA rights without subsequent examination by an official". In this regard, the 3Million Limited draws attention to the fact that eligibility for universal credit and other benefits depends on the individual being able to demonstrate a right to reside; and that this right specifically does not include having pre-settled status under the EUSS: Fratila v Secretary of State for Work and Pensions [2021] UKSC 53.

92. The 3Million Limited denies that, by adopting a constitutive scheme, the defendant is able to insist upon subsequent applications, with the negative consequences for an individual with limited leave who does not make such an application. Choosing to implement the constitutive scheme does not, in short, entitle the defendant to confer limited leave on the cohort in question, with all that entails. It was always open to the

defendant to have introduced any necessary amendments to the United Kingdom's immigration legal framework in order to secure the lawful implementation of the WA.

93. The 3Million Ltd says that the claimant's construction of the WA does not mean there was no point in the defendant's requiring people to apply under Article 18. The purpose of that provision was to ensure that individuals were significantly incentivised in order to apply under the EUSS. The 3Million Limited submits that this creates "a bright line between those who have obtained WA status and protection and those who have not". In the latter case, no rights under the WA are conferred. This permitted the United Kingdom to put in place a deadline in order to generate "public 'buy-in" via a major communications campaign. It ensured that all those individuals would then be registered and documented". This did not, however, permit or necessitate a requirement to apply for further status after five years.

H. THE DEFENDANT'S CASE

94. The defendant stresses that the United Kingdom's exit from the EU has resulted in a fundamental change to this country's legal order. At the end of the transition period on 31 December 2020, EU law ceased to apply in the United Kingdom. At that point, EU citizens no longer enjoy free movement rights in the United Kingdom, as they had up to that point because of EU law.

95. The defendant emphasises the fact that the WA is not EU law. Rather, it introduces its own body of law. Although the WA applies certain provisions of EU free movement law, the WA is clear that it is only those provisions that are to be interpreted and applied in accordance with EU law: see Article 4. The bespoke system of residence rights, which the WA creates, is confined to the single State in which EU law rights to reside were exercised before the end of the transition period. Even where EU law is specifically applied by the WA, that law nevertheless applies subject to other relevant provisions of the WA.

96. The defendant points to the judgment of the CJEU in Préfet du Gers and Institut national de la statistique et des études économiques (9 June 2022) (case C-673/20) as a recognition by that Court of the fundamental changes arising from the United Kingdom's EU exit. In that case, the CJEU held that a British citizen resident in France could no longer rely upon her status as an EU citizen in order to be entitled to vote in French elections. The Court observed that the WA does not contain anything which suggests that a right to vote was conferred on such citizens, or on EU citizens residing in the United Kingdom.

97. The defendant also places great emphasis on the fact that the United Kingdom has chosen to exercise its powers under Article 18 of the WA, in order to give effect to the WA by means of a constitutive residence scheme. The scheme comprises the EUSS. The defendant points out that the scheme is more generous than is required by the WA, in that the EUSS relies on mere residence in the United Kingdom, as opposed to residence in pursuance of the EU right of free movement.

98. The defendant submits that it is critical to her case that the constitutive scheme gives rise to rights under the WA, as opposed to those rights arising automatically upon the fulfilment of the relevant conditions. EU rights of free movement for EU citizens and their family members (but not for extended or "other" family members) arise

automatically. In Secretary of State for Work and Pension v Dias the CJEU described the position as follows:-

> "48. As the Court has held on numerous occasions, the right of nationals of a Member State to enter the territory of another Member State and to reside there for the purposes intended by the EC Treaty is a right conferred directly by the Treaty, or, as the case may be, by the provisions adopted for its implementation. The grant of a residence permit to a national of a Member State is to be regarded, not as a measure giving rise to rights, but as a measure by a Member State serving to prove the individual position of a national of another Member State with regard to provisions of European Union law (see Case C-408/03 *Commission* v *Belgium* [2006] ECR I-2647, paragraphs 62 and 63 and case-law cited).
>
> 49. Such a declaratory, as opposed to a constitutive, character of residence permits, in regard to rights, has been acknowledged by the Court independently of the fact that the permit in question was issued pursuant to the provisions of Directive 68/360 or Directive 90/364 (see, to that effect, *Commission* v *Belgium*, paragraph 65)."

99. The defendant contends that the case advanced by the claimant and supported by the Commission, is that Article 18 of the WA merely envisages a "gateway" application, such that (a) without a successful application, a person cannot enjoy rights under the WA at all; but (b) once they make such an application, the system reverts to a "declaratory" one, which is to all intents and purposes the same as existed before the end of the transition period. As a result, all that a successful Article 18 application shows, according to the defendant, is that the individual is capable of enjoying a right to reside under the WA. However, in order to know whether they actually enjoy such a right, it is necessary, just as it was before the end of the transition period, to examine their circumstances to see if they still fall within scope and meet the underlying conditions of the right of residence concerned. That interpretation has, the defendant says, the consequence that an individual will, in certain circumstances, continue to reside lawfully under the WA, regardless of the lack of any status under domestic law. The defendant submits that this is wrong. The claimant's construction would result in a continued state of uncertainty as to whether an EU citizen enjoys any right to reside in the United Kingdom and, even if they do, as to the nature and content of that right. This has significant consequences in practice.

100. The defendant says that the declaratory system, such as she asserts would arise from an acceptance of the case put forward by the claimant and the Commission, would give rise to inherent uncertainty about whether a person enjoys a right to reside in the United Kingdom. It would always be necessary to perform a fact-sensitive analysis of their circumstances on any given date, in order to decide whether they enjoy such a right. The position of the United Kingdom government, from the outset, is said to have been that an applications-based scheme, such as the EUSS, provides secure evidence of status and is a better way of protecting people, including vulnerable individuals, compared with the declaratory system. This is said to have been demonstrated by the experience of certain members of the "Windrush generation", who acquired indefinite

leave to remain automatically by virtue of section 1(2) of the 1971 Act but then, years later, had difficulty proving their status and rights in the United Kingdom.

101. The defendant emphasises that those holding pre-settled status will be reminded of the need to apply for settled status before the expiry of their pre-settled status. They will be permitted to submit a late application if they have reasonable grounds for missing the relevant deadlines. Rights will be protected as soon as a valid application is made (whether in time or not). Furthermore, the intention is to continue to support vulnerable individuals with pre-settled status, so that they are able to apply for settled status. The defendant says that "further details will be announced in due course" (skeleton argument, paragraph 31).

102. Mr Blundell and Ms Smyth next address Articles 13 to 18 of the WA in detail. Article 13(1) provides that EU citizens shall have the right to reside under the limitations and conditions set out in specified Articles of the Directive. As I have described above, these include the right to reside for up to three months without formalities, the right to reside for longer than that period if a worker, self-employed, etc; the right to reside for those temporarily unable to work; and (in Article 16 of the Directive) the right of permanent residence for those who have resided for five years in accordance with the Directive. Article 13(2) and (3) make corresponding provision for the right to reside in respect of certain family members.

103. I have already noted that Article 13(4) provides the host State "may not impose any limitations or conditions for obtaining, retaining or losing residence rights on the persons referred to in paragraphs 1, 2 and 3, other than those provided for in this Title"; and there is specifically said to be "no discretion in applying the limitations and conditions" other than in favour of the person concerned.

104. In response to the argument of the claimant and the Commission that the grant of limited leave to remain for those with pre-settled status violates Article 13(4), the defendant submits that this is an inevitable consequence of adopting a constitutive residence scheme under Article 18; and that the United Kingdom has a right to regulate the procedure by which that scheme operates. The grant of limited leave to remain for those with pre-settled status is a procedural matter, not governed by Article 13(4). Since the defendant's system under the EUSS is authorised by Article 18, Article 13(4) must be read as being subject to what is permitted by Article 18.

105. In this regard, Mr Blundell draws attention to Article 14(2). This provides no exit visa shall be required of holders of a valid document issued in accordance with Article 18 or 26. By inference, Mr Blundell submits Article 14(2) shows that procedural matters are otherwise outside the scope of the WA.

106. As for Article 15 (right of permanent residence), Mr Blundell acknowledges that this right, albeit created by the WA, has been "borrowed" from the Directive. It remains, however, a right of residence, not a right of free movement. This is emphasised by Article 15(3) which provides for the right to be lost "only through absence... for a period exceeding 5 consecutive years". This contrasts with the two years referred to in the Directive and is explained by the fact that a right of free movement, once lost, can be re-acquired as a result of compliance with relevant conditions of the Directive. By contrast, the right of permanent residence under the WA, once lost, cannot be regained.

107. The interpretation of Article 16 is a key area of dispute between the parties. As we have seen, Article 16 deals with the position of those who before the end of the transition period had resided legally in accordance with Article 7 of the Directive for a period of less than five years. They "shall have the right to acquire the right to reside permanently under... Article 15… once they have completed the necessary periods of residence".

108. The defendant places emphasis on the words which in the English version of the WA: "shall have the right to acquire the right to reside permanently…". She also draws attention to the closing words: "necessary for acquisition of the right of permanent residence". The defendant submits that, in the case of a constitutive scheme such as that adopted by her, the right to which Article 16 refers is only acquired if it is conferred by her, following an application.

109. The defendant says it is wrong to contend that "the right to acquire the right" of permanent residence under Article 16 is one of the package of residence rights for which provision is made in Article 13(1), with the result that - once the five year condition is satisfied - the right of permanent residence is acquired, without the need for any discrete application. The Article 16 right is, the defendant says, entirely contingent upon the satisfaction of a condition, which may or may not happen. This is reinforced by the phrase "once they have completed the necessary periods of residence". Furthermore, since Article 17 (status and changes) makes express provision for the rights of EU citizens to rely directly on Part Two not to be affected when they change status (e.g. as between student and worker), the lack of any corresponding provision in respect of Article 16 reinforces the latter's contingent nature.

110. Although I have already described in broad terms the defendant's reliance upon Article 18 of the WA, it is necessary to say more about her position. If the system is intended to operate as the claimant and the Commission suggest, the defendant submits there is little point in requiring an initial application at all. It makes little sense to impose requirements on EU citizens and their family members to make an application and for a State to dedicate substantial resources to establishing an applications and documentation process and conducting the detailed task of verifying and examining applications, only for the end result to be the grant which confirms a qualifying status only, as opposed to an actual right of residence. All manner of practical difficulties would, the defendant says, arise if that were right. An individual could not be sure of the legality of their residence. The host State might need to undertake repeated checks as to their status. One could not even be sure that Article 18 "beneficiary status" is held by an individual. The claimant thus contends for the worst of both worlds, requiring the investment by the defendant of considerable resources into designing and establishing an applications-based regime, all for a status which does not confer any concrete rights of residence and which cannot even be taken as confirmation of present beneficiary status.

111. By contrast, the interpretation proposed by the defendant involves a real benefit, not only for EU citizens and their family members but for economic operators and public authorities, who need to be clear about the status of the person concerned. There is nothing confusing in providing for a further application upon expiry of "limited leave". The defendant says that "even its name makes clear that the leave is temporary only" (skeleton, paragraph 68.3). There is nothing inherently problematic about the defendant using the system established by the 1971 Act, which has operated satisfactorily in the domestic immigration context for many years.

112. The defendant submits that Article 18(1)(a) does not state that the purpose of the application is simply to determine whether the individual falls within the scope of the WA. Mr Blundell draws attention to the words "evidencing that status" at the end of Article 18(1)(a). The "status", he says, can be either that under Article 13 or that under Article 15.

113. Article 18(1)(n) imposes a requirement for applicants to "provide evidence that the conditions relating to the right of residence under this Title have been fulfilled". If the purpose of the application procedure was simply to determine whether a person fell within the scope of the WA, the defendant says that Article 18 (1)(n) would have required an applicant simply to provide evidence that the requirements of Title II of Part Two were satisfied. This means the fundamental purpose of the new status was to confer "actual residence rights, not merely to confirm that a person is in scope of such rights".

114. The claimant and the Commission emphasise Article 18(1)(a) to (d) of the WA, which in their view make it plain that only a single application process is permitted by Article 18. The defendant submits this is wrong. The fact that the WA does not specify a deadline for later applications does not mean that later applications cannot be required. It simply means that the WA does not regulate the timescales for such applications, leaving that to national law. The reason for providing a deadline for an initial application was, the defendant says, to avoid a "cliff-edge" at the end of the transition period. Consistently with the principle of procedural autonomy under national law, the contracting parties simply did not need to regulate the detail of later application processes (subject to general provisions, such as Article 18(1)(e), which requires the avoidance of unnecessary administrative burdens).

115. The defendant submits that provisions are missing from the WA, which would have been included if the claimant is right that the system reverts to being fundamentally declaratory, following the grant of the initial Article 18 application. Although various provisions of the Directive were "imported" by the WA, Article 25 of the Directive was not. Article 25 specifically provides that possession of residence documentation cannot be the precondition for the exercise of a residence right; and that lawful residence can be established "by any other means of proof". If the constitutive residence scheme introduced by the WA merely permitted the defendant to require an "initial gateway" type of application, then the defendant says it fails to protect EU citizens in constitutive residence schemes in the same way as beneficiaries of the Directive are protected. It would, for example, be open to an economic operator or public authority to insist on an EU citizen in the United Kingdom providing a particular type of proof that they have a right to reside. Furthermore, if the Article 13 residence right automatically "upgrades" to a right of permanent residence, then, again, the WA has included nothing akin to Article 25 in order to protect those enjoying such a right. The WA, by contrast, leaves that cohort without any right to insist on a document confirming their permanent residence status. This admission is all the more striking because Article 18(4) of the WA does include special provision akin to Article 25 for States which do not establish a constitutive scheme.

I. THE EXTRANEOUS MATERIALS

116. I turn to the extraneous materials. The defendant contends that these materials confirm her interpretation of the WA, as permitted by the Vienna Convention. She submits that

the materials show the United Kingdom government has consistently adopted a position that an application would be required in order to renew pre-settled status and/or to acquire settled status; and that the Commission has been well aware of that position.

117. The claimant and the Commission say that, insofar as the exchanges between officials and informative guides emanating from the Commission might seem to support the defendant's case, they were the product of misunderstandings, which cannot be used to give the WA a different and incorrect meaning.

118. The materials on which the defendant relies are as follows. On 5 December 2017, there was an e-mail exchange between the Commission's negotiator on residence rights and an official of the defendant. The Commission's negotiator said:-

> "Whilst waiting for something to happen, a question came to my mind: will persons who need to apply for temporary status also be given a document proving their rights under the WA? I guess so, since the main argument for the new Status has been that it will be the only pragmatic way to identify those who are covered by the WA.
>
> So, in my understanding, the procedure for temporary status will be for the Home Office to check that conditions for lawful residence are fulfilled, issue a document certifying this, and then this procedure will happen again after the 5 years necessary for settled status.

119. The Home Office official's response was:-

> "Yes, that's right. Everyone who applies and qualifies for protection under the WA will get a document confirming their status.
>
> …"

120. A Commission memo of May 2018 containing "Questions and answers - the Rights of EU and UK citizens, as outlined in the draft Withdrawal Agreement" had the following question:-

> "We are hearing a lot about the new UK residence status called "settled status". Will it apply to EU citizens after the end of the transition period and what will it mean?".

121. The answer was:-

> All EU citizens and their family members residing in the UK will have to apply for a new UK residence status within 6 months following the end of the transition period in order to be able to stay in the UK. This new status can either be "settled status" or "pre-settled status" depending on how long you have already been living in the UK at the time of application. To get "settled status" you and your family must have been lawfully living in the UK for at least 5 years at the time of your application… If you are not able to apply straight away for "settled status" because you do not have a least 5 years residence, you will

> be eligible to apply for "pre-settled status". This status will allow you to build up the required five years to later apply for "settled status"."

122. This document was written before the conclusion of the WA. So too was the later Questions and Answers memo of 26 November 2018. This stated in terms that it was for "information purposes only" and that the WA "needs to be ratified by both the UK and the EU for its entry into force".

123. One of the questions was:-

> "I am Czech and I arrived in the UK 2 years ago. I work in a local hospital. Can I stay after the UK leaves the EU?

124. The answer contained the following: -

> "You will continue to have residence rights after the end of the transition period: you will keep your residence under essentially the same substantive conditions provided by EU free movement law, although to this affect you will need to make an application to the UK authorities for your new UK residence status. Once you have accumulated five years of legal residence in the UK, you will be able to apply for your residence status in the UK to be upgraded to a permanent one that offers more rights and better protection."

125. A Questions and Answers memo, describing the situation as at 1 January 2021 (i.e. well after the conclusion of the WA), has the following question:-

> "I am Czech and I arrived in the UK in 2017. I work in a local hospital. Can I stay after 31 December 2020?

126. The answer is:-

> "Yes. If you continue to work… then you can stay in the UK after the end of the transition period.
>
> You have the right to reside in the UK under the Withdrawal Agreement after the end of the transition period. To keep your residence, you must comply with essentially the same substantive conditions as were applicable before the end of the transition period by EU Law on free movement of EU citizens.
>
> You need to make an application to the UK authorities for your new UK status before the end of the grace period. Once you have accumulated 5 years of legal residence in the UK, you will be able to apply for your residence status in the UK to be upgraded to a permanent one that offers more rights and better protection."

127. The defendant submits that these materials make it plain that the Commission fully understood that the WA effectively means a person with pre-settled status needs to make an application in order to obtain settled status in the United Kingdom. The

defendant says the Commission was correct in that understanding and its present stance is therefore mistaken.

J. DISCUSSION

128. The WA has been given the force of law by the United Kingdom Parliament by means of section 7A of the 2018 Act. It is therefore the task of this court to interpret the WA.

129. In so doing, the guiding interpretative instrument is the Vienna Convention. Under that Convention, this court's duty is to interpret the WA "in good faith in accordance with the ordinary meaning to be given to the terms of [the WA] in their context and in the light of [the WA's] object and purpose": Article 31(1).

130. There can be no doubt that, as Mr Blundell says, a new legal order has arisen in the United Kingdom, as a result of this country's withdrawal from the EU. Neither the claimant nor the Commission seeks to suggest otherwise. Indeed, the fourth recital to the WA states in terms that "subject to the arrangements laid down in this Agreement, the law of the Union … in its entirety ceases to apply to the United Kingdom from the date of entry into force of this Agreement".

131. Article 4(3) of the WA provides that "the provisions of this Agreement referring to Union law or to concepts or provisions thereof shall be interpreted and applied in accordance with the methods and general principles of Union law". To that extent, the fact that the United Kingdom has left the EU does not mean EU legal concepts must be ignored; indeed, the contrary is the case. Otherwise, however, EU legal concepts such as free movement are not to be imported into, or inferred from, the WA, except insofar as that may be necessary in order to comply with the general rule of interpretation in Article 31 of the Vienna Convention.

132. That last sentence needs a little elaboration. In interpreting the WA, what the parties meant may need to be considered against the relevant background, which is part of the "context" mentioned in Article 31 of the Vienna Convention. In the present case, that background is EU law, which applied to the United Kingdom whilst it was a member (and for a period thereafter). As we have seen from paragraphs 85 and 106 above, both the claimant and the defendant acknowledge that, in Mr Blundell's phrase, the right of permanent residence in Article 15 of the WA has been "borrowed" from Article 16 of the Directive. This may tell us something about the nature of the right of permanent residence in the WA, when interpreting the WA in accordance with the Vienna Convention. This is, however, quite different from saying that general concepts such as the right of free movement must be lurking beneath the words of the WA, to be called forth even if these words would not otherwise warrant it.

133. I agree with the defendant that the "residence rights" created by Article 13 of the WA are not free movement rights. Mr Palmer did not contend to the contrary. This is so, notwithstanding that the rights described in Article 13 contain limitations and conditions set out in the Directive.

134. I have mentioned that the defendant, in framing the EUSS, has adopted a policy which is more generous than what is required by the WA, in that leave may be granted under the EUSS by reference to "mere" residence in the United Kingdom at the relevant point

in time, rather than residence in accordance with EU free movement rights. This policy, however, sheds no light on the interpretative task for this court.

135. The defendant seeks to place great store on the fact that the claimant and the Commission argue for an interpretation of Article 18 of the WA, which entails an individual who has been given pre-settled residence status by the defendant under Article 18, automatically obtaining the right of permanent residence under Article 15, upon completion of the necessary five-year period of residence. The defendant says that this is to interpret Article 18 as a one-off grant of "gateway" status, which "would not, in fact, confer residence rights at all". Making it "over the first hurdle of falling within the scope of the WA at the time of the application" may be a "status" but, the defendant says, it is not a "residence status" (skeleton paragraph 61.1). The point of the constitutive scheme envisaged by Article 18(1) is, according to the defendant, to confer actual residence rights, not merely a gateway or qualifying right. In contrast, the defendant maintains that her interpretation is consistent with the language of Article 18(1) and that the status granted under the EUSS, whether it be pre-settled or settled, is a residence status in the true sense, which confers residence rights. The grant of limited or indefinite leave itself confers the relevant right to reside (skeleton, paragraph 62).

136. I consider this last element of the proposition - that the grant of limited or indefinite leave itself confers the relevant right to reside – is right; but that it exposes a fundamental difficulty in the defendant's approach to the WA. This difficulty arises, even if, on a proper construction of the WA, the defendant is entitled to require an application to be made to her, in order for a person granted limited leave under the EUSS, who has subsequently achieved five years' compliant residence in the United Kingdom, to be able to enjoy the Article 15 right of permanent residence.

The first issue

137. I therefore need to address first the issue of whether the defendant can deal with a person who is given limited leave to remain under the EUSS by way of pre-settled status, in such a way that they lose any right to be in the United Kingdom if their leave expires without them applying for (and being granted) further leave, be that limited leave or indefinite leave.

138. The difficulty for the defendant centres on Article 13 of the WA. Once it is accepted by the defendant that rights of residence as described in Article 13 are conferred under the constitutive scheme, attention must turn to what is meant by the prohibition in Article 13(4) on the imposition of limitations or conditions for obtaining or retaining residence rights. The defendant argues that this prohibition must be read as applying to substantive limitations and conditions. The grant of limited leave to remain to those with a right of residence under Article 13, falling short of the right of permanent residence under Article 15, is, according to the defendant, not a substantive limitation or condition. It is merely procedural.

139. The defendant also contends that Article 13 is subject to Article 18. As paragraph 63 of the defendant's skeleton has it, "no right is acquired at all in the absence of a successful application for it". This is "because Article 18(1) expressly requires a successful application for status for the relevant rights to be acquired…it is the grant of the application which 'confers' the right… in the absence of a grant of status pursuant to a successful application, there is no right to lose".

140. As the claimant points out, the consequence under the 1971 Act of limited leave coming to an end, without being followed by further leave, is extremely serious. The person concerned becomes an overstayer, who from that point is in the United Kingdom unlawfully. A person who knowingly remains beyond the time limited by the leave commits a criminal offence: section 24 of the 1971 Act. There is no legal ability to work or claim certain benefits.

141. In my judgment, these consequences cannot be brushed aside as merely procedural matters. They are inherent in the system of immigration control laid down by the Immigration Acts.

142. The fact that, apart from the obvious temporal element, there are significant differences of substance between limited and indefinite leave is underscored by section 3 of the 1971 Act. Section 3(1)(b) and (c) and (3) empower the defendant to impose conditions, restricting the activities of a person who is subject to limited leave, or requiring them to do certain things. Such conditions may not be imposed on a person who enjoys indefinite leave. The defendant's assurance that she would not in practice impose a condition relating to, for example, the minimum income that must be earned by a person with pre-settled status does not change the legal nature of limited leave and the legal consequences of such leave coming to an end.

143. Whether someone has limited or unlimited leave is (along with ordinary residence) the determinant of whether that person is "settled" for the purposes of the 1971 Act: section 33(2A). A child born in the United Kingdom to a person who is settled becomes a British citizen at birth: section 1(1)(b) of the British Nationality Act 1981. That is not the case if the parent has only limited leave.

144. The defendant says that a person with limited leave to remain as result of their pre-settled status can apply for indefinite leave (once the five-year requirement is met) or for further limited leave, where the requirement is not met but the person concerned remains in possession of an Article 13 right. She emphasises that such a person's rights will be protected as soon as a valid application is made. I assume the defendant has in mind section 3C of the 1971 Act, which extends a person's limited leave, upon an application being made for further leave before the expiry of their current leave, until that application is decided. I accept that section 3C has this effect. The fact remains, however, that a person who, for whatever reason, does not seek such further leave faces the consequences I have described; and those consequences are not merely procedural in nature.

145. There is no reason to doubt the defendant will, as she says, support vulnerable individuals with pre-settled status in order to apply for settled status. But this does not permit the court to construe Article 13(4) so as to run counter to the ordinary meaning of the words, seen in the light of the object and purpose of the WA. Not only is limited leave in these circumstances a "limitation" on retaining residence rights; the requirement to apply for further leave is itself "a condition" for retaining such rights. Both are precluded by Article 13(4).

146. I do not consider the defendant's argument that Article 13(4) is subject to Article 18 assists her in respect of the position of those with pre-settled status. Even if the defendant is right to say that a person who has pre-settled status must apply for the right of permanent residence, once the relevant condition is satisfied, this cannot affect the

way in which Article 13(4) applies to those with residence rights under Article 13(1), which fall short of permanent residence under Article 15.

147. Nor do I consider there is anything that assists the defendant in her appeals to legal certainty and procedural autonomy. If the defendant is right on the first issue, a very large number of people face the most serious uncertainty. If they lose legal status in the United Kingdom, their continued physical presence here will depend on the view taken by the defendant on whether to enforce immigration control by insisting on the individual's removal. Someone who makes a belated application for further leave will not know whether the defendant will accept the late application. Any appeal to procedural autonomy is, on this issue, hopeless. It cannot be invoked to gainsay the clear words of Article 13(4).

148. Although I have rejected the defendant's attempt to categorise the nature of limited leave and what flows from it as procedural, as opposed to substantive, I agree with the Commission that the distinction is ultimately irrelevant to the court's interpretative exercise. Article 39 provides that beneficiaries of residence rights enjoy those rights for as long as they meet the relevant conditions. Absent a change in circumstances, protection under the WA is life-long. Whether it is categorised as procedural or substantive, something which, in reality, constitutes a limitation or condition of the Article 13 right is prohibited. There can be no doubt that the way in which the 1971 Act works has "real world" outcomes for those with pre-settled status.

149. The defendant submits that the consequences for those who, despite her encouragement and support, do not apply to extend their limited leave are the consequences of the United Kingdom's decision to adopt a constitutive scheme under Article 18. In the United Kingdom, that scheme is the 1971 Act, with all it entails.

150. The problem with this submission is that, whilst the WA permits the use of a constitutive scheme, that scheme must deliver the rights of residence in Title II of Part Two. Neither the United Kingdom nor a Member State can employ a constitutive scheme which fails to do this. This is so, even where, as here, what is chosen as the delivery system is the long-standing machinery contained in the Immigration Acts.

151. As I have already said, at this stage of the discussion I am considering whether the defendant is correct to contend that those who have been granted rights under Article 13 by the operation of the constitutive scheme may lose those rights at the end of the period of limited leave. Whether those rights include the right automatically to enjoy the right of permanent residence once the five year requirement is satisfied is, in my view, an irrelevant question at this stage. In oral submissions, Mr Palmer accepted this point. Mr Blundell did not. The fact that the two issues are distinct is, however, plain. A person who becomes, in the language of Article 16, entitled to "the right to acquire the right to reside permanently …" does not thereby lose the pre-existing conditional right of residence under Article 13, so as to be left with nothing at all if they fail to apply for and be granted the right of permanent residence. Such an interpretation of the WA would be wholly contrary to its language and obvious intent. Accordingly, even if the defendant were to succeed in showing that the right of permanent residence needs in all cases to be conferred through the constitutive scheme, she could not derive anything from this success to support her submission that a person with pre-settled status loses their conditional right to reside under Article 13, if they fail to apply for and obtain further leave, of whatever kind.

152. On this issue, the defendant cannot gain any support from the extraneous materials. The passages I have cited above, which were relied on by Mr Blundell, show that, both before and after signing of the WA, the Commission was of the view that an application for permanent residence would need to be made by a person with pre-settled status, in order to enjoy the right of permanent residence. By contrast, there is nothing in the materials that shows the Commission or its officials thought a person's rights under the WA were limited by the nature and consequences of the grant of limited leave.

153. The closest one comes is the exchange recorded at paragraphs 118 and 119 above; in particular, the reference by the Commission's negotiator to "persons who need to apply for temporary status" being given "a document proving their rights under the WA" and the understanding of the negotiator that "this procedure will happen again after the 5 years necessary for settled status". There is, however, no necessary inference from this exchange that the Commission understood, let alone accepted, the possibility of a total loss of rights if the procedure did not "happen again". The topic being discussed was whether those with pre-settled status would be documented by the defendant. On that, the reply of the Home Office official was clear that "(e)veryone who applies and qualifies under the WA will get a document confirming their status". There was nothing in this reply to suggest that this status was liable to be terminated as a consequence of the operation of the 1971 Act.

154. In reaching my conclusion on this issue, I have had regard to the defendant's emphasis upon the desirability of having a residence scheme which brings certainty for individuals, economic operators and public authorities. I have already referred to the obvious uncertainty for a person who finds themselves without leave. There is, however, more to be said on the subject of certainty. The defendant refers to the experience of certain members of the "Windrush" generation, whose lack of documentation later led, in some cases, to the most serious consequences. The defendant says it is in the interests of immigrants and those with whom they come into contact (including employers) to be in possession of documents evidencing their status in the United Kingdom. The defendant also argues that to accept the case for the claimant and the Commission would render the defendant's adoption of the constitutive residence scheme of little or no practical utility.

155. I shall return to these matters later, when considering whether contrary – to the assumption I am currently making for the purposes of this first issue – the claimant and the Commission are correct to say that, upon satisfying the five-year condition, a person with pre-settled status automatically enjoys the Article 15 right of permanent residence.

156. The concept of certainty is a relative one, as the claimant and the3million Ltd point out. The defendant herself makes the point that the grant of limited leave under the EUSS represents no more than a "snapshot" of the applicant's position at the time the decision on the application is made. In any event, the pursuit of certainty under a constitutive residence scheme cannot affect the nature of the rights of residence conferred by the WA. A person with Article 13 residence rights falling short of permanent residence is entitled to reside in the United Kingdom for as long as the relevant limitations and conditions in the Directive are satisfied. That is an inherent feature of the rights conferred by Article 13(1) to (3).

157. Finally on this issue, there was some dispute between the claimant and the defendant as to the nature and extent of the cohort of persons who are given limited leave under

the EUSS but whose residency is such that they do not (on any view) become eligible to acquire a right of permanent residence during their five-year period of limited leave. The defendant casts doubt on the existence of this cohort but argues, in the alternative, that it should in any event be left to be examined "in a case where it actually arises" (skeleton, paragraph 50).

158. I am satisfied that what the claimant has to say on this aspect is right and that an individual may not qualify for permanent residence; for example, because of an absence that breaks continuity of residence before 31 December 2020, as provided in Article 15(2) of the WA, with the result that they must make a further application for limited leave before the expiry of the initial five-year period of limited leave. Regardless of this, however, the important point remains that a person who acquires a residence right under Article 13(1) and who continues to meet the relevant limitations and conditions – for example as a worker – cannot lose that right otherwise than as provided for in Title II of Part Two of the WA. To repeat, this is so, even if the defendant is right in her contention that an individual cannot acquire a right of permanent residence under the WA except by making an application to the defendant.

The second issue

159. I therefore turn to the second issue. It concerns the meaning of Article 18 of the WA; in particular, what is meant by the "new residence status" which confers "the rights under this Title". The defendant submits that the claimant and the Commission are wrong to say that one of the rights inherent in the grant of residence status, following an application, is the right to be recognised as having the right of permanent residence under Article 15, once the requisite 5-year period of residence has been achieved, without the individual having to make an application to the defendant for the grant of permanent residence.

160. Mr Khan's written submissions on behalf of the Commission argue that the objective of an application in a constitutive scheme is the granting of a new residence status. The Commission's concept of a "WA beneficiary" derives from the wording of Article 18(1): "residence status which confers the rights under this Title". The rights under Title II of Part Two comprise, in Mr Khan's description, the "*chapeau*" of Article 18(1); that is to say, the rights provided for in Articles 13-29 of the WA. These rights "include the right of non-permanent residence and that of permanent residence". As a result, there is "only one residence status under the WA, that of WA beneficiary, to which all the rights in Title II are attached". Different rights amongst these are said to be "relevant" at particular moments, depending on the personal situation of the beneficiary.

161. Both the claimant and the defendant seek to draw support from the language of Article 18. Mr Palmer emphasises the fact that "the new residence status" is referred to in the singular, whereas that status confers "rights" (plural). One of those rights, Mr Palmer says, is the right of Union citizens and their family members "who have resided legally" in the United Kingdom, "for a continuous period of 5 years…" to have the right to "reside permanently": Article 15(1).

162. For his part, Mr Blundell submits the words "that status" in Article 18(1)(a) refer to either Article 13 status or Article 15 status. A person who had already achieved the latter status on the date of application would receive it as part of the grant of residence

status. However, someone who had not reached that point would not. In the latter case, there is no right to permanent residence conferred by the grant of residence status.

163. The defendant argues that the case for the claimant and the Commission on this issue involves the impermissible importation into the WA of the "declaratory" element of EU free movement rights, in circumstances where this is not specifically authorised by the WA. As I have sought to explain, the defendant emphasises the new legal order which exists in the United Kingdom, following this country's departure from the EU. The effect of this new order is that recourse to such principles of EU law is allowed only if permitted by the WA. I agree with that submission: see also paragraphs 130-132 above.

164. The defendant also relies upon the (English) wording of Article 16 of the WA. The defendant highlights the words "shall have the right to acquire the right to reside permanently". In the case of a State, such as the United Kingdom, which has chosen to exercise the power in Article 18 and establish a constitutive residence scheme, as opposed to a declaratory system, the defendant says that the acquisition must be by way of application and grant. Mr Blundell also draws attention to the closing words of the first sentence of Article 16, whereby the right to acquire the right to reside permanently arises "once they have completed the necessary periods of residence". Mr Blundell points out that this eventuality may never arise. This underscores the contingent nature of the concept, which means the claimant is wrong to say that one of "the rights under this Title" is the right to acquire permanent residence in the automatic way for which the claimant contends.

165. On the second day of the hearing, I asked the main parties and the Commission to provide a note (to be agreed if possible) on two matters: (i) a comparison across the different language versions of Article 16 of the phrase "right to acquire the right to reside permanently"; and (ii) whether EU Member States which have, like the United Kingdom, opted for a constitutive scheme, require a second application to be made in order for a person to enjoy the right of permanent residence in Article 15.

166. In the event, the parties were unable to agree a note. Instead, I received separate communications from the Commission and from the Government Legal Department on behalf of the defendant. Their respective responses on the two issues are set out in Annex 2 to this judgment.

167. In its response, the Commission also drew my attention to the Commission Implementing Decision (EU) 2022/1945 of February 2020 "on documents to be issued pursuant to Article 18(1) and (4) and Article 26 of the [WA]". The Implementing Decision is relevant both to those Member States that have decided to employ a constitutive scheme for giving effect to Title II of Part Two of the WA, and to those who have decided to use the declaratory scheme.

168. Recital (9) to the Implementing Decision reads:

> "(9) In order to ensure that the identity of the holder can be checked without doubts, the documents should have a minimum period of validity of five years and a maximum period of validity of 10 years so as to enable updating the picture of the holder."

169. Accordingly, Article 2 of the Implementing Decision provides that "The validity of the document shall be a minimum of five and a maximum of 10 years".

170. The Commission submits that it is evident from recital (9) that the purpose of having a time limit on the validity of documents under Article 18 of the WA (and, in the case of frontier workers, Article 24) is to "enable updating of the picture of the holder". Thus, "the expiry of the documents provided for in the [Implementing Decision] does not in any way imply the expiry of the underlying rights of residence". These features are said by the Commission to confirm that, within the legal framework which applies to all Member States, there is no expiry of either non-permanent residence rights or residence status under the WA after five years.

171. I accept that the Implementing Decision is indicative of such a legal framework; and that the Commission's action in producing the Decision is compatible with its stance on what I have described as the first issue, on which I have found in favour of the claimant. The principle that documents evidencing free movement rights in the declaratory context can be of limited duration is already established in the Directive: see Articles 11 and 19.

172. The position on the second issue is, however, far less clear from the post-hearing responses. As can be seen from the tables in Annex 2, there is a degree of difference in the question being answered, with the Commission's question being somewhat broader than that of the defendant. Be that as it may, the GLD's letter of 17 November 2022, attaching its material, states that the defendant's information, received from United Kingdom posts, is that, save in respect of Hungary and Malta (the defendant being unable to obtain information regarding Luxembourg), notwithstanding the asterisked provision on page 2 of the Commission's table in Annex 2, in 10 Member States "in practice a second application or administrative formality is required there for a person issued a non-permanent residence document (Article 13) to enjoy the rights associated with permanent residence (Article 15)." The asterisked provision in the Commission's material states that, in States which, in its table, do require "a second successful application", the "Failure to comply with such an administrative obligation does not have any impact on the continued existence of WA beneficiary status and the enjoyment of the connected rights." The position, therefore, is that, except for Slovenia (where, according to both the defendant and the Commission, the government of that country appears to be of the same view as the defendant on this issue), there is a factual dispute as to whether, in other States operating a constitutive scheme, issuing the permanent residence document is regarded by those States as actually conferring the right of permanent residence.

173. There is, by contrast, much greater consensus on the language versions of Article 16. The great majority of the official languages in which the WA is written employ the formulation "right to acquire the right to reside permanently" found in the English language version of Article 16, or something very close to it.

174. At first sight, there does appear to be force in the defendant's reliance upon this formulation and its use of the verb "to acquire". The right to acquire another right means there are two rights in play. In a declaratory scheme, the acquisition of the second right is triggered merely by reaching the five year point. In a constitutive scheme, however, where rights have to be conferred, the defendant's case is that the acquisition of the second right has to be by application and grant. If this were not so, the constitutive

scheme becomes a form of hybrid, with elements of the declaratory scheme diluting the purpose and efficacy of the constitutive scheme, by introducing the very kind of uncertainty which the constitutive scheme is designed to avoid.

175. There is, however, a question left begging in this argument: what exactly is the nature of the constitutive residence scheme for which provision is made in the WA? If the drafters of the WA have, in fact, created a constitutive scheme that is, at this point, hybrid in nature, then that is the scheme which the United Kingdom and the Member States must operate, even though some of them might have preferred something else.

176. Attention must therefore focus on Article 18 of the WA. In Article 18(1), Mr Palmer is right to point to the facts that the new residence status is a single entity, and that it comprises "the rights under this Title". This, on its face, includes the rights in Articles 15 and 16.

177. I agree with the claimant and the Commission that it is highly significant that Article 18(1)(a), (b), (c) and (d) make it plain the constitutive scheme established by Article 18 requires a person to make one, and only one, application for a new residence status. So too does Article 18(2). If the defendant were right about what is contained in the new residence status, in the case of a person granted pre-settled status because they have not yet achieved the right of permanent residence, then the WA has failed to explain how that person is to apply for the right of permanent residence; and how the application is to be handled by the State concerned. That would be a remarkable omission.

178. This problem seems to me to be reinforced by the defendant's pointing to the words "that status" in Article 18(1)(a) as indicating a single grant of something that depends upon the applicant's position at that time.

179. The defendant seeks to circumvent this problem by submitting that the fact the WA does not specify deadlines for later applications does not mean that such later applications cannot be required. It simply means the WA does not regulate the timescales for such applications, leaving this to national law. It is, however, in my view inconceivable that the WA would not have expressly covered such an obviously important matter. There is no basis for construing the WA so as to infer a requirement to make a second application for residence status conferring different "rights under this Title", according to some procedure that is left wholly to the State concerned. This is particularly so, given that the WA has been at pains to impose requirements regulating the procedures for the Article 18 application: see e.g. Article 18(1)(e). I do not accept that the reference in that sub-paragraph to "applications" extends to applications not described in the preceding sub-paragraphs; and so can cover the subsequent applications for which the defendant contends. It is manifest in my view that the reference to applications is to the applications described in sub-paragraph (b) *et seq.* If the position were otherwise, the failure of the WA to refer expressly to subsequent applications for permanent residence becomes all the odder. A similar point can be made about the reference to "application forms" in Article 18(1)(f).

180. The defendant argues that, if the claimant is correct, it is notable that the WA does not contain an equivalent of Article 25 of the Directive. This provides that possession of residence documentation cannot be the precondition for the exercise of a residence right; and that lawful residence can be established "by any other means of proof". The WA thus leaves the cohort of persons who, following the grant of pre-settled status

"automatically" acquire a right of permanent residence, without any right to insist on a document confirming their permanent residence status. The defendant says this would be a highly significant omission, given that the right of permanent residence confers a number of important benefits, such as unqualified access to state financial assistance. This omission is said to be all the more striking because Article 18(4) of the WA does include special provision akin to Article 25 for States which do not establish a constitutive residence scheme.

181. I am not persuaded that this submission avails the defendant. The failure of the WA to say anything about how the pre-settled cohort are to have the right of permanent residence conferred is, I consider, a far greater problem. In any event, the difficulties described by the defendant are more apparent than real. A person with pre-settled status who subsequently obtains the right of permanent residence will be able to rely for most purposes upon the document originally issued under Article 18, evidencing what was then the qualified right of residence. Insofar as the individual concerned may wish to rely upon the right of permanent residence as such (for example, because they are no longer a worker), they may apply to the defendant for indefinite leave to remain. Indeed, I can see no reason why the defendant should not continue to encourage those who have been granted pre-settled status to apply for indefinite leave to remain.

182. At this point, it is necessary to return to the question of whether a finding on this issue in favour of the claimant means that the time and effort respectively spent by the defendant and applicants in devising the EUSS and making applications under it were pointless. The answer is most precisely articulated in the revised written submissions of the3million Ltd. The application process contained in Article 18 was meaningful. Its purpose was to ensure that individuals were significantly incentivised to apply under the EUSS. The constitutive scheme created a "bright line" between those who obtained status under the WA and those who did not. Unless and until individuals obtained such status, rights under the WA were not conferred. This allowed the government to put in place a deadline, in order to generate public "buy-in" via a major communications campaign. It ensured that all who responded would then be registered and documented.

183. The3milllion Ltd also point out that, since eligibility under the EUSS is not considered by the defendant to be entirely the same as eligibility under the WA, those who acquire pre-settled or settled status under the EUSS do not necessarily know whether they are considered by the defendant to have rights under the WA, without subsequent examination by an official. Eligibility for universal credit and other benefits depends on an individual being able to demonstrate a "right to reside"; but this specifically does not include having pre-settled status under the EUSS: regulation 9 of the Universal Credit Regulations 2013. Instead, the individual must demonstrate a right to reside by reference to archived implementing provisions of EU free movement law, under the Immigration (European Economic Area) Regulations 2016 (now repealed). In other words, there is a requirement on the United Kingdom government to continue to examine the circumstances of someone with pre-settled status for the purposes of ascertaining eligibility to welfare benefits: Fratila v Secretary of State for Work and Pensions.

184. I therefore conclude that the defendant's submissions on the alleged pointlessness of the Article 18 scheme, if the claimant is right, do not support her interpretation of the WA.

185. The defendant submits that support for her interpretation is contained in Article 18(1)(n). This provides that, except in certain situations, the host State shall not require applicants to present supporting documents that go beyond what is strictly necessary and proportionate to provide evidence that the conditions relating to the right of residence under Title II have been fulfilled. The defendant says that if the purpose of the application procedure was simply to determine whether a person fell within scope of the WA, then Article 18(1)(n) would require an applicant simply to provide evidence that the requirements of Title II were satisfied. This, the defendant says, shows that the fundamental purpose of the new status is to confer actual residence rights, not merely to confirm that a person is in scope of such rights. Article 18(1)(n) is also said to encompass rights of permanent residence, which is directly contrary to the claimant's submission that such rights are acquired automatically.

186. I agree with the claimant that the defendant's reliance on Article 18(1)(n) does not take her the requisite distance. I do not understand the claimant to be arguing that it is sufficient for an individual merely to satisfy the "scope" conditions of Article 10 of the WA. But even if that is a proper reading of the claimant's position, the issue is really about the nature of the rights in Title II of Part Two; in particular, those in Articles 13 to 16, in the context of the constitutive scheme established by Article 18. If one of those rights is the right to acquire the right of residence by reaching the five-year point, then that is one of the rights conferred. There is also nothing in sub-paragraph (n) to support the contention that – despite Article 18(1)(a) to (d) and (2) – more than one application under Article 18 may be required.

187. I find there is little to be gained by the defendant's attempt to categorise the nature of the right to acquire permanent residence as contingent. Both Mr Palmer and Mr Blundell described the right as contingent, whilst continuing to disagree on what this meant for their respective cases. In my view, the fact that the right to acquire permanent residence may, in the event, never lead to the right of permanent residence does not say anything meaningful about <u>how</u> the right of permanent residence is acquired. I do not consider that Article 17 has anything relevant to say on this aspect.

188. I am acutely conscious of the fact that, as the post-hearing information makes plain, there is good reason to suppose that the defendant is not alone in her view that those who subsequently reach the five year residence mark need to apply for the grant of a permanent right of residence. This certainly appears to be the position with Slovenia, although there is factual uncertainty about the position in a number of other States. I am also aware of the extraneous materials on this issue. Unlike the first issue, concerning loss of rights, these materials do indeed demonstrate that, both before and after the conclusion of the WA, officials in the Commission understood, and apparently accepted, the United Kingdom's intention to require a person with pre-settled status to apply for settled status if and when they acquired the necessary five years' residence.

189. As I have mentioned, Article 32 of the Vienna Convention permits recourse to supplementary means of interpretation, including the preparatory work on the treaty, and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of Article 31 or to determine the meaning, when the interpretation according to the principles in Article 31 leaves the meaning ambiguous or obscure or would lead to a result which is manifestly absurd or unreasonable.

190. Mr Blundell does not seek to rely upon the extraneous materials in order to determine the meaning of the WA. Rather, he relies on them to confirm the meaning for which the defendant contends under Article 31.

191. The materials are, as I have indicated, strongly at odds with the interpretation for which the claimant and the Commission contend on the second issue. The materials do not, however, compel the conclusion that, despite the wording of Article 18, an important element of "the new residence status which confers the rights under this Title" has been left out of account: namely, the right of permanent residence for those who subsequently satisfy the five years' residence requirement. Embarrassing though they may be for the Commission, the materials do not show that the construction for which the claimant and the Commission contend is manifestly absurd or unreasonable.

192. Accordingly, my conclusion is that the claimant and the Commission are correct. Properly interpreted, the WA means that the rights conferred by the grant of new residence status under Article 18 to those who do not, at that point, have a right of permanent residence, includes the right to reside permanently in the United Kingdom, pursuant to Article 15, once the five-year period has been satisfied (subject to the conditions mentioned in Article 15(1)). I reach this conclusion by reference to Article 31 of the Vienna Convention. I do not do so by importing any free-standing principles of EU free movement law because, so far as this country is concerned, there are no such free-standing principles. I confirm that there is no need for a reference to the CJEU. The matter is *acte clair.*

K. GENERAL CONCLUSIONS AND NEXT STEPS

193. Having found for the claimant on both issues, the claimant is entitled to a declaration that the defendant's interpretation of the Withdrawal Agreement, the EEA EFTA Agreement and the Swiss Citizens Rights Agreement is wrong in law and that the EUSS is accordingly unlawful insofar as it (a) purports (as described in the court's findings on the first issue) to abrogate rights of residence arising under the Agreements in respect of those granted limited leave to remain; and (b) purports to abrogate the right of permanent residence in the manner described in the court's findings in respect of the second issue.

194. I invite the parties to seek to agree an order which gives effect to this judgment and which deals with any consequential matters.

195. Finally, I wish to thank counsel and those instructing them for the high quality of the oral and written submissions and for the general preparation and other work they have undertaken to assist the court.

Annex 1

Section 1: International/EU Materials

A. *WITHDRAWAL AGREEMENT*

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Section 2: UK Legislation etc.

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Section 1: International/EU Materials

A. WITHDRAWAL AGREEMENT

PREAMBLE

THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY

AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

CONSIDERING that on 29 March 2017 the United Kingdom of Great Britain and Northern Ireland ("United Kingdom"), following the outcome of a referendum held in the United Kingdom and its sovereign decision to leave the European Union, notified its intention to withdraw from the European Union ("Union") and the European Atomic Energy Community ("Euratom") in accordance with Article 50 of the Treaty on European Union ("TEU"), which applies to Euratom by virtue of Article 106a of the Treaty establishing the European Atomic Energy Community ("Euratom Treaty"),

WISHING to set out the arrangements for the withdrawal of the United Kingdom from the Union and Euratom, taking account of the framework for their future relationship,

NOTING the guidelines of 29 April and 15 December 2017 and of 23 March 2018 provided by the European Council in the light of which the Union is to conclude the Agreement setting out the arrangements for the withdrawal of the United Kingdom from the Union and Euratom,

RECALLING that, pursuant to Article 50 TEU, in conjunction with Article 106a of the Euratom Treaty, and subject to the arrangements laid down in this Agreement, the law of the

Union and of Euratom in its entirety ceases to apply to the United Kingdom from the date of entry into force of this Agreement,

STRESSING that the objective of this Agreement is to ensure an orderly withdrawal of the United Kingdom from the Union and Euratom,

RECOGNISING that it is necessary to provide reciprocal protection for Union citizens and for United Kingdom nationals, as well as their respective family members, where they have exercised free movement rights before a date set in this Agreement, and to ensure that their rights under this Agreement are enforceable and based on the principle of non-discrimination; recognising also that rights deriving from periods of social security insurance should be protected,

RESOLVED to ensure an orderly withdrawal through various separation provisions aiming to prevent disruption and to provide legal certainty to citizens and economic operators as well as to judicial and administrative authorities in the Union and in the United Kingdom, while not excluding the possibility of relevant separation provisions being superseded by the agreement(s) on the future relationship,

CONSIDERING that it is in the interest of both the Union and the United Kingdom to determine a transition or implementation period during which – notwithstanding all consequences of the United Kingdom's withdrawal from the Union as regards the United Kingdom's participation in the institutions, bodies, offices and agencies of the Union, in particular the end, on the date of entry into force of this Agreement, of the mandates of all members of institutions, bodies and agencies of the Union nominated, appointed or elected in relation to the United Kingdom's membership of the Union – Union law, including international agreements, should be applicable to and in the United Kingdom, and, as a general rule, with the same effect as regards the Member States, in order to avoid disruption in the period during which the agreement (s) on the future relationship will be negotiated,

RECOGNISING that, even if Union law will be applicable to and in the United Kingdom during the transition period, the specificities of the United Kingdom as a State having withdrawn from the Union mean that it will be important for the United Kingdom to be able to take steps to prepare and establish new international arrangements of its own, including in areas of Union exclusive competence, provided such agreements do not enter into force or apply during that period, unless so authorised by the Union,

RECALLING that the Union and the United Kingdom have agreed to honour the mutual commitments undertaken while the United Kingdom was a member of the Union through a single financial settlement,

CONSIDERING that in order to guarantee the correct interpretation and application of this Agreement and compliance with the obligations under this Agreement, it is essential to establish provisions ensuring overall governance, in particular binding dispute-settlement and enforcement rules that fully respect the autonomy of the respective legal orders of the Union and of the United Kingdom as well as the United Kingdom's status as a third country,

ACKNOWLEDGING that, for an orderly withdrawal of the United Kingdom from the Union, it is also necessary to establish, in separate protocols to this Agreement, durable arrangements

addressing the very specific situations relating to Ireland/ Northern Ireland and to the Sovereign Base Areas in Cyprus,

ACKNOWLEDGING further that, for an orderly withdrawal of the United Kingdom from the Union, it is also necessary to establish, in a separate protocol to this Agreement, the specific arrangements in respect of Gibraltar applicable in particular during the transition period,

UNDERLINING that this Agreement is founded on an overall balance of benefits, rights and obligations for the Union and the United Kingdom, NOTING that in parallel with this Agreement, the Parties have made a Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom of Great Britain and Northern Ireland,

CONSIDERING that there is a need for both the United Kingdom and the Union to take all necessary steps to begin as soon as possible from the date of entry into force of this Agreement, the formal negotiations of one or several agreements governing their future relationship with a view to ensuring that, to the extent possible, those agreements apply from the end of the transition period,

HAVE AGREED AS FOLLOWS:

PART ONE

COMMON PROVISIONS

ARTICLE 2

Definitions

For the purposes of this Agreement, the following definitions shall apply:

(a)"Union law" means:

(i)the Treaty on European Union ("TEU"), the Treaty on the Functioning of the European Union ("TFEU") and the Treaty establishing the European Atomic Energy Community ("Euratom Treaty"), as amended or supplemented, as well as the Treaties of Accession and the Charter of Fundamental Rights of the European Union, together referred to as "the Treaties";

(ii) the general principles of the Union's law;

(iii) the acts adopted by the institutions, bodies, offices or agencies of the Union;

(iv)the international agreements to which the Union is party and the international agreements concluded by the Member States acting on behalf of the Union;

(v)the agreements between Member States entered into in their capacity as Member States of the Union;

(vi)acts of the Representatives of the Governments of the Member States meeting within the European Council or the Council of the European Union ("Council");

(vii)the declarations made in the context of intergovernmental conferences which adopted the Treaties;

(b)"Member States" means the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Croatia, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland and the Kingdom of Sweden;

(c) "Union citizen" means any person holding the nationality of a Member State;

(d)"United Kingdom national" means a national of the United Kingdom, as defined in the New Declaration by the Government of the United Kingdom of Great Britain and Northern Ireland of 31 December 1982 on the definition of the term "nationals" ([1]) together with Declaration No 63 annexed to the Final Act of the intergovernmental conference which adopted the Treaty of Lisbon ([2]);

(e) "transition period" means the period provided in Article 126;

(f)"day" means a calendar day, unless otherwise provided in this Agreement or in provisions of Union law made applicable by this Agreement.

ARTICLE 4

Methods and principles relating to the effect, the implementation and the application of this Agreement

1. The provisions of this Agreement and the provisions of Union law made applicable by this Agreement shall produce in respect of and in the United Kingdom the same legal effects as those which they produce within the Union and its Member States. Accordingly, legal or natural persons shall in particular be able to rely directly on the provisions contained or referred to in this Agreement which meet the conditions for direct effect under Union law.

2. The United Kingdom shall ensure compliance with paragraph 1, including as regards the required powers of its judicial and administrative authorities to disapply inconsistent or incompatible domestic provisions, through domestic primary legislation.

3. The provisions of this Agreement referring to Union law or to concepts or provisions thereof shall be interpreted and applied in accordance with the methods and general principles of Union law.

4. The provisions of this Agreement referring to Union law or to concepts or provisions thereof shall in their implementation and application be interpreted in conformity with the relevant case law of the Court of Justice of the European Union handed down before the end of the transition period.

5. In the interpretation and application of this Agreement, the United Kingdom's judicial and administrative authorities shall have due regard to relevant case law of the Court of Justice of the European Union handed down after the end of the transition period.

ARTICLE 6

References to Union law

1. With the exception of Parts Four and Five, unless otherwise provided in this Agreement all references in this Agreement to Union law shall be understood as references to Union law, including as amended or replaced, as applicable on the last day of the transition period.

2. Where in this Agreement reference is made to Union acts or provisions thereof, such reference shall, where relevant, be understood to include a reference to Union law or provisions thereof that, although replaced or superseded by the act referred to, continue to apply in accordance with that act.

3. For the purposes of this Agreement, references to provisions of Union law made applicable by this Agreement shall be understood to include references to the relevant Union acts supplementing or implementing those provisions.

TITLE I

GENERAL PROVISIONS

ARTICLE 9

Definitions

For the purposes of this Part, and without prejudice to Title III, the following definitions shall apply:

(a) "family members" means the following persons, irrespective of their nationality, who fall within the personal scope provided for in Article 10 of this Agreement:

   (i) family members of Union citizens or family members of United Kingdom nationals as defined in point (2) of Article 2 of Directive 2004/38/EC of the European Parliament and of the Council;
   (ii) persons other than those defined in Article 3(2) of Directive 2004/38/EC whose presence is required by Union citizens or United Kingdom nationals in order not to deprive those Union citizens or United Kingdom nationals of a right of residence granted by this Part;

(b) "frontier workers" means Union citizens or United Kingdom nationals who pursue an economic activity in accordance with Article 45 or 49 TFEU in one or more States in which they do not reside;

(c) "host State" means:

(i) in respect of Union citizens and their family members, the United Kingdom, if they exercised their right of residence there in accordance with Union law before the end of the transition period and continue to reside there thereafter;

(ii) in respect of United Kingdom nationals and their family members, the Member State in which they exercised their right of residence in accordance with Union law before the end of the transition period and in which they continue to reside thereafter;

(d) "State of work" means:

(i) in respect of Union citizens, the United Kingdom, if they pursued an economic activity as frontier workers there before the end of the transition period and continue to do so thereafter;

(ii) in respect of United Kingdom nationals, a Member State in which they pursued an economic activity as frontier workers before the end of the transition period and in which they continue to do so thereafter;

(e) "rights of custody" means rights of custody within the meaning of point (9) of Article 2 of Council Regulation (EC) No 2201/2003 (6), including rights of custody acquired by judgment, by operation of law or by an agreement having legal effect.

ARTICLE 10

Personal scope

1. Without prejudice to Title III, this Part shall apply to the following persons:

(a) Union citizens who exercised their right to reside in the United Kingdom in accordance with Union law before the end of the transition period and continue to reside there thereafter;

(b) United Kingdom nationals who exercised their right to reside in a Member State in accordance with Union law before the end of the transition period and continue to reside there thereafter;

(c) Union citizens who exercised their right as frontier workers in the United Kingdom in accordance with Union law before the end of the transition period and continue to do so thereafter;

(d) United Kingdom nationals who exercised their right as frontier workers in one or more Member States in accordance with Union law before the end of the transition period and continue to do so thereafter;

(e) family members of the persons referred to in points (a) to (d), provided that they fulfil one of the following conditions:

(i) they resided in the host State in accordance with Union law before the end of the transition period and continue to reside there thereafter;

(ii) they were directly related to a person referred to in points (a) to (d) and resided outside the host State before the end of the transition period,

provided that they fulfil the conditions set out in point (2) of Article 2 of Directive 2004/38/EC at the time they seek residence under this Part in order to join the person referred to in points (a) to (d) of this paragraph;

(iii) they were born to, or legally adopted by, persons referred to in points (a) to (d) after the end of the transition period, whether inside or outside the host State, and fulfil the conditions set out in point (2)(c) of Article 2 of Directive 2004/38/EC at the time they seek residence under this Part in order to join the person referred to in points (a) to (d) of this paragraph and fulfil one of the following conditions:
– both parents are persons referred to in points (a) to (d);

– one parent is a person referred to in points (a) to (d) and the other is a national of the host State; or

– one parent is a person referred to in points (a) to (d) and has sole or joint rights of custody of the child, in accordance with the applicable rules of family law of a Member State or of the United Kingdom, including applicable rules of private international law under which rights of custody established under the law of a third State are recognised in the Member State or in the United Kingdom, in particular as regards the best interests of the child, and without prejudice to the normal operation of such applicable rules of private international law[1];

(f) family members who resided in the host State in accordance with Articles 12 and 13, Article 16(2) and Articles 17 and 18 of Directive 2004/38/EC before the end of the transition period and continue to reside there thereafter.

2. Persons falling under points (a) and (b) of Article 3(2) of Directive 2004/38/EC whose residence was facilitated by the host State in accordance with its national legislation before the end of the transition period in accordance with Article 3(2) of that Directive shall retain their right of residence in the host State in accordance with this Part, provided that they continue to reside in the host State thereafter.

3. Paragraph 2 shall also apply to persons falling under points (a) and (b) of Article 3(2) of Directive 2004/38/EC who have applied for facilitation of entry and residence before the end of the transition period, and whose residence is being facilitated by the host State in accordance with its national legislation thereafter.

4. Without prejudice to any right to residence which the persons concerned may have in their own right, the host State shall, in accordance with its national legislation and in accordance with point (b) of Article 3(2) of Directive 2004/38/EC, facilitate entry and residence for the partner with whom the person referred to in points (a) to (d) of paragraph 1 of this Article has a durable relationship, duly attested, where that partner resided outside the host State before the end of the transition period, provided that the

[1] The notion of rights of custody is to be interpreted in accordance with point (9) of Article 2 of Regulation (EC) No 2201/2003. Therefore, it covers rights of custody acquired by judgment, by operation of law or by an agreement having legal effect.

relationship was durable before the end of the transition period and continues at the time the partner seeks residence under this Part.

5. In the cases referred to in paragraphs 3 and 4, the host State shall undertake an extensive examination of the personal circumstances of the persons concerned and shall justify any denial of entry or residence to such persons.

TITLE II RIGHTS AND OBLIGATIONS

CHAPTER 1 RIGHTS RELATED TO RESIDENCE, RESIDENCE DOCUMENTS

ARTICLE 13

Residence rights

1. Union citizens and United Kingdom nationals shall have the right to reside in the host State under the limitations and conditions as set out in Articles 21, 45 or 49 TFEU and in Article 6(1), points (a), (b) or (c) of Article 7(1), Article 7(3), Article 14, Article 16(1) or Article 17(1) of Directive 2004/38/EC.

2. Family members who are either Union citizens or United Kingdom nationals shall have the right to reside in the host State as set out in Article 21 TFEU and in Article 6(1), point (d) of Article 7(1), Article 12(1) or (3), Article 13(1), Article 14, Article 16(1) or Article 17(3) and (4) of Directive 2004/38/EC, subject to the limitations and conditions set out in those provisions.

3. Family members who are neither Union citizens nor United Kingdom nationals shall have the right to reside in the host State under Article 21 TFEU and as set out in Article 6(2), Article 7(2), Article 12(2) or (3), Article 13(2), Article 14, Article 16(2), Article 17(3) or (4) or Article 18 of Directive 2004/38/EC, subject to the limitations and conditions set out in those provisions.

4. The host State may not impose any limitations or conditions for obtaining, retaining or losing residence rights on the persons referred to in paragraphs 1, 2 and 3, other than those provided for in this Title. There shall be no discretion in applying the limitations and conditions provided for in this Title, other than in favour of the person concerned.

ARTICLE 15

Right of permanent residence

1. Union citizens and United Kingdom nationals, and their respective family members, who have resided legally in the host State in accordance with Union law for a continuous period of 5 years or for the period specified in Article 17 of Directive 2004/38/EC, shall have the right to reside permanently in the host State under the conditions set out in Articles 16, 17 and 18 of Directive 2004/38/EC. Periods of legal residence or work in accordance with Union law before and after the end of the transition period shall be included in the calculation of the qualifying period necessary for acquisition of the right of permanent residence.

2. Continuity of residence for the purposes of acquisition of the right of permanent residence shall be determined in accordance with Article 16(3) and Article 21 of Directive 2004/38/EC.

3. Once acquired, the right of permanent residence shall be lost only through absence from the host State for a period exceeding 5 consecutive years.

ARTICLE 16

Accumulation of periods

Union citizens and United Kingdom nationals, and their respective family members, who before the end of the transition period resided legally in the host State in accordance with the conditions of Article 7 of Directive 2004/38/EC for a period of less than 5 years, shall have the right to acquire the right to reside permanently under the conditions set out in Article 15 of this Agreement once they have completed the necessary periods of residence. Periods of legal residence or work in accordance with Union law before and after the end of the transition period shall be included in the calculation of the qualifying period necessary for acquisition of the right of permanent residence.

ARTICLE 17

Status and changes

1. The right of Union citizens and United Kingdom nationals, and their respective family members, to rely directly on this Part shall not be affected when they change status, for example between student, worker, self-employed person and economically inactive person. Persons who, at the end of the transition period, enjoy a right of residence in their capacity as family members of Union citizens or United Kingdom nationals, cannot become persons referred to in points (a) to (d) of Article 10(1).

2. The rights provided for in this Title for the family members who are dependants of Union citizens or United Kingdom nationals before the end of the transition period, shall be maintained even after they cease to be dependants.

ARTICLE 18

Issuance of residence documents

1. The host State may require Union citizens or United Kingdom nationals, their respective family members and other persons, who reside in its territory in accordance with the conditions set out in this Title, to apply for a new residence status which confers the rights under this Title and a document evidencing such status which may be in a digital form.

Applying for such a residence status shall be subject to the following conditions:

(a) the purpose of the application procedure shall be to verify whether the applicant is entitled to the residence rights set out in this Title. Where that is the case, the applicant

shall have a right to be granted the residence status and the document evidencing that status;

(b) the deadline for submitting the application shall not be less than 6 months from the end of the transition period, for persons residing in the host State before the end of the transition period.

1. For persons who have the right to commence residence after the end of the transition period in the host State in accordance with this Title, the deadline for submitting the application shall be 3 months after their arrival or the expiry of the deadline referred to in the first subparagraph, whichever is later.
   A certificate of application for the residence status shall be issued immediately;

(c) the deadline for submitting the application referred to in point (b) shall be extended automatically by 1 year where the Union has notified the United Kingdom, or the United Kingdom has notified the Union, that technical problems prevent the host State either from registering the application or from issuing the certificate of application referred to in point (b). The host State shall publish that notification and shall provide appropriate public information for the persons concerned in good time;

(d) where the deadline for submitting the application referred to in point (b) is not respected by the persons concerned, the competent authorities shall assess all the circumstances and reasons for not respecting the deadline and shall allow those persons to submit an application within a reasonable further period of time if there are reasonable grounds for the failure to respect the deadline;

(e) the host State shall ensure that any administrative procedures for applications are smooth, transparent and simple, and that any unnecessary administrative burdens are avoided;

(f) application forms shall be short, simple, user friendly and adapted to the context of this Agreement; applications made by families at the same time shall be considered together;

(g) the document evidencing the status shall be issued free of charge or for a charge not exceeding that imposed on citizens or nationals of the host State for the issuing of similar documents;

(h) persons who, before the end of the transition period, hold a valid permanent residence document issued under Article 19 or 20 of Directive 2004/38/EC or hold a valid domestic immigration document conferring a permanent right to reside in the host State, shall have the right to exchange that document within the period referred to in point (b) of this paragraph for a new residence document upon application after a verification of their identity, a criminality and security check in accordance with point (p) of this paragraph and confirmation of their ongoing residence; such new residence documents shall be issued free of charge;

(i) the identity of the applicants shall be verified through the presentation of a valid passport or national identity card for Union citizens and United Kingdom nationals, and through the presentation of a valid passport for their respective family members and other persons who are not Union citizens or United Kingdom nationals; the acceptance of such identity documents shall not be made conditional upon any criteria other than that of the validity of the document. Where the identity document is retained by the competent authorities of the host State while the application is pending, the host State

shall return that document upon application without delay, before the decision on the application has been taken;

(j) supporting documents other than identity documents, such as civil status documents, may be submitted in copy. Originals of supporting documents may be required only in specific cases where there is a reasonable doubt as to the authenticity of the supporting documents submitted;

(k) the host State may only require Union citizens and United Kingdom nationals to present, in addition to the identity documents referred to in point (i) of this paragraph, the following supporting documents as referred to in Article 8(3) of Directive 2004/38/EC:

(i) where they reside in the host State in accordance with point (a) of Article 7(1) of Directive 2004/38/EC as workers or self-employed, a confirmation of engagement from the employer or a certificate of employment, or proof that they are self-employed;

(ii) where they reside in the host State in accordance with point (b) of Article 7(1) of Directive 2004/38/EC as economically inactive persons, evidence that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host State during their period of residence and that they have comprehensive sickness insurance cover in the host State; or

(iii) where they reside in the host State in accordance with point (c) of Article 7(1) of Directive 2004/38/EC as students, proof of enrolment at an establishment accredited or financed by the host State on the basis of its legislation or administrative practice, proof of comprehensive sickness insurance cover, and a declaration or equivalent means of proof, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host State during their period of residence. The host State may not require such declarations to refer to any specific amount of resources.

With regard to the condition of sufficient resources, Article 8(4) of Directive 2004/38/EC shall apply;

(l) the host State may only require family members who fall under point (e)(i) of Article 10(1) or Article 10(2) or (3) of this Agreement and who reside in the host State in accordance with point (d) of Article 7(1) or Article 7(2) of Directive 2004/38/EC to present, in addition to the identity documents referred to in point (i) of this paragraph, the following supporting documents as referred to in Article 8(5) or 10(2) of Directive 2004/38/EC:

(i) a document attesting to the existence of a family relationship or registered partnership;

(ii) the registration certificate or, in the absence of a registration system, any other proof that the Union citizen or the United Kingdom national with whom they reside actually resides in the host State;

(iii) for direct descendants who are under the age of 21 or who are dependants and dependent direct relatives in the ascending line, and for those of the spouse or registered partner, documentary evidence that the conditions set out in point (c) or (d) of Article 2(2) of Directive 2004/38/EC are fulfilled;

(iv) for the persons referred to in Article 10(2) or (3) of this Agreement, a document issued by the relevant authority in the host State in accordance with Article 3(2) of Directive 2004/38/EC.

With regard to the condition of sufficient resources as concerns family members who are themselves Union citizens or United Kingdom nationals, Article 8(4) of Directive 2004/38/EC shall apply;

(m) the host State may only require family members who fall under point (e)(ii) of Article 10(1) or Article 10(4) of this Agreement to present, in addition to the identity documents referred to in point (i) of this paragraph, the following supporting documents as referred to in Articles 8(5) and 10(2) of Directive 2004/38/EC:

(i) a document attesting to the existence of a family relationship or of a registered partnership;

(ii) the registration certificate or, in the absence of a registration system, any other proof of residence in the host State of the Union citizen or of the United Kingdom nationals whom they are joining in the host State;

(iii) for spouses or registered partners, a document attesting to the existence of a family relationship or a registered partnership before the end of the transition period;

(iv) for direct descendants who are under the age of 21 or who are dependants and dependent direct relatives in the ascending line and those of the spouse or registered partner, documentary evidence that they were related to Union citizens or United Kingdom nationals before the end of the transition period and fulfil the conditions set out in point (c) or (d) of Article 2(2) of Directive 2004/38/EC relating to age or dependence;

(v) for the persons referred to in Article 10(4) of this Agreement, proof that a durable relationship with Union citizens or United Kingdom nationals existed before the end of the transition period and continues to exist thereafter;

(n) for cases other than those set out in points (k), (l) and (m), the host State shall not require applicants to present supporting documents that go beyond what is strictly necessary and proportionate to provide evidence that the conditions relating to the right of residence under this Title have been fulfilled;

(o) the competent authorities of the host State shall help the applicants to prove their eligibility and to avoid any errors or omissions in their applications; they shall give the applicants the opportunity to furnish supplementary evidence and to correct any deficiencies, errors or omissions;

(p) criminality and security checks may be carried out systematically on applicants, with the exclusive aim of verifying whether the restrictions set out in Article 20 of this Agreement may be applicable. For that purpose, applicants may be required to declare past criminal convictions which appear in their criminal record in accordance with the law of the State of conviction at the time of the application. The host State may, if it considers this essential, apply the procedure set out in Article 27(3) of Directive 2004/38/EC with respect to enquiries to other States regarding previous criminal records;

(q) the new residence document shall include a statement that it has been issued in accordance with this Agreement;

(r) the applicant shall have access to judicial and, where appropriate, administrative redress procedures in the host State against any decision refusing to grant the residence status. The redress procedures shall allow for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed decision is based. Such redress procedures shall ensure that the decision is not disproportionate.

2. During the period referred to in point (b) of paragraph 1 of this Article and its possible one-year extension under point (c) of that paragraph, all rights provided for in this Part shall be deemed to apply to Union citizens or United Kingdom nationals, their respective family members, and other persons residing in the host State, in accordance with the conditions and subject to the restrictions set out in Article 20.

3. Pending a final decision by the competent authorities on any application referred to in paragraph 1, and pending a final judgment handed down in case of judicial redress sought against any rejection of such application by the competent administrative authorities, all rights provided for in this Part shall be deemed to apply to the applicant, including Article 21 on safeguards and right of appeal, subject to the conditions set out in Article 20(4).

4. Where a host State has chosen not to require Union citizens or United Kingdom nationals, their family members, and other persons, residing in its territory in accordance with the conditions set out in this Title, to apply for the new residence status referred to in paragraph 1 as a condition for legal residence, those eligible for residence rights under this Title shall have the right to receive, in accordance with the conditions set out in Directive 2004/38/EC, a residence document, which may be in a digital form, that includes a statement that it has been issued in accordance with this Agreement.

ARTICLE 39

Life-long protection

The persons covered by this Part shall enjoy the rights provided for in the relevant Titles of this Part for their lifetime, unless they cease to meet the conditions set out in those Titles.

ARTICLE 158

References to the Court of Justice of the European Union concerning Part Two

1. Where, in a case which commenced at first instance within 8 years from the end of the transition period before a court or tribunal in the United Kingdom, a question is raised concerning the interpretation of Part Two of this Agreement, and where that court or tribunal considers that a decision on that question is necessary to enable it to give judgment in that case, that court or tribunal may request the Court of Justice of the European Union to give a preliminary ruling on that question.

However, where the subject matter of the case before the court or tribunal in the United Kingdom is a decision on an application made pursuant to Article 18(1) or (4) or pursuant to Article 19, a request for a preliminary ruling may be made only where the case commenced at first instance within a period of 8 years from the date from which Article 19 applies.

2. The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings on requests pursuant to paragraph 1. The legal effects in the United Kingdom of such preliminary rulings shall be the same as the legal effects of preliminary rulings given pursuant to Article 267 TFEU in the Union and its Member States.

3. In the event that the Joint Committee adopts a decision under Article 132(1), the period of eight years referred to in the second subparagraph of paragraph 1 shall be automatically extended by the corresponding number of months by which the transition period is extended.

ARTICLE 159

Monitoring of the implementation and application of Part Two

1. In the United Kingdom, the implementation and application of Part Two shall be monitored by an independent authority (the "Authority") which shall have powers equivalent to those of the European Commission acting under the Treaties to conduct inquiries on its own initiative concerning alleged breaches of Part Two by the administrative authorities of the United Kingdom and to receive complaints from Union citizens and their family members for the purposes of conducting such inquiries. The Authority shall also have the right, following such complaints, to bring a legal action before a competent court or tribunal in the United Kingdom in an appropriate judicial procedure with a view to seeking an adequate remedy.

2. The European Commission and the Authority shall each annually inform the specialised Committee on citizens' rights referred to in point (a) of Article 165(1) on the implementation and application of Part Two in the Union and in the United Kingdom, respectively. The information provided shall, in particular, cover measures taken to implement or comply with Part Two and the number and nature of complaints received.

3. The Joint Committee shall assess, no earlier than 8 years after the end of the transition period, the functioning of the Authority. Following such assessment, it may decide, in good faith, pursuant to point (f) of Article 164(4) and Article 166, that the United Kingdom may abolish the Authority.

ARTICLE 162

Participation of the European Commission in cases pending in the United Kingdom

Where the consistent interpretation and application of this Agreement so requires, the European Commission may submit written observations to the courts and tribunals of the United Kingdom in pending cases where the interpretation of the Agreement is concerned. The European Commission may, with the permission of the court or tribunal in question, also make oral observations. The European Commission shall inform the United Kingdom of its intention to submit observations before formally making such submissions.

B. DIRECTIVE 2004/38/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (THE 'CITIZEN'S' RIGHTS DIRECTIVE')

CHAPTER III

Right of residence

Article 6

Right of residence for up to three months

1. Union citizens shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.

2. The provisions of paragraph 1 shall also apply to family members in possession of a valid passport who are not nationals of a Member State, accompanying or joining the Union citizen.

Article 7

Right of residence for more than three months

1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:

(a) are workers or self-employed persons in the host Member State; or
(b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State; or
(c) – are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training; and – have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence; or
(d) are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c).

2. The right of residence provided for in paragraph 1 shall extend to family members who are not nationals of a Member State, accompanying or joining the Union citizen in the host Member State, provided that such Union citizen satisfies the conditions referred to in paragraph 1(a), (b) or (c).

3. For the purposes of paragraph 1(a), a Union citizen who is no longer a worker or self-employed person shall retain the status of worker or self-employed person in the following circumstances:

(a) he/she is temporarily unable to work as the result of an illness or accident;

(b) he/she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a job-seeker with the relevant employment office;

(c) he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and has registered as a job-seeker with the relevant employment office. In this case, the status of worker shall be retained for no less than six months;

(d) he/she embarks on vocational training. Unless he/she is involuntarily unemployed, the retention of the status of worker shall require the training to be related to the previous employment.

4. By way of derogation from paragraphs 1(d) and 2 above, only the spouse, the registered partner provided for in Article 2(2)(b) and dependent children shall have the right of residence as family members of a Union citizen meeting the conditions under 1(c) above. Article 3(2) shall apply to his/her dependent direct relatives in the ascending lines and those of his/her spouse or registered partner.

Article 8

Administrative formalities for Union citizens

1. Without prejudice to Article 5(5), for periods of residence longer than three months, the host Member State may require Union citizens to register with the relevant authorities.

2. The deadline for registration may not be less than three months from the date of arrival. A registration certificate shall be issued immediately, stating the name and address of the person registering and the date of the registration. Failure to comply with the registration requirement may render the person concerned liable to proportionate and non-discriminatory sanctions.

3. For the registration certificate to be issued, Member States may only require that – Union citizens to whom point (a) of Article 7(1) applies present a valid identity card or

passport, a confirmation of engagement from the employer or a certificate of employment, or proof that they are self-employed persons;
– Union citizens to whom point (b) of Article 7(1) applies present a valid identity card or passport and provide proof that they satisfy the conditions laid down therein;

– Union citizens to whom point (c) of Article 7(1) applies present a valid identity card or passport, provide proof of enrolment at an accredited establishment and of comprehensive sickness insurance cover and the declaration or equivalent means referred to in point (c) of Article 7(1). Member States may not require this declaration to refer to any specific amount of resources.

4. Member States may not lay down a fixed amount which they regard as "sufficient resources", but they must take into account the personal situation of the person concerned. In all cases this amount shall not be higher than the threshold below which nationals of the host Member State become eligible for social assistance, or, where this criterion is not applicable, higher than the minimum social security pension paid by the host Member State.

5. For the registration certificate to be issued to family members of Union citizens, who are themselves Union citizens, Member States may require the following documents to be presented:

(a) a valid identity card or passport;
(b) a document attesting to the existence of a family relationship or of a registered partnership;
(c) where appropriate, the registration certificate of the Union citizen whom they are accompanying or joining;
(d) in cases falling under points (c) and (d) of Article 2(2), documentary evidence that the conditions laid down therein are met;
(e) in cases falling under Article 3(2)(a), a document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants or members of the household of the Union citizen, or proof of the existence of serious health grounds which strictly require the personal care of the family member by the Union citizen;
(f) in cases falling under Article 3(2)(b), proof of the existence of a durable relationship with the Union citizen.

Article 12

Retention of the right of residence by family members in the event of death or departure of the Union citizen

1. Without prejudice to the second subparagraph, the Union citizen's death or departure from the host Member State shall not affect the right of residence of his/her family members who are nationals of a Member State.

   Before acquiring the right of permanent residence, the persons concerned must meet the conditions laid down in points (a), (b), (c) or (d) of Article 7(1).

2. Without prejudice to the second subparagraph, the Union citizen's death shall not entail loss of the right of residence of his/her family members who are not nationals of a Member State and who have been residing in the host Member State as family members for at least one year before the Union citizen's death.

   Before acquiring the right of permanent residence, the right of residence of the persons concerned shall remain subject to the requirement that they are able to show that they are workers or self-employed persons or that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State, or that they are members of the family, already constituted in the host Member State, of a person satisfying these requirements. "Sufficient resources" shall be as defined in Article 8(4).

   Such family members shall retain their right of residence exclusively on a personal basis.

1. The Union citizen's departure from the host Member State or his/her death shall not entail loss of the right of residence of his/her children or of the parent who has actual custody of the children, irrespective of nationality, if the children reside in the host Member State and are enrolled at an educational establishment, for the purpose of studying there, until the completion of their studies.

Article 13

Retention of the right of residence by family members in the event of divorce, annulment of marriage or termination of registered partnership

1. Without prejudice to the second subparagraph, divorce, annulment of the Union citizen's marriage or termination of his/her registered partnership, as referred to in point 2(b) of Article 2 shall not affect the right of residence of his/her family members who are nationals of a Member State.
   Before acquiring the right of permanent residence, the persons concerned must meet the conditions laid down in points (a), (b), (c) or (d) of Article 7(1).
2. Without prejudice to the second subparagraph, divorce, annulment of marriage or termination of the registered partnership referred to in point 2(b) of Article 2 shall not entail loss of the right of residence of a Union citizen's family members who are not nationals of a Member State where:

   (a) prior to initiation of the divorce or annulment proceedings or termination of the registered partnership referred to in point 2(b) of Article 2, the marriage or registered partnership has lasted at least three years, including one year in the host Member State; or

   (b) by agreement between the spouses or the partners referred to in point 2(b) of Article 2 or by court order, the spouse or partner who is not a national of a Member State has custody of the Union citizen's children; or

   (c) this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence while the marriage or registered partnership was subsisting; or

(d)by agreement between the spouses or partners referred to in point 2(b) of Article 2 or by court order, the spouse or partner who is not a national of a Member State has the right of access to a minor child, provided that the court has ruled that such access must be in the host Member State, and for as long as is required.

Before acquiring the right of permanent residence, the right of residence of the persons concerned shall remain subject to the requirement that they are able to show that they are workers or self-employed persons or that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State, or that they are members of the family, already constituted in the host Member State, of a person satisfying these requirements. "Sufficient resources" shall be as defined in Article 8(4).

Such family members shall retain their right of residence exclusively on personal basis.

Article 14

Retention of the right of residence

1. Union citizens and their family members shall have the right of residence provided for in Article 6, as long as they do not become an unreasonable burden on the social assistance system of the host Member State.

2. Union citizens and their family members shall have the right of residence provided for in Articles 7, 12 and 13 as long as they meet the conditions set out therein. In specific cases where there is a reasonable doubt as to whether a Union citizen or his/her family members satisfies the conditions set out in Articles 7, 12 and 13, Member States may verify if these conditions are fulfilled. This verification shall not be carried out systematically.

3. An expulsion measure shall not be the automatic consequence of a Union citizen's or his or her family member's recourse to the social assistance system of the host Member State.

4. By way of derogation from paragraphs 1 and 2 and without prejudice to the provisions of Chapter VI, an expulsion measure may in no case be adopted against Union citizens or their family members if:

(a) the Union citizens are workers or self-employed persons, or

(b) the Union citizens entered the territory of the host Member State in order to seek employment. In this case, the Union citizens and their family members may not be expelled for as long as the Union citizens can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged.

CHAPTER IV

Right of permanent residence

Section I

Eligibility

Article 16

General rule for Union citizens and their family members

1. Union citizens who have resided legally for a continuous period of five years in the host Member State shall have the right of permanent residence there. This right shall not be subject to the conditions provided for in Chapter III.

2. Paragraph 1 shall apply also to family members who are not nationals of a Member State and have legally resided with the Union citizen in the host Member State for a continuous period of five years.

3. Continuity of residence shall not be affected by temporary absences not exceeding a total of six months a year, or by absences of a longer duration for compulsory military service, or by one absence of a maximum of twelve consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.

4. Once acquired, the right of permanent residence shall be lost only through absence from the host Member State for a period exceeding two consecutive years.

Article 17

Exemptions for persons no longer working in the host Member State and their family members

1. By way of derogation from Article 16, the right of permanent residence in the host Member State shall be enjoyed before completion of a continuous period of five years of residence by:

(a) workers or self-employed persons who, at the time they stop working, have reached the age laid down by the law of that Member State for entitlement to an old age pension or workers who cease paid employment to take early retirement, provided that they have been working in that Member State for at least the preceding twelve months and have resided there continuously for more than three years.
If the law of the host Member State does not grant the right to an old age pension to certain categories of self-employed persons, the age condition shall be deemed to have been met once the person concerned has reached the age of 60;

(b) workers or self-employed persons who have resided continuously in the host Member State for more than two years and stop working there as a result of permanent incapacity to work.

Article 18

Acquisition of the right of permanent residence by certain family members who are not nationals of a Member State

Without prejudice to Article 17, the family members of a Union citizen to whom Articles 12(2) and 13(2) apply, who satisfy the conditions laid down therein, shall acquire the right of permanent residence after residing legally for a period of five consecutive years in the host Member State.

Article 21

Continuity of residence

For the purposes of this Directive, continuity of residence may be attested by any means of proof in use in the host Member State. Continuity of residence is broken by any expulsion decision duly enforced against the person concerned.

C. THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

Article 21 (ex Article 18 TEC)

1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.

2. If action by the Union should prove necessary to attain this objective and the Treaties have not provided the necessary powers, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1.

3. For the same purposes as those referred to in paragraph 1 and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt measures concerning social security or social protection. The Council shall act unanimously after consulting the European Parliament.

TITLE IV

FREE MOVEMENT OF PERSONS, SERVICES AND CAPITAL

CHAPTER 1 WORKERS

Article 45 (ex Article 39 TEC)

1. Freedom of movement for workers shall be secured within the Union.

2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
   (a) to accept offers of employment actually made;

(b) to move freely within the territory of Member States for this purpose;

(c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;

(d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.

4. The provisions of this Article shall not apply to employment in the public service.

CHAPTER 2

RIGHT OF ESTABLISHMENT

Article 49 (ex Article 43 TEC)

Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 54, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.

D. VIENNA CONVENTION ON THE LAW OF TREATIES 1969

SECTION 3. INTERPRETATION OF TREATIES

Article 31

General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32

Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or

(b) leads to a result which is manifestly absurd or unreasonable.

Section 2: UK Legislation etc.

A. IMMIGRATION ACT 1971

Part I Regulation of Entry into and Stay in United Kingdom

1 General principles

(1) All those who are in this Act expressed to have the right of abode in the United Kingdom shall be free to live in, and to come and go into and from, the United Kingdom without let or hindrance except such as may be required under and in accordance with this Act to enable their right to be established or as may be otherwise lawfully imposed on any person.

(2) Those not having that right may live, work and settle in the United Kingdom by permission and subject to such regulation and control of their entry into, stay in and departure from the United Kingdom as is imposed by this Act; and indefinite leave to enter or remain in the United Kingdom shall, by virtue of this provision be treated as having been given under

this Act to those in the United Kingdom at its coming into force, if they are then settled there (and not exempt under this Act from the provisions relating to leave to enter or remain).

(3) Arrival in and departure from the United Kingdom on a local journey from or to any of the Islands (that is to say, the Channel Islands and Isle of Man) or the Republic of Ireland shall not be subject to control under this Act, nor shall a person require leave to enter the United Kingdom on so arriving, except in so far as any of those places is for any purpose excluded from this subsection under the powers conferred by this Act; and in this Act the United Kingdom and those places, or such of them as are not so excluded, are collectively referred to as "the common travel area".

(4) The rules laid down by the Secretary of State as to the practice to be followed in the administration of this Act for regulating the entry into and stay in the United Kingdom of persons not having the right of abode shall include provision for admitting (in such cases and subject to such restrictions as may be provided by the rules, and subject or not to conditions as to length of stay or otherwise) persons coming for the purpose of taking employment, or for purposes of study, or as visitors, or as dependants of persons lawfully in or entering the United Kingdom.

(5) . . .

3 General provisions for regulation and control

B. (1) Except as otherwise provided by or under this Act, where a person is not [a British citizen]—

C. (a) he shall not enter the United Kingdom unless given leave to do so in accordance with [the provisions of, or made under,] this Act;

D. (b) he may be given leave to enter the United Kingdom (or, when already there, leave to remain in the United Kingdom) either for a limited or for an indefinite period;

E. [(c) if he is given limited leave to enter or remain in the United Kingdom, it may be given subject to all or any of the following conditions, namely—

F. (i) a condition restricting his [work] or occupation in the United Kingdom;

G. [(ia) a condition restricting his studies in the United Kingdom;]

H. (ii) a condition requiring him to maintain and accommodate himself, and any dependants of his, without recourse to public funds; . . .

I. (iii) a condition requiring him to register with the police;

J. [(iv) a condition requiring him to report to an immigration officer or the Secretary of State; and

K. (v) a condition about residence].]

L. (2) The Secretary of State shall from time to time (and as soon as may be) lay before Parliament statements of the rules, or of any changes in the rules, laid down by him as to the practice to be followed in the administration of this Act for regulating the entry into and stay in the United Kingdom of persons required by this Act to have leave to enter, including any rules as to the period for which leave is to be given and the conditions to be attached in different circumstances; and section 1(4) above shall not be taken to require uniform provision to be made by the rules as regards admission of persons for a purpose or in a capacity specified in section 1(4) (and in particular, for this as well as other purposes of this Act, account may be taken of citizenship or nationality).

M. If a statement laid before either House of Parliament under this subsection is disapproved by a resolution of that House passed within the period of forty days beginning with the date of laying (and exclusive of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days), then the Secretary of State shall as soon as may be make such changes or further changes in the rules as appear to him to be required in the circumstances, so that the statement of those changes be laid before Parliament at latest by the end of the period of forty days beginning with the date of the resolution (but exclusive as aforesaid).

N. (3) In the case of a limited leave to enter or remain in the United Kingdom,—

O. (a) a person's leave may be varied, whether by restricting, enlarging or removing the limit on its duration, or by adding, varying or revoking conditions, but if the limit on its duration is removed, any conditions attached to the leave shall cease to apply; and

P. (b) the limitation on and any conditions attached to a person's leave [(whether imposed originally or on a variation) shall], if not superseded, apply also to any subsequent leave he may obtain after an absence from the United Kingdom within the period limited for the duration of the earlier leave.

Q. (4) A person's leave to enter or remain in the United Kingdom shall lapse on his going to a country or territory outside the common travel area (whether or not he lands there), unless within the period for which he had leave he returns to the United Kingdom in circumstances in which he is not required to obtain leave to enter; but, if he does so return, his previous leave (and any limitation on it or conditions attached to it) shall continue to apply.

R. [(5) A person who is not a British citizen is liable to deportation from the United Kingdom if—

S. (a) the Secretary of State deems his deportation to be conducive to the public good; or

T. (b) another person to whose family he belongs is or has been ordered to be deported.]

U. [(5A) The Secretary of State may not deem a relevant person's deportation to be conducive to the public good under subsection (5) if the person's deportation—

V. (a) would be in breach of the obligations of the United Kingdom under Article 20 of the EU withdrawal agreement, Article 19 of the EEA EFTA separation agreement, or Article 17 or 20(3) of the Swiss citizens' rights agreement, or

W. (b) would be in breach of those obligations if the provision in question mentioned in paragraph (a) applied in relation to the person.]

X. (6) Without prejudice to the operation of subsection (5) above, a person who is not [a British citizen] shall also be liable to deportation from the United Kingdom if, after he has attained the age of seventeen, he is convicted of an offence for which he is punishable with imprisonment and on his conviction is recommended for deportation by a court empowered by this Act to do so.

Y. [(6A) A court may not recommend under subsection (6) that a relevant person be deported if the offence for which the person was convicted consisted of or included conduct that took place before IP completion day.]

Z. (7) Where it appears to Her Majesty proper so to do by reason of restrictions or conditions imposed on [British citizens, [British overseas territories citizens] or British Overseas citizens] when leaving or seeking to leave any country or the territory subject to the government of any country, Her Majesty may by Order in Council make provision for

prohibiting persons who are nationals or citizens of that country and are not [British citizens] from embarking in the United Kingdom, or from doing so elsewhere than at a port of exit, or for imposing restrictions or conditions on them when embarking or about to embark in the United Kingdom; and Her Majesty may also make provision by Order in Council to enable those who are not [British citizens] to be, in such cases as may be prescribed by the Order, prohibited in the interests of safety from so embarking on a ship or aircraft specified or indicated in the prohibition.

AA. Any Order in Council under this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.

BB. (8) When any question arises under this Act whether or not a person is [a British citizen], or is entitled to any exemption under this Act, it shall lie on the person asserting it to prove that he is.

CC. [(9) A person seeking to enter the United Kingdom and claiming to have the right of abode there shall prove it by means of—

DD. (a) a United Kingdom passport describing him as a British citizen,

EE. (b) a United Kingdom passport describing him as a British subject with the right of abode in the United Kingdom, [or]

FF. (c) . . .

GG. (d) . . .

HH. (e) a certificate of entitlement.]

II. [(10) For the purposes of this section, a person is a "relevant person"—

JJ. (a) if the person is in the United Kingdom (whether or not they have entered within the meaning of section 11(1)) having arrived with entry clearance granted by virtue of relevant entry clearance immigration rules,

KK. (b) if the person has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules,

LL. [(ba) if the person is in the United Kingdom (whether or not they have entered within the meaning of section 11(1)) having arrived with entry clearance granted by virtue of Article 23 of the Swiss citizens' rights agreement,]

MM. (c) if the person may be granted leave to enter or remain in the United Kingdom as a person who has a right to enter the United Kingdom by virtue of—

NN. (i) Article 32(1)(b) of the EU withdrawal agreement,

OO. (ii) Article 31(1)(b) of the EEA EFTA separation agreement, or

PP. (iii) Article 26a(1)(b) of the Swiss citizens' rights agreement,

QQ. whether or not the person has been granted such leave, or

RR. (d) if the person may enter the United Kingdom by virtue of regulations made under section 8 of the European Union (Withdrawal Agreement) Act 2020 (frontier workers), whether or not the person has entered by virtue of those regulations.

SS.

TT. (11) In this section—

UU. "EEA EFTA separation agreement" and "Swiss citizens' rights agreement" have the same meanings as in the European Union (Withdrawal Agreement) Act 2020 (see section 39(1) of that Act);

VV. "relevant entry clearance immigration rules" and "residence scheme immigration rules" have the meanings given by section 17 of the European Union (Withdrawal Agreement) Act 2020.]

WW.

33 Interpretation.

(2A)Subject to section 8(5) above, references to a person being settled in the United Kingdom are references to his being ordinarily resident there without being subject under the immigration laws to any restriction on the period for which he may remain

XX. IMMIGRATION ACT 1988

Section 7 (Repealed)

7.— Persons exercising Community rights and nationals of member States.

1) A person shall not under the principal Act require leave to enter or remain in the United Kingdom in any case in which he is entitled to do so by virtue of an enforceable [EU]1 right or of any provision made under section 2(2) of the European Communities Act 1972.

(2) The Secretary of State may by order made by statutory instrument give leave to enter the United Kingdom for a limited period to any class of persons who are nationals of member

States but who are not entitled to enter the United Kingdom as mentioned in subsection (1) above; and any such order may give leave subject to such conditions as may be imposed by the order.

(3) References in the principal Act to limited leave shall include references to leave given by an order under subsection (2) above and a person having leave by virtue of such an order shall be treated as having been given that leave by a notice given to him by an immigration officer within the period specified in paragraph 6(1) of Schedule 2 to that Act.

YY. *EUROPEAN UNION (WITHDRAWAL) ACT 2018*

7A General implementation of remainder of withdrawal agreement

(1) Subsection (2) applies to—

(a) all such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the withdrawal agreement, and

(b) all such remedies and procedures from time to time provided for by or under the withdrawal agreement,

as in accordance with the withdrawal agreement are without further enactment to be given legal effect or used in the United Kingdom.

(2) The rights, powers, liabilities, obligations, restrictions, remedies and procedures concerned are to be—

(a) recognised and available in domestic law, and

(b) enforced, allowed and followed accordingly.

(3) Every enactment (including an enactment contained in this Act) is to be read and has effect subject to subsection (2).

(4) This section does not apply in relation to Part 4 of the withdrawal agreement so far as section 2(1) of the European Communities Act 1972 applies in relation to that Part.

(5) See also (among other things)—

(a) Part 3 of the European Union (Withdrawal Agreement) Act 2020 (further provision about citizens' rights),

(b) section 20 of that Act (financial provision),

(c) section 7C of this Act (interpretation of law relating to withdrawal agreement etc.),

(d) section 8B of this Act (power in connection with certain other separation issues),

(e) section 8C of this Act (power in connection with the Protocol on Ireland/Northern Ireland in withdrawal agreement), and

(f) Parts 1B and 1C of Schedule 2 to this Act (powers involving devolved authorities in connection with certain other separation issues and the Ireland/Northern Ireland Protocol).

7B General implementation of EEA EFTA and Swiss agreements

(1)Subsection (2) applies to all such rights, powers, liabilities, obligations, restrictions, remedies and procedures as—

(a)would from time to time be created or arise, or (in the case of remedies or procedures) be provided for, by or under the EEA EFTA separation agreement or the Swiss citizens' rights agreement, and

(b)would, in accordance with Article 4(1) of the withdrawal agreement, be required to be given legal effect or used in the United Kingdom without further enactment,

if that Article were to apply in relation to the EEA EFTA separation agreement and the Swiss citizens' rights agreement, those agreements were part of EU law and the relevant EEA states and Switzerland were member States.

(2)The rights, powers, liabilities, obligations, restrictions, remedies and procedures concerned are to be—

(a)recognised and available in domestic law, and

(b)enforced, allowed and followed accordingly.

(3)Every enactment (other than section 7A but otherwise including an enactment contained in this Act) is to be read and has effect subject to subsection (2).

(4)See also (among other things)—

(a)Part 3 of the European Union (Withdrawal Agreement) Act 2020 (further provision about citizens' rights),

(b)section 7C of this Act (interpretation of law relating to the EEA EFTA separation agreement and the Swiss citizens' rights agreement etc.),

(c)section 8B of this Act (power in connection with certain other separation issues), and

(d)Part 1B of Schedule 2 to this Act (powers involving devolved authorities in connection with certain other separation issues).

(5)In this section “the relevant EEA states” means Norway, Iceland and Liechtenstein.

(6)In this Act "EEA EFTA separation agreement" and "Swiss citizens' rights agreement" have the same meanings as in the European Union (Withdrawal Agreement) Act 2020 (see section 39(1) of that Act).

7B General implementation of EEA EFTA and Swiss agreements

(1)Subsection (2) applies to all such rights, powers, liabilities, obligations, restrictions, remedies and procedures as—

(a)would from time to time be created or arise, or (in the case of remedies or procedures) be provided for, by or under the EEA EFTA separation agreement or the Swiss citizens' rights agreement, and

(b)would, in accordance with Article 4(1) of the withdrawal agreement, be required to be given legal effect or used in the United Kingdom without further enactment,

if that Article were to apply in relation to the EEA EFTA separation agreement and the Swiss citizens' rights agreement, those agreements were part of EU law and the relevant EEA states and Switzerland were member States.

(2)The rights, powers, liabilities, obligations, restrictions, remedies and procedures concerned are to be—

(a)recognised and available in domestic law, and

(b)enforced, allowed and followed accordingly.

(3)Every enactment (other than section 7A but otherwise including an enactment contained in this Act) is to be read and has effect subject to subsection (2).

(4)See also (among other things)—

(a)Part 3 of the European Union (Withdrawal Agreement) Act 2020 (further provision about citizens' rights),

(b)section 7C of this Act (interpretation of law relating to the EEA EFTA separation agreement and the Swiss citizens' rights agreement etc.),

(c)section 8B of this Act (power in connection with certain other separation issues), and

(d)Part 1B of Schedule 2 to this Act (powers involving devolved authorities in connection with certain other separation issues).

(5)In this section "the relevant EEA states" means Norway, Iceland and Liechtenstein.

(6)In this Act "EEA EFTA separation agreement" and "Swiss citizens' rights agreement" have the same meanings as in the European Union (Withdrawal Agreement) Act 2020 (see section 39(1) of that Act).

7C Interpretation of relevant separation agreement law

(1)Any question as to the validity, meaning or effect of any relevant separation agreement law is to be decided, so far as they are applicable—

(a)in accordance with the withdrawal agreement, the EEA EFTA separation agreement and the Swiss citizens' rights agreement, and

(b)having regard (among other things) to the desirability of ensuring that, where one of those agreements makes provision which corresponds to provision made by another of those agreements, the effect of relevant separation agreement law in relation to the matters dealt with by the corresponding provision in each agreement is consistent.

(2)See (among other things)—

(a)Article 4 of the withdrawal agreement (methods and principles relating to the effect, the implementation and the application of the agreement),

(b)Articles 158 and 160 of the withdrawal agreement (jurisdiction of the European Court in relation to Part 2 and certain provisions of Part 5 of the agreement),

(c)Articles 12 and 13 of the Protocol on Ireland/Northern Ireland in the withdrawal agreement (implementation, application, supervision and enforcement of the Protocol and common provisions),

(d)Article 4 of the EEA EFTA separation agreement (methods and principles relating to the effect, the implementation and the application of the agreement), and

(e)Article 4 of the Swiss citizens' rights agreement (methods and principles relating to the effect, the implementation and the application of the agreement).

(3)In this Act “relevant separation agreement law” means—

(a)any of the following provisions or anything which is domestic law by virtue of any of them—

(i)section 7A, 7B, 8B or 8C or Part 1B or 1C of Schedule 2 or this section, or

(ii)Part 3, or section 20, of the European Union (Withdrawal Agreement) Act 2020 (citizens' rights and financial provision), or

(b)anything not falling within paragraph (a) so far as it is domestic law for the purposes of, or otherwise within the scope of—

(i)the withdrawal agreement (other than Part 4 of that agreement),

(ii)the EEA EFTA separation agreement, or

(iii)the Swiss citizens' rights agreement,

as that body of law is added to or otherwise modified by or under this Act or by other domestic law from time to time.

ZZ.IMMIGRATION RULES APPENDIX EU (EUSS)

EU1
EU1. This Appendix sets out the basis on which an **EEA citizen** and their family members, and the family members of a **qualifying British citizen**, will, if they apply under it, be granted indefinite leave to enter or remain or limited leave to enter or remain.
EU2

Requirements for indefinite leave to enter or remain other than as a joining family member of a relevant sponsor

EU2. The applicant will be granted indefinite leave to enter (where the application is made outside the UK) or indefinite leave to remain (where the application is made within the UK) where:

- A valid application has been made in accordance with paragraph EU9;
- The applicant meets the eligibility requirements for indefinite leave to enter or remain in accordance with paragraph EU11 or EU12; and
- The application is not to be refused on grounds of suitability in accordance with paragraph EU15 or EU16.

EU3

Requirements for limited leave to enter or remain other than as a joining family member of a relevant sponsor

EU3. The applicant will be granted five years' limited leave to enter (where the application is made outside the UK) or five years' limited leave to remain (where the application is made within the UK) where:

- A valid application has been made in accordance with paragraph EU9;
- The applicant does not meet the eligibility requirements for indefinite leave to enter or remain in accordance with paragraph EU11 or EU12, but meets the eligibility requirements for limited leave to enter or remain in accordance with paragraph EU14; and
- The application is not to be refused on grounds of suitability in accordance with paragraph EU15 or EU16.

AAA.

BBB. EU11

CCC. Persons eligible for indefinite leave to enter or remain as a relevant EEA citizen or their family member, or as a person with a derivative right to reside or with a Zambrano right to reside

DDD. EU11. The applicant meets the eligibility requirements for indefinite leave to enter or remain as a **relevant EEA citizen** or their family member (or as a **person with a derivative right to reside** or a **person with a Zambrano right to reside**) where the Secretary of State is satisfied, including (where applicable) by the **required evidence of family relationship**, that, at the date of application and in an application made by the **required date**, one of conditions 1 to 7 set out in the following table is met:

Condition	**Is met where:**
1.	(a) The applicant: (i) is a relevant EEA citizen; or (ii) is (or, as the case may be, was) a **family member of a relevant EEA citizen**; or (iii) is (or, as the case may be, was) a **family member who has retained the right of residence** by virtue of a relationship with a relevant EEA citizen; and (b) The applicant has a **documented right of permanent residence**; and (c) Since they did, no **supervening event** has occurred in respect of the applicant
2.	(a) The applicant is: (i) a relevant EEA citizen; or (ii) a family member of a relevant EEA citizen; or (iii) a family member who has retained the right of residence by virtue of a relationship with a relevant EEA citizen; and (b) There is **valid evidence of their indefinite leave to enter or remain**
3.	(a) The applicant: (i) is a relevant EEA citizen; or (ii) is (or, as the case may be, for the relevant period was) a family member of a relevant EEA citizen; or (iii) is (or, as the case may be, for the relevant period was) a family member who has retained the right of residence by virtue of a relationship with a relevant EEA citizen; or (iv) is a person with a derivative right to reside; or (v) is a person with a Zambrano right to reside; or (vi) is a **person who had a derivative or Zambrano right to reside**; and (b) The applicant has completed a **continuous qualifying period** of five years in

Condition	Is met where:
	any (or any combination) of those categories; and (c) Since then no supervening event has occurred in respect of the applicant
4.	(a) The applicant is a relevant EEA citizen who is a **person who has ceased activity**; and (b) Since they did so, no supervening event has occurred
5.	(a) The applicant is (or, as the case may be, was) a family member of a relevant EEA citizen; and (b) The relevant EEA citizen is a person who has ceased activity; and (c)(i) Where the date of application by the family member is before 1 July 2021, the relevant EEA citizen: (aa) meets the requirements of sub-paragraph (b) of the applicable definition of relevant EEA citizen in Annex 1; or (bb) meets the requirements of sub-paragraph (d)(ii)(bb) of the applicable definition of relevant EEA citizen in Annex 1; or (cc) meets the requirements of sub-paragraph (e)(ii) or (e)(iii) of the applicable definition of relevant EEA citizen in Annex 1; or (dd) is a **relevant naturalised British citizen** (in accordance with sub-paragraphs (b), (c) and (d) of the relevant definition in Annex 1); or (ii) Where the date of application by the family member is on or after 1 July 2021, the relevant EEA citizen meets the following requirements of the applicable definition of relevant EEA citizen in Annex 1: (aa) sub-paragraph (a)(ii)(aa); or (bb) sub-paragraph (b)(ii)(aa); or (cc) sub-paragraph (c)(i); or (dd) sub-paragraph (d)(iii)(aa); or (ee) sub-paragraph (e)(i)(bb)(aaa), (e)(i)(bb)(ccc) or (e)(ii)(bb)(aaa); and (d) Sub-paragraph (a) above was met at the point at which the relevant EEA citizen became a person who has ceased activity; and (e) The applicant was resident in the UK and Islands for a continuous qualifying period immediately before the relevant EEA citizen became a person who has ceased activity; and (f) Since the relevant EEA citizen became a person who has ceased activity, no supervening event has occurred in respect of the applicant

Condition	Is met where:
6.	(a) The applicant is a family member of a relevant EEA citizen; and (b) The relevant EEA citizen has died and was resident in the UK as a **worker** or **self-employed person** at the time of their death; and (c) The relevant EEA citizen was resident in the UK and Islands for a continuous qualifying period of at least two years immediately before dying, or the death was the result of an accident at work or an occupational disease; and (d) The applicant was resident in the UK with the relevant EEA citizen immediately before their death; and (e) Since the death of the relevant EEA citizen, no supervening event has occurred
7.	(a) The applicant is a family member of a relevant EEA citizen and is a child under the age of 21 years of a relevant EEA citizen, or of their **spouse** or **civil partner**, and either: (i) The marriage was contracted or the civil partnership was formed before the **specified date**; or (ii) the person who is now their spouse or civil partner was the **durable partner** of the relevant EEA citizen before the specified date (the definition of durable partner in Annex 1 being met before that date rather than at the date of application) and the partnership remained durable at the specified date; and (b)(i) Where the date of application by the family member is before 1 July 2021, the relevant EEA citizen (or, as the case may be, their spouse or civil partner): (aa) has been granted indefinite leave to enter or remain under paragraph EU2 of this Appendix (or under its equivalent in the Islands), which has not lapsed or been cancelled, revoked or invalidated (or is being granted that leave under that paragraph of this Appendix or under its equivalent in the Islands); or (bb) meets the requirements of sub-paragraph (b)(ii) of the applicable definition of relevant EEA citizen in Annex 1 (where the relevant EEA citizen is an **Irish citizen**); or (cc) meets the requirements of sub-paragraph (d)(ii)(bb) of the applicable definition of relevant EEA citizen in Annex 1; or (dd) meets the requirements of sub-paragraph (e)(ii) or (e)(iii) of the applicable definition of relevant EEA citizen in Annex 1; or (ee) meets the requirements of sub-paragraph (f)(ii) of the applicable definition of relevant EEA citizen in Annex 1; or (ff) is a relevant naturalised British citizen (in accordance with sub-paragraphs (b), (c) and (d) of the relevant definition in Annex 1); or (ii) Where the date of application by the family member is on or after 1 July 2021, the relevant EEA citizen (or, as the case may be, their spouse or civil partner) meets the following requirements of the applicable definition of relevant EEA citizen in

Condition	Is met where:
	Annex 1: (aa) sub-paragraph (a)(ii)(aa); or (bb) sub-paragraph (b)(ii)(aa) (where the relevant citizen is an Irish citizen); or (cc) sub-paragraph (c)(i); or (dd) sub-paragraph (d)(iii)(aa); or (ee) sub-paragraph (e)(i)(bb)(aaa), (e)(i)(bb)(ccc) or (e)(ii)(bb)(aaa); or (ff) sub-paragraph (f)(ii)(aa)

EU14

Persons eligible for limited leave to enter or remain as a relevant EEA citizen or their family member, as a person with a derivative right to reside or with a Zambrano right to reside or as a family member of a qualifying British citizen

EU14. The applicant meets the eligibility requirements for limited leave to enter or remain where the Secretary of State is satisfied, including (where applicable) by the required evidence of family relationship, that, at the date of application and in an application made by the required date, condition 1 or 2 set out in the following table is met:

Condition	Is met where:
1.	(a) The applicant is: (i) a relevant EEA citizen; or (ii) a family member of a relevant EEA citizen; or (iii) a family member who has retained the right of residence by virtue of a relationship with a relevant EEA citizen; or (iv) a person with a derivative right to reside; or (v) a person with a Zambrano right to reside; and (b) The applicant is not eligible for indefinite leave to enter or remain under paragraph EU11 of this Appendix solely because they have completed a continuous qualifying period of less than five years; and

Condition	Is met where:
	(c) Where the applicant is a family member of a relevant EEA citizen, there has been no supervening event in respect of the relevant EEA citizen
2.	(a) The applicant is: (i) a family member of a qualifying British citizen; or (ii) a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen; and (b) The applicant was, for any period in which they were present in the UK as a family member of a qualifying British citizen relied upon under sub-paragraph (c), lawfully resident by virtue of regulation 9(1) to (6) of the EEA Regulations (regardless of whether in the UK the qualifying British citizen was a qualified person under regulation 6 of the EEA Regulations); and (c) The applicant is not eligible for indefinite leave to enter or remain under paragraph EU12 of this Appendix solely because they have completed a continuous qualifying period in the UK of less than five years

Persons eligible for limited leave to enter or remain as a joining family member of a relevant sponsor

EU14A. The applicant meets the eligibility requirements for limited leave to enter or remain as a joining family member of a relevant sponsor where the Secretary of State is satisfied, including by the required evidence of family relationship, that, at the date of application and in an application made after the specified date and by the required date, the condition set out in the following table is met:

Condition	Is met where:
	(a) The applicant is: (i) a joining family member of a relevant sponsor; or (ii) a family member who has retained the right of residence by virtue of a

Condition	Is met where:
	relationship with a relevant sponsor; and (b) The applicant is: (i) not eligible for indefinite leave to enter under paragraph EU11A of this Appendix, where the application is made outside the UK; or (ii) not eligible for indefinite leave to remain under paragraph EU11A of this Appendix, where the application is made within the UK, solely because they have completed a continuous qualifying period of less than five years which began after the specified date; and (c) Where the applicant is a joining family member of a relevant sponsor, there has been no supervening event in respect of the relevant sponsor

EU15

EU15. (1) An application made under this Appendix will be refused on grounds of suitability where any of the following apply at the date of decision:

(a) The applicant is subject to a **deportation order** or to a decision to make a deportation order; or

(b) The applicant is subject to an **exclusion order** or **exclusion decision**.

(2) An application made under this Appendix will be refused on grounds of suitability where the Secretary of State deems the applicant's presence in the UK is not conducive to the public good because of conduct committed after the specified date.

(3) An application made under this Appendix will be refused on grounds of suitability where at the date of decision the applicant is subject to an **Islands deportation order**.

(4) An application made under this Appendix may be refused on grounds of suitability where at the date of decision the applicant is subject to an **Islands exclusion decision**.

EU16

EU16. An application made under this Appendix may be refused on grounds of suitability where, at the date of decision, the Secretary of State is satisfied that:

(a) It is proportionate to refuse the application where, in relation to the application and whether or not to the applicant's knowledge, false or misleading information, representations or documents have been submitted (including false or misleading information submitted to any person to obtain a document used in support of the application); and the information, representation or documentation is material to the decision whether or not to grant the applicant indefinite leave to enter or remain or limited leave to enter or remain under this Appendix; or

(b) It is proportionate to refuse the application where the applicant is subject to a removal decision under the EEA Regulations on the grounds of their non-exercise or misuse of rights, and the date of application under this Appendix is before 1 July 2021; or

(c)(i) The applicant:

(aa) Has previously been refused admission to the UK in accordance with regulation 23(1) of the EEA Regulations; or

(bb) Has previously been refused admission to the UK in accordance with regulation 12(1)(a) of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020; or

(cc) Had indefinite leave to enter or remain or limited leave to enter or remain granted under this Appendix (or limited leave to enter granted by virtue of having arrived in the UK with an entry clearance that was granted under Appendix EU (Family Permit) to these Rules) which was cancelled under paragraph 321B(b)(i) or 321B(b)(ii) of these Rules, under paragraph A3.1. or A3.2.(a) of Annex 3 to this Appendix or under paragraph A3.3. or A3.4.(a) of Annex 3 to Appendix EU (Family Permit); and

(ii) The refusal of the application is justified either:

> (aa) In respect of the applicant's conduct committed before the specified date, on grounds of public policy, public security or public health in accordance with regulation 27 of the EEA Regulations, irrespective of whether the EEA Regulations apply to that person (except that in regulation 27 for "with a right of permanent residence under regulation 15" and "has a right of permanent residence under regulation 15" read "who meets the requirements of paragraph EU11, EU11A or EU12 of Appendix EU to the Immigration Rules"; and for "an EEA decision" read "a decision under paragraph EU16(c) of Appendix EU to the Immigration Rules"), and it is proportionate to refuse the application; or
>
> (bb) In respect of conduct committed after the specified date, where the Secretary of State deems the applicant's presence in the UK is not conducive to the public good; or

(d) It is proportionate to refuse the application where the applicant is a **relevant excluded person** because of their conduct committed before the specified date and the Secretary of State is satisfied that the decision to refuse the application is justified on the grounds of public policy, public security or public health in accordance with regulation 27 of the EEA Regulations, irrespective of whether the EEA Regulations apply to that person (except that in regulation 27 for "with a right of permanent residence under regulation 15" and "has a right of permanent residence under regulation 15" read "who meets the requirements of paragraph EU11, EU11A or EU12 of Appendix EU to the Immigration Rules"; and for "an EEA decision" read "a decision under paragraph EU16(d) of Appendix EU to the Immigration Rules"); or

(e) The applicant is a relevant excluded person because of conduct committed after the specified date.

Annex 2

Index

1. Comparison across the different language versions of Article 16 of the phrase "right to acquire the right to reside permanently"

A. EUROPEAN COMMISSION'S RESPONSE

LINGUISTIC VERSIONS OF ART 16 WITHDRAWAL AGREEMENT

Article 16 WA, entitled "Accumulation of periods", lays down a specific provision concerning the condition of five years of continuous legal residence for accessing the right of permanent residence, which is provided for in Article 15 WA.

ORIGINAL:

"Union citizens and United Kingdom nationals, and their respective family members, who before the end of the transition period resided legally in the host State in accordance with the conditions of Article 7 of Directive 2004/38/EC for a period of less than 5 years, ***shall have the right to acquire the right to reside permanently*** under the conditions set out in Article 15 of this Agreement once they have completed the necessary periods of residence. Periods of legal residence or work in accordance with Union law before and after the end of the transition period shall be included in the calculation of the qualifying period necessary for acquisition of the right of permanent residence."

	Literal translation into EN
BULGARIAN Граждани на Съюза и граждани на Обединеното кралство, както и членовете на техните семейства, които преди края	*"…have the right to acquire the right of permanent residence…"*

на преходния период са пребивавали законно в приемащата държава в съответствие с условията на член 7 от Директива 2004/38/ЕО за срок от по-малко от 5 години, *имат право да придобият правото на постоянно пребиваване* съгласно условията, определени в член 15 от настоящото споразумение, след като бъдат завършени необходимите периоди на пребиваване. При изчисляването на периода, необходим за придобиването на право на постоянно пребиваване, се вземат предвид периодите на законно пребиваване или работа в съответствие с правото на Съюза преди и след края на преходния период.	
CZECH Občané Unie a státní příslušníci Spojeného království a jejich rodinní příslušníci, kteří před koncem přechodného období oprávněně pobývali v hostitelském státě v souladu s podmínkami stanovenými v článku 7 směrnice 2004/38/ES po dobu kratší 5 let, *mají právo získat právo trvalého pobytu* za podmínek stanovených v článku 15 této dohody, jakmile dosáhli požadovaných dob pobytu. Doby oprávněného pobytu nebo doby práce v souladu s právem Unie před koncem přechodného období a po jeho skončení se zahrnou do výpočtu rozhodné doby pro získání práva trvalého pobytu.	*"…have the right to acquire the right of permanent residence…"*
DANISH Unionsborgere og statsborgere i Det Forenede Kongerige og deres respektive familiemedlemmer, som inden overgangsperiodens udløb havde lovligt ophold i værtslandet i overensstemmelse med betingelserne i artikel 7 i direktiv 2004/38/EF i en periode på mindre end fem år, *har ret til at opnå ret til tidsubegrænset ophold* efter betingelserne i denne aftales artikel 15, når de har afsluttet de nødvendige opholdsperioder. Perioder med lovligt ophold eller arbejde i overensstemmelse med EU-retten før og efter overgangsperiodens udløb indgår i beregningen af den optjeningsperiode, der er nødvendig for at opnå ret til tidsubegrænset ophold.	*"… the right to acquire the right to reside permanently"*

GERMAN 'Unionsbürger und britische Staatsangehörige sowie ihre jeweiligen Familienangehörigen, die sich vor Ende des Übergangszeitraums im Einklang mit den Voraussetzungen des Artikels 7 der Richtlinie 2004/38/EG weniger als fünf Jahre lang rechtmäßig im Aufnahmestaat aufgehalten haben, *haben das Recht, das Recht auf Daueraufenthalt unter den Voraussetzungen des Artikels 15 dieses Abkommens zu erwerben*, sobald sie die erforderlichen Aufenthaltszeiten vollendet haben. Bei der Berechnung des für den Erwerb des Rechts auf Daueraufenthalt erforderlichen Zeitraums werden die Zeiten des rechtmäßigen Aufenthalts oder der Erwerbstätigkeit im Einklang mit dem Unionsrecht vor und nach Ende des Übergangszeitraums berücksichtigt.'	*"… shall have the right to acquire the right of permanent residence under the conditions of Article 15 of this Agreement …"*
GREEK Οι πολίτες της Ένωσης και οι υπήκοοι του Ηνωμένου Βασιλείου, καθώς και τα μέλη των οικογενειών τους, που πριν από τη λήξη της μεταβατικής περιόδου διέμεναν νομίμως στο κράτος υποδοχής σύμφωνα με τις προϋποθέσεις του άρθρου 7 της οδηγίας 2004/38/ΕΚ για χρονικό διάστημα μικρότερο των 5 ετών, *δικαιούνται να αποκτήσουν δικαίωμα μόνιμης διαμονής υπό τις προϋποθέσεις που καθορίζονται στο άρθρο 15 της παρούσας συμφωνίας* αφού συμπληρώσουν τα απαραίτητα χρονικά διαστήματα διαμονής. Τα χρονικά διαστήματα νόμιμης διαμονής ή εργασίας σύμφωνα με το δίκαιο της Ένωσης πριν και μετά τη λήξη της μεταβατικής περιόδου περιλαμβάνονται στον υπολογισμό του απαιτούμενου χρονικού διαστήματος για την απόκτηση του δικαιώματος μόνιμης διαμονής.	*"…shall be entitled to acquire the right of permanent residence …"*
SPANISH Los ciudadanos de la Unión y los nacionales del Reino Unido, así como los miembros de sus familias respectivas, que hayan residido legalmente en el Estado de acogida antes del final del período transitorio con arreglo a las condiciones del artículo 7 de la	*"… shall have the right to acquire the right to reside permanently in the host State…"* (Addition of the words "in the host State").

Directiva 2004/38/CE por un período inferior a cinco años *tendrán derecho a adquirir el derecho a residir permanentemente en el Estado de acogida* en las condiciones establecidas en el artículo 15 del presente Acuerdo una vez hayan completado los períodos de residencia exigidos. Se tendrán en consideración para el cálculo del período mínimo necesario para la adquisición del derecho de residencia permanente los períodos de residencia o de trabajo legales con arreglo al Derecho de la Unión antes y después del final del período transitorio.	
ESTONIAN Liidu kodanikel, Ühendkuningriigi kodanikel ja nende pereliikmetel, kes on enne üleminekuperioodi lõppu elanud direktiivi 2004/38/EÜ artiklis 7 sätestatud tingimustel vastuvõtvas riigis seaduslikult vähem kui viis aastat, *on õigus omandada* käesoleva lepingu artiklis 15 sätestatud tingimustel *alaline elamisõigus* selleks vajaliku elamisperioodi täitudes. Alalise elamisõiguse omandamiseks vajaliku elamisperioodi arvestamisel võetaks arvesse liidu õiguse kohase seadusliku elamise või töötamise ajavahemikke enne ja pärast üleminekuperioodi lõppu.	*"… shall have the right to acquire, [once they have completed the necessary periods of residence, under the conditions set out in Article 15 of this Agreement], the right to reside permanently …"*

B.

FINNISH Unionin kansalaisilla ja Yhdistyneen kuningaskunnan kansalaisilla sekä heidän perheenjäsenillään, jotka ovat ennen siirtymäjakson päättymistä oleskelleet vastaanottavassa valtiossa laillisesti ja direktiivin 2004/38/EY 7 Artiklassa vahvistettujen edellytysten mukaisesti vähemmän kuin viisi vuotta, *on oikeus pysyvään oleskeluoikeuteen* tämän sopimuksen 15 Artiklan ehtojen mukaisesti sen jälkeen kun heidän oleskelunsa on kestänyt vaaditun ajan. Ajanjaksot, joiden kuluessa henkilö on unionin oikeuden nojalla oleskellut tai työskennellyt vastaanottavassa valtiossa laillisesti ennen siirtymäkauden päättymistä ja sen jälkeen, on laskettava osaksi aikaa, joka oikeuttaa pysyvän oleskeluoikeuden saamiseen.	*"…shall have the right to permanent residence…"*

FRENCH Les citoyens de l'Union et les ressortissants du Royaume-Uni, ainsi que les membres de leur famille respective, qui, avant la fin de la période de transition, ont séjourné légalement dans l'État d'accueil conformément aux conditions prévues à l'Article 7 de la directive 2004/38/CE pour une durée inférieure à cinq ans, *ont le droit d'acquérir le droit de séjourner de manière permanente* dans les conditions énoncées à l'Article 15 du présent accord une fois qu'ils ont accompli les périodes de séjour nécessaires. Les périodes de séjour légal ou d'activité conformément au droit de l'Union avant et après la fin de la période de transition sont prises en compte dans le calcul de la période nécessaire à l'acquisition du droit de séjour permanent.	*"…shall have the right to acquire the right to reside permanently…"*

GAELIC *Beidh sé de cheart* ag saoránaigh den Aontas agus ag náisiúnaigh den Ríocht Aontaithe, agus ag a mbaill teaghlaigh féin, a raibh cónaí orthu go dlíthiúil sa Stát óstach roimh dheireadh na hidirthréimhse i gcomhréir le coinníollacha Airteagal 7 de Threoir 2004/38/CE ar feadh tréimhse níos giorra ná cúig bliana, *cónaí go buan* faoi na coinníollacha a leagtar amach in Airteagal 15 den Chomhaontú seo nuair a bheidh na tréimhsí cónaithe riachtanacha tugtha chun críche acu. Áireofar tréimhsí cónaithe dhlíthiúil nó tréimhsí oibre i gcomhréir le dlí an Aontais roimh agus tar éis dheireadh na hidirthréimhse i ríomh na tréimhse cáilithí is gá chun an ceart chun buanchónaí a fháil.	*"…shall have the right to reside permanently …"*
CROATIAN Građani Unije i državljani Ujedinjene Kraljevine te članovi njihovih obitelji, koji su prije isteka prijelaznog razdoblja zakonito boravili u državi domaćinu u skladu s uvjetima iz članka 7. Direktive 2004/38/EZ u razdoblju kraćem od pet godina, *mogu steći pravo na stalni boravak* pod uvjetima utvrđenima u članku 15. ovog Sporazuma nakon isteka potrebnog razdoblja boravka. Razdoblja zakonitog boravka ili rada u skladu s pravom Unije prije i nakon isteka prijelaznog razdoblja uključuju se u izračun razdoblja potrebnog za stjecanje prava na stalni boravak.	*"… can acquire the right to permanent residence …"*

HUNGARIAN Azok az uniós polgárok és egyesült királysági állampolgárok, valamint családtagjaik, akik az átmeneti időszak vége előtt 5 évnél rövidebb ideig tartózkodtak jogszerűen a fogadó államban a 2004/38/EK irányelv 7. Cikkében meghatározott feltételeknek megfelelően, *jogosultak arra, hogy* az e megállapodás 15. Cikkében foglalt feltételek szerint *huzamos tartózkodási jogot szerezzenek* az ehhez szükséges tartózkodási időszakok teljesítését követően. A huzamos tartózkodási jog megszerzéséhez szükséges jogosultsági időszak kiszámításakor figyelembe kell venni azokat az időszakokat, amikor az érintett személy az átmeneti időszak vége előtt és után az uniós jognak megfelelően jogszerűen tartózkodott vagy dolgozott a fogadó államban.	*"…have the right to … acquire the right to permanent residence…"*
ITALIAN I cittadini dell'Unione e i cittadini del Regno Unito, nonché i rispettivi familiari, che prima della fine del periodo di transizione abbiano soggiornato legalmente nello Stato ospitante conformemente alle condizioni di cui all'articolo 7 della direttiva 2004/38/CE per un periodo inferiore a cinque anni *hanno il diritto di acquisire il diritto di soggiorno permanente* alle condizioni di cui all'articolo 15 del presente accordo, una volta completati i periodi di soggiorno necessari. I periodi di soggiorno legale o di lavoro in conformità del diritto dell'Unione che precedono o seguono la fine del periodo di transizione sono inclusi nel calcolo del periodo necessario per l'acquisizione del diritto di soggiorno permanente.	Literally: *"…shall have the right to acquire the right of permanent residence…"*

LITHUANIAN Sąjungos piliečiai, Jungtinės Karalystės piliečiai ir atitinkami jų šeimos nariai, iki pereinamojo laikotarpio pabaigos Direktyvos 2004/38/EB 7 straipsnyje išdėstytomis sąlygomis priimančiojoje valstybėje teisėtai išgyvenę trumpesnį kaip 5 metų laikotarpį, *turi teisę, išgyvenę reikalingus laikotarpius, šio Susitarimo 15 straipsnyje išdėstytomis sąlygomis nuolat gyventi priimančiojoje valstybėje.* Apskaičiuojant laikotarpį, reikalingą siekiant įgyti teisę nuolat gyventi šalyje, įskaitomi teisėto gyvenimo ar darbo pagal Sąjungos teisę laikotarpiai iki pereinamojo laikotarpio pabaigos ir po jos.	*"…shall have the right[, once they have completed the necessary periods of residence, under the conditions set out in Article 15 of this Agreement,] to reside permanently in the host state."* (Addition of the words 'in the host state')
LATVIAN Savienības pilsoņiem un Apvienotās Karalistes valstspiederīgajiem, un viņu attiecīgajiem ģimenes locekļiem, kas uzņēmējvalstī saskaņā ar Direktīvas 2004/38/EK 7. panta nosacījumiem līdz pārejas perioda beigām ir likumīgi uzturējušies mazāk nekā 5 gadus*, ir tiesības iegūt pastāvīgas uzturēšanās tiesības* atbilstoši šā līguma 15. panta nosacījumiem, kad viņi ir savākuši nepieciešamos uzturēšanās periodus. Aprēķinā par pastāvīgas uzturēšanās tiesību iegūšanai nepieciešamo periodu ietver periodus līdz pārejas perioda beigām un pēc tam, kuros persona likumīgi uzturējusies vai strādājusi saskaņā ar Savienības tiesībām.	*"… shall have the right to acquire the right to permanent residence …"*
MALTESE Iċ-ċittadini tal-Unjoni u ċ-ċittadini tar-Renju Unit, u l-membri tal-familji rispettivi tagħhom, li qabel tmiem il-perjodu ta' tranżizzjoni kienu jirrisjedu legalment fl-Istat ospitanti f'konformità mal-kundizzjonijiet tal-Artikolu 7 tad-Direttiva 2004/38/KE għal perjodu ta' anqas minn 5 snin, *għandu jkollhom id-dritt li jiksbu d-dritt li jirrisjedu b'mod permanenti* bil-kundizzjonijiet stabbiliti fl-Artikolu 15 ta' dan il-Ftehim ladarba jiskorru l-perjodi neċessarji ta' residenza. Il-perjodi ta' residenza legali jew tax-xogħol f'konformità mad-dritt tal-Unjoni qabel u wara tmiem il-perjodu ta' tranżizzjoni għandhom jiġu inklużi fil-kalkolu tal-perjodu ta' kwalifika neċessarju għall-kisba tad-dritt ta' residenza permanenti.	*"…shall have the right to acquire the right to reside in a permanent way…"*

DUTCH Burgers van de Unie en onderdanen van het Verenigd Koninkrijk en hun respectieve familieleden die voor het eind van de overgangsperiode voor een periode van minder dan 5 jaar legaal in het gastland hebben verbleven overeenkomstig de voorwaarden van Artikel 7 van Richtlijn 2004/38/EG, *kunnen het recht van duurzaam verblijf verwerven onder de voorwaarden als vermeld in Artikel 15 van dit akkoord* wanneer zij eenmaal aan de voorwaarden inzake de verblijfsperioden hebben voldaan. Bij de berekening van de drempelperiode die voor de verwerving van het duurzaam verblijfsrecht nodig is, wordt rekening gehouden met de perioden van legaal verblijf of werk overeenkomstig het recht van de Unie voor en na het eind van de overgangsperiode.	*"…can acquire the right of permanent residence …"*
POLISH Obywatele Unii i obywatele Zjednoczonego Królestwa oraz członkowie ich rodzin, którzy przed zakończeniem okresu przejściowego legalnie zamieszkiwali w państwie przyjmującym zgodnie z warunkami określonymi w art. 7 dyrektywy 2004/38/WE przez okres krótszy niż 5 lat, *mają prawo do nabycia prawa stałego pobytu na warunkach określonych w art. 15 niniejszej Umowy* po osiągnięciu wymaganego okresu pobytu. Okresy legalnego pobytu lub pracy zgodnie z prawem Unii, przypadające na czas przed zakończeniem okresu przejściowego i po nim, wlicza się do wymaganego okresu uprawniającego do nabycia prawa stałego pobytu.	"…*shall have the right to acquire the right of permanent residence* …"

PORTUGUESE Os cidadãos da União e os nacionais do Reino Unido, bem como os membros das suas famílias, que antes do termo do período de transição tenham residido legalmente no território do Estado de acolhimento, em conformidade com as condições do artigo 7.o da Diretiva 2004/38/CE, por um período inferior a cinco anos, *podem adquirir o direito de residência permanente* nas condições estabelecidas no artigo 15.o do presente Acordo, desde que tenham cumprido os períodos necessários de residência. Os períodos de residência legal ou de trabalho em conformidade com o direito da União antes e após o termo do período de transição devem ser incluídos no cálculo do período de elegibilidade necessário para a aquisição do direito de residência permanente.	*"…can acquire the right of permanent residence …"*
ROMANIAN Cetățenii Uniunii, resortisanții Regatului Unit și membrii de familie ai acestora care, înainte de încheierea perioadei de tranziție, și-au avut reședința legală în statul-gazdă în conformitate cu condițiile prevăzute la articolul 7 din Directiva 2004/38/CE pentru o perioadă de mai puțin de cinci ani au *dreptul de a dobândi dreptul de ședere permanentă* în condițiile prevăzute la articolul 15 din prezentul acord, odată ce au acumulat perioadele de ședere necesare. Perioadele de ședere legală sau de muncă derulate în conformitate cu dreptul Uniunii înainte și după încheierea perioadei de tranziție se includ în calculul perioadei de vechime necesare pentru dobândirea dreptului de ședere permanentă.	*"… shall have the right to acquire the right to reside permanently …"*

SLOVAK Občania Únie a štátni príslušníci Spojeného kráľovstva, ako aj ich rodinní príslušníci, ktorí sa pred skončením prechodného obdobia oprávnene zdržiavali v hostiteľskom štáte v súlade s podmienkami stanovenými v článku 7 smernice 2004/38/ES počas obdobia kratšieho ako päť rokov, *majú právo získať právo na trvalý pobyt* na základe podmienok stanovených v článku 15 tejto dohody po dosiahnutí potrebných období pobytu. Obdobia oprávneného pobytu alebo legálnej práce v súlade s právom Únie pred skončením prechodného obdobia alebo po jeho skončení sa započítajú do výpočtu obdobia oprávňujúceho na získanie práva na trvalý pobyt.	*"…have the right to acquire the right of permanent residence…"*
SLOVENIAN Državljani Unije in državljani Združenega kraljestva ter njihovi družinski člani, ki so pred koncem prehodnega obdobja zakonito prebivali v državi gostiteljici v skladu s pogoji iz člena 7 Direktive 2004/38/ES manj kot pet let, imajo *pravico do pridobitve pravice do stalnega prebivanja* pod pogoji iz člena 15 tega sporazuma, potem ko so izpolnili pogoj glede trajanja prebivanja. Obdobja zakonitega prebivanja ali dela v skladu s pravom Unije pred koncem prehodnega obdobja in po njem se upoštevajo v izračunu predpisanega obdobja za pridobitev pravice do stalnega prebivanja.	*"…shall have the right to acquire the right to reside permanently…"*
SWEDISH Unionsmedborgare och medborgare i Förenade kungariket, och deras respektive familjemedlemmar, som före övergångsperiodens utgång uppehållit sig lagligen i värdstaten i enlighet med villkoren i artikel 7 i direktiv 2004/38/EG i mindre än fem år ska ha *rätt att förvärva permanent uppehållsrätt* enligt villkoren i artikel 15 i detta avtal när de fullgjort de nödvändiga uppehållsperioderna. Perioder av lagligt uppehåll eller arbete i enlighet med unionsrätten före och efter övergångsperiodens utgång ska inkluderas i beräkningen av den tid som krävs för att kvalificera sig för permanent uppehållsrätt.	*"…shall have the right to acquire the right of permanent residence…"*

B. SECRETARY OF STATE FOR THE HOME DEPARTMENT'S RESPONSE

Language[2]	Text of Article 16[3] with relevant phrase highlighted[4]	English translation[5] with relevant phrase highlighted	Comments
English	**Accumulation of periods** Union citizens and United Kingdom nationals, and their respective family members, who before the end of the transition period resided legally in the host State in accordance with the conditions of Article 7 of Directive 2004/38/EC for a period of less than 5 years, shall have the right to acquire the right to reside permanently under the conditions set out in Article 15 of this Agreement once they have completed the necessary periods of residence. Periods of legal residence or work in accordance with Union law before and after the end of the transition period shall be included in the calculation of the qualifying period necessary for acquisition of the right of permanent residence.	-	-
Bulgarian	**Натрупване на периоди** Граждани на Съюза и граждани на Обединеното кралство, както и членовете на техните семейства, които преди края на преходния период са пребивавали законно в приемащата държава в съответствие с условията на член 7 от Директива 2004/38/ЕО за срок от по-малко от 5 години, имат право да придобият правото на постоянно пребиваване съгласно условията, определени в член 15 от настоящото споразумение, след като бъдат завършени необходимите периоди на пребиваване. При изчисляването на периода, необходим за придобиването на право на постоянно пребиваване, се вземат предвид периодите на законно пребиваване или работа в съответствие с правото на Съюза преди и след края на преходния период.	**Accumulation of periods** Union citizens and United Kingdom citizens, as well as members of their families who, before the end of the transitional period, have been legally resident in the host Country in accordance with the conditions laid down in Article 7 of Directive 2004/38/EC for a period of less than 5 years shall be entitled to acquire the right of permanent residence under the conditions laid down in Article 15 of this Agreement, necessary periods of residence have been completed. The calculation of the period necessary for the acquisition of a right of	The highlighted text has the same meaning as the English text.

[2] Non-English languages are shown in the order in which they appear on europa.eu.
[3] EUR-Lex - 12019W/TXT(02) - EN - EUR-Lex (europa.eu)
[4] The highlighted text in the English version is referred to in this table as the 'English text'.
[5] Using various online translation functions, in particular the Europa website translate tool, and HMG language expertise.

		permanent residence shall take into account periods of legal residence or work in accordance with Union law before and after the end of the transitional period.	
Spanish	**Acumulación de períodos** Los ciudadanos de la Unión y los nacionales del Reino Unido, así como los miembros de sus familias respectivas, que hayan residido legalmente en el Estado de acogida antes del final del período transitorio con arreglo a las condiciones del artículo 7 de la Directiva 2004/38/CE por un período inferior a cinco años tendrán derecho a adquirir el derecho a residir permanentemente en el Estado de acogida en las condiciones establecidas en el artículo 15 del presente Acuerdo una vez hayan completado los períodos de residencia exigidos. Se tendrán en consideración para el cálculo del período mínimo necesario para la adquisición del derecho de residencia permanente los períodos de residencia o de trabajo legales con arreglo al Derecho de la Unión antes y después del final del período transitorio.	**Accumulation of periods** Union citizens and United Kingdom nationals, as well as their respective family members, who have resided legally in the host State before the end of the transition period under the conditions of Article 7 of Directive 2004/38/EC for a period of less than five years shall have the right to acquire the right to reside permanently in the host State under the conditions laid down in Article 15 of this Agreement once they have completed the required periods of residence. For the calculation of the minimum period necessary for the acquisition of the right of permanent residence, periods of legal residence or work under Union law before and after the end of the transitional period shall be taken into account.	The highlighted text has the same meaning as the English text.
Czech	**Sčítání dob pobytu** Občané Unie a státní příslušníci Spojeného království a jejich rodinní příslušníci, kteří před koncem přechodného období oprávněně pobývali v hostitelském státě v souladu s podmínkami stanovenými v článku 7 směrnice 2004/38/ES po dobu kratší 5 let, mají právo získat právo trvalého pobytu za podmínek stanovených v článku 15 této dohody, jakmile dosáhli požadovaných dob pobytu. Doby oprávněného pobytu nebo doby práce v souladu s právem Unie před koncem přechodného období a po jeho skončení se zahrnou do výpočtu rozhodné doby pro získání práva trvalého pobytu.	**Aggregation of periods of stay** Union citizens and United Kingdom nationals and their family members who have resided legally in the host Member State in accordance with the conditions set out in Article 7 of Directive 2004/38/EC for less than 5 years before the end of the transition period have the right to acquire the right of permanent residence under the conditions set out in	The highlighted text has the same meaning as the English text.

		Article 15 of this Agreement, once they have completed the required periods of residence. Periods of legal stay or periods of work in accordance with Union law before and after the end of the transition period shall be included in the calculation of the qualifying period for acquiring the right of permanent residence.	
Danish	**Akkumulering af perioder** Unionsborgere og statsborgere i Det Forenede Kongerige og deres respektive familiemedlemmer, som inden overgangsperiodens udløb havde lovligt ophold i værtslandet i overensstemmelse med betingelserne i artikel 7 i direktiv 2004/38/EF i en periode på mindre end fem år, har ret til at opnå ret til tidsubegrænset ophold efter betingelserne i denne aftales artikel 15, når de har afsluttet de nødvendige opholdsperioder. Perioder med lovligt ophold eller arbejde i overensstemmelse med EU-retten før og efter overgangsperiodens udløb indgår i beregningen af den optjeningsperiode, der er nødvendig for at opnå ret til tidsubegrænset ophold.	**Accumulation of periods** Union citizens and nationals of the United Kingdom and their respective family members who, before the end of the transition period, were legally resident in the host Member State in accordance with the conditions laid down in Article 7 of Directive 2004/38/EC for a period of less than five years shall have the right to have the right of permanent residence under the conditions laid down in Article 15 of this Agreement once they have completed the necessary periods of residence. Periods of legal residence or work in accordance with Union law before and after the end of the transitional period shall be taken into account in the calculation of the vesting period necessary to obtain the right of permanent residence.	The highlighted text has the same meaning as the English text.
German	**Kumulierung von Zeiten** Unionsbürger und britische Staatsangehörige sowie ihre jeweiligen Familienangehörigen, die sich vor Ende des Übergangszeitraums im Einklang mit den Voraussetzungen des Artikels 7 der Richtlinie 2004/38/EG weniger als fünf	**Accumulation of periods** Union citizens and United Kingdom nationals, as well as their respective family members, who have resided legally in the host State for less than	The highlighted text has the same meaning as the English text.

	Jahre lang rechtmäßig im Aufnahmestaat aufgehalten haben, haben das Recht, das Recht auf Daueraufenthalt unter den Voraussetzungen des Artikels 15 dieses Abkommens zu erwerben, sobald sie die erforderlichen Aufenthaltszeiten vollendet haben. Bei der Berechnung des für den Erwerb des Rechts auf Daueraufenthalt erforderlichen Zeitraums werden die Zeiten des rechtmäßigen Aufenthalts oder der Erwerbstätigkeit im Einklang mit dem Unionsrecht vor und nach Ende des Übergangszeitraums berücksichtigt.	five years before the end of the transition period in accordance with the conditions laid down in Article 7 of Directive 2004/38/EC shall have the right to acquire the right of permanent residence under the conditions laid down in Article 15 of this Agreement as soon as they have completed the necessary periods of residence. When calculating the period necessary to acquire the right of permanent residence, periods of legal residence or activity shall be taken into account in accordance with Union law before and after the end of the transitional period.	
Estonian	**Ajavahemike liitmine** Liidu kodanikel, Ühendkuningriigi kodanikel ja nende pereliikmetel, kes on enne üleminekuperioodi lõppu elanud direktiivi 2004/38/EÜ artiklis 7 sätestatud tingimustel vastuvõtvas riigis seaduslikult vähem kui viis aastat, on õigus omandada käesoleva lepingu artiklis 15 sätestatud tingimustel alaline elamisõigus selleks vajaliku elamisperioodi täitudes. Alalise elamisõiguse omandamiseks vajaliku elamisperioodi arvestamisel võetaks arvesse liidu õiguse kohase seadusliku elamise või töötamise ajavahemikke enne ja pärast üleminekuperioodi lõppu.	**Aggregation of time intervals** Union citizens, United Kingdom nationals and their family members who, before the end of the transition period, have legally resided in the host State for less than five years under the conditions laid down in Article 7 of Directive 2004/38/EC shall be entitled, under the conditions laid down in Article 15 of this Agreement, to acquire the right of permanent residence upon completion of the period of residence necessary for that purpose. For the purpose of calculating the period of residence necessary for the acquisition of the right of permanent residence, the periods of legal residence or employment under Union law before and after the end of the transition period would be taken into account.	The highlighted text has the same meaning as the English text.

Greek	**Σώρευση περιόδω** Οι πολίτες της Ένωσης και οι υπήκοοι του Ηνωμένου Βασιλείου, καθώς και τα μέλη των οικογενειών τους, που πριν από τη λήξη της μεταβατικής περιόδου διέμεναν νομίμως στο κράτος υποδοχής σύμφωνα με τις προϋποθέσεις του άρθρου 7 της οδηγίας 2004/38/ΕΚ για χρονικό διάστημα μικρότερο των 5 ετών, δικαιούνται να αποκτήσουν δικαίωμα μόνιμης διαμονής υπό τις προϋποθέσεις που καθορίζονται στο άρθρο 15 της παρούσας συμφωνίας αφού συμπληρώσουν τα απαραίτητα χρονικά διαστήματα διαμονής. Τα χρονικά διαστήματα νόμιμης διαμονής ή εργασίας σύμφωνα με το δίκαιο της Ένωσης πριν και μετά τη λήξη της μεταβατικής περιόδου περιλαμβάνονται στον υπολογισμό του απαιτούμενου χρονικού διαστήματος για την απόκτηση του δικαιώματος μόνιμης διαμονής.	**Cumulation of periods** Union citizens and United Kingdom nationals, as well as their family members, who before the end of the transition period were legally residing in the host State in accordance with the conditions set out in Article 7 of Directive 2004/38/EC for a period of less than 5 years, shall have the right to acquire the right of permanent residence under the conditions set out in Article 15 of this Agreement after completing the necessary periods of residence. Periods of legal residence or work in accordance with Union law before and after the end of the transition period shall be included in the calculation of the period of time required to acquire the right of permanent residence.	The highlighted text has the same meaning as the English text.
French	**Cumul de périodes** Les citoyens de l'Union et les ressortissants du Royaume-Uni, ainsi que les membres de leur famille respective, qui, avant la fin de la période de transition, ont séjourné légalement dans l'État d'accueil conformément aux conditions prévues à l'Article 7 de la directive 2004/38/CE pour une durée inférieure à cinq ans, ont le droit d'acquérir le droit de séjourner de manière permanente dans les conditions énoncées à l'Article 15 du présent accord une fois qu'ils ont accompli les périodes de séjour nécessaires. Les périodes de séjour légal ou d'activité conformément au droit de l'Union avant et après la fin de la période de transition sont prises en compte dans le calcul de la période nécessaire à l'acquisition du droit de séjour permanent.	**Cumulation of periods** Union citizens and United Kingdom nationals, as well as their respective family members, who, before the end of the transition period, have resided legally in the host State in accordance with the conditions laid down in Article 7 of Directive 2004/38/EC for a period of less than five years, shall have the right to acquire the right to reside permanently under the conditions set out in Article 15 of this Agreement once they have completed the necessary periods of stay. Periods of legal residence or activity in accordance with Union law before and after the end of the transition period shall be taken into account in the	The highlighted text has the same meaning as the English text.

		calculation of the period necessary for the acquisition of the right of permanent residence.	
Irish	**Tréimhsí carntha** Beidh sé de cheart ag saoránaigh den Aontas agus ag náisiúnaigh den Ríocht Aontaithe, agus ag a mbaill teaghlaigh féin, a raibh cónaí orthu go dlíthiúil sa Stát óstach roimh dheireadh na hidirthréimhse i gcomhréir le coinníollacha Airteagal 7 de Threoir 2004/38/CE ar feadh tréimhse níos giorra ná cúig bliana, cónaí go buan faoi na coinníollacha a leagtar amach in Airteagal 15 den Chomhaontú seo nuair a bheidh na tréimhsí cónaithe riachtanacha tugtha chun críche acu. Áireofar tréimhsí cónaithe dhlíthiúil nó tréimhsí oibre i gcomhréir le dlí an Aontais roimh agus tar éis dheireadh na hidirthréimhse i ríomh na tréimhse cáilithí is gá chun an ceart chun buanchónaí a fháil.	**Accumulated periods** Citizens of the Union and nationals of the United Kingdom, and their own family members, who were legally resident in the host State before the end of the transitional period in accordance with the conditions of Article 7 of Directive 2004/38/EC for less than five years, shall have the right to reside permanently under the conditions set out in Article 15 of this Agreement once the necessary periods of residence have been completed. Legal or working periods in accordance with Union law before and after the end of the transitional period shall be included in the calculation of the qualifying period necessary for obtaining the right to permanent residence.	The highlighted text differs from the English text. The same formulation is used in relation to the acquisition of the right of permanent residence in Articles 15 and 16 of the Irish text.
Croatian	**Zbrajanje razdoblja** Građani Unije i državljani Ujedinjene Kraljevine te članovi njihovih obitelji, koji su prije isteka prijelaznog razdoblja zakonito boravili u državi domaćinu u skladu s uvjetima iz članka 7. Direktive 2004/38/EZ u razdoblju kraćem od pet godina, mogu steći pravo na stalni boravak pod uvjetima utvrđenima u članku 15. ovog Sporazuma nakon isteka potrebnog razdoblja boravka. Razdoblja zakonitog boravka ili rada u skladu s pravom Unije prije i nakon isteka prijelaznog razdoblja uključuju se u izračun razdoblja potrebnog za stjecanje prava na stalni boravak.	**Cumulation of periods** Union citizens and United Kingdom nationals and their family members who, before the end of the transition period, have legally resided in the host Country in accordance with the conditions laid down in Article 7of Directive 2004/38/EC, for a period of less than five years, they may acquire the right of permanent residence under the conditions laid down in Article 15 of this Agreement after the expiry of the required period of residence. Periods of legal residence or work in accordance	The highlighted text differs from the English text. However, the effect is similar to the English text when read with the Croatian text of Article 15. Article 15 uses the formulation 'imaju pravo na stalni boravak' ('shall have the right'). Article 16 uses the formulation 'mogu steći pravo na stalni boravak' ('may have the right').

		with Union law before and after the end of the transitional period shall be included in the calculation of the period necessary to acquire the right of permanent residence.	
Italian	**Cumulo dei periodi** I cittadini dell'Unione e i cittadini del Regno Unito, nonché i rispettivi familiari, che prima della fine del periodo di transizione abbiano soggiornato legalmente nello Stato ospitante conformemente alle condizioni di cui all'articolo 7 della direttiva 2004/38/CE per un periodo inferiore a cinque anni hanno il diritto di acquisire il diritto di soggiorno permanente alle condizioni di cui all'articolo 15 del presente accordo, una volta completati i periodi di soggiorno necessari. I periodi di soggiorno legale o di lavoro in conformità del diritto dell'Unione che precedono o seguono la fine del periodo di transizione sono inclusi nel calcolo del periodo necessario per l'acquisizione del diritto di soggiorno permanente.	**Cumulation of periods** Union citizens and United Kingdom nationals, as well as their family members, who before the end of the transition period have resided legally in the host State in accordance with the conditions laid down in Article 7 of Directive 2004/38/EC for a period of less than five years shall have the right to acquire the right of permanent residence under the conditions laid down in Article 15 of this Agreement, once the necessary periods of stay have been completed. Periods of legal residence or work in accordance with Union law preceding or following the end of the transition period shall be included in the calculation of the period necessary for the acquisition of the right of permanent residence.	The highlighted text has the same meaning as the English text.
Latvian	**Periodu summēšana** Savienības pilsoņiem un Apvienotās Karalistes valstspiederīgajiem, un viņu attiecīgajiem ģimenes locekļiem, kas uzņēmējvalstī saskaņā ar Direktīvas 2004/38/EK 7. panta nosacījumiem līdz pārejas perioda beigām ir likumīgi uzturējušies mazāk nekā 5 gadus, ir tiesības iegūt pastāvīgas uzturēšanās tiesības atbilstoši šā līguma 15. panta nosacījumiem, kad viņi ir savākuši nepieciešamos uzturēšanās periodus. Aprēķinā par pastāvīgas uzturēšanās tiesību iegūšanai nepieciešamo periodu ietver periodus līdz pārejas perioda beigām un pēc tam, kuros persona likumīgi uzturējusies vai strādājusi saskaņā ar Savienības tiesībām.	**Accumulation of periods** Union citizens and United Kingdom nationals and their respective family members who have lawfully resided in the host State for less than 5 years before the end of the transition period under the conditions laid down in Article 7 of Directive 2004/38/EC shall have the right to acquire the right of permanent residence under the conditions of Article 15 of this Agreement once they have collected the	The highlighted text has the same meaning as the English text.

		necessary periods of residence. The calculation of the period required for the acquisition of the right of permanent residence shall include the periods up to and after the end of the transition period during which the person has legally resided or worked in accordance with Union law.	
Lithuanian	**Laikotarpių sumavimas** Sąjungos piliečiai, Jungtinės Karalystės piliečiai ir atitinkami jų šeimos nariai, iki pereinamojo laikotarpio pabaigos Direktyvos 2004/38/EB 7 straipsnyje išdėstytomis sąlygomis priimančiojoje valstybėje teisėtai išgyvenę trumpesnį kaip 5 metų laikotarpį, turi teisę, išgyvenę reikalingus laikotarpius, šio Susitarimo 15 straipsnyje išdėstytomis sąlygomis nuolat gyventi priimančiojoje valstybėje. Apskaičiuojant laikotarpį, reikalingą siekiant įgyti teisę nuolat gyventi šalyje, įskaitomi teisėto gyvenimo ar darbo pagal Sąjungos teisę laikotarpiai iki pereinamojo laikotarpio pabaigos ir po jos.	**Aggregation of periods** Citizens of the Union, nationals of the United Kingdom and their respective family members who, under the conditions laid down in Article 7 of Directive 2004/38/EC, have legally resided in the host Country for a period of less than 5 years before the end of the transitional period shall have the right to permanent residence in the host State under the conditions set out in Article 15 of this Agreement, after having completed the necessaryperiods. For the purpose of calculating the period required to acquire the right of permanent residence, periods of legal residence or employment under Union law before and after the end of the transition period shall be taken into account.	The highlighted text differs from the English text. The same formulation is used in relation to the acquisition of the right of permanent residence in Articles 15 and 16 of the Lithuanian text.
Hungarian	**Időszakok összeszámítása** Azok az uniós polgárok és egyesült királysági állampolgárok, valamint családtagjaik, akik az átmeneti időszak vége előtt 5 évnél rövidebb ideig tartózkodtak jogszerűen a fogadó államban a 2004/38/EK irányelv 7. Cikkében meghatározott feltételeknek megfelelően, jogosultak arra, hogy az e megállapodás 15. Cikkében foglalt feltételek szerint huzamos tartózkodási jogot szerezzenek az ehhez szükséges tartózkodási időszakok teljesítését követően. A huzamos tartózkodási jog megszerzéséhez szükséges jogosultsági	**Accumulation of periods** Union citizens and United Kingdom nationals and their family members who have resided legally in the host State for less than 5 years before the end of the transition period in accordance with Article 7 of Directive 2004/38/EC shall be considered as such citizens and United Kingdom nationals. They shall be entitled, in	The highlighted text has the same meaning as the English text.

	időszak kiszámításakor figyelembe kell venni azokat az időszakokat, amikor az érintett személy az átmeneti időszak vége előtt és után az uniós jognak megfelelően jogszerűen tartózkodott vagy dolgozott a fogadó államban.	accordance with the conditions laid down in Article 15 of this Agreement, to apply the provisions of Article 15 of this Agreement. Under the conditions set out in its article, they are entitled to the right of permanent residence after completing the periods of residence required for this purpose. For the purpose of calculating the period of eligibility for the acquisition of the right of permanent residence, account should be taken of periods during which the person concerned has resided or worked legally in the host State in accordance with Union law before and after the end of the transition period.	
Maltese	**Akkumulazzjoni ta' perjodi** Iċ-ċittadini tal-Unjoni u ċ-ċittadini tar-Renju Unit, u l-membri tal-familji rispettivi tagħhom, li qabel tmiem il-perjodu ta' tranżizzjoni kienu jirrisjedu legalment fl-Istat ospitanti f'konformità mal-kundizzjonijiet tal-Artikolu 7 tad-Direttiva 2004/38/KE għal perjodu ta' anqas minn 5 snin, għandu jkollhom id-dritt li jiksbu d-dritt li jirrisjedu b'mod permanenti bil-kundizzjonijiet stabbiliti fl-Artikolu 15 ta' dan il-Ftehim ladarba jiskorru l-perjodi neċessarji ta' residenza. Il-perjodi ta' residenza legali jew tax-xogħol f'konformità mad-dritt tal-Unjoni qabel u wara tmiem il-perjodu ta' tranżizzjoni għandhom jiġu inklużi fil-kalkolu tal-perjodu ta' kwalifika neċessarju għall-kisba tad-dritt ta' residenza permanenti.	**Accumulation of periods** Union citizens and United Kingdom nationals, and their respective family members, who before the end of the transition period resided lawfully in the host State in accordance with the conditions of Article 7 of Directive 2004/38/EC for a period of less than 5 years, shall have the right to acquire the right to reside permanently under the conditions set out in Article 15 of this Agreement once the necessary periods of residence have elapsed. Periods of legal or occupational residence in accordance with Union law before and after the end of the transition period should be included in the calculation of the qualifying period necessary for obtaining the right of permanent residence.	The highlighted text has the same meaning as the English text.

Dutch	**Accumulatie van perioden** Burgers van de Unie en onderdanen van het Verenigd Koninkrijk en hun respectieve familieleden die voor het eind van de overgangsperiode voor een periode van minder dan 5 jaar legaal in het gastland hebben verbleven overeenkomstig de voorwaarden van Artikel 7 van Richtlijn 2004/38/EG, kunnen het recht van duurzaam verblijf verwerven onder de voorwaarden als vermeld in Artikel 15 van dit akkoord wanneer zij eenmaal aan de voorwaarden inzake de verblijfsperioden hebben voldaan. Bij de berekening van de drempelperiode die voor de verwerving van het duurzaam verblijfsrecht nodig is, wordt rekening gehouden met de perioden van legaal verblijf of werk overeenkomstig het recht van de Unie voor en na het eind van de overgangsperiode.	**Accumulation of periods** Union citizens and United Kingdom nationals and their respective family members who have legally resided in the host Member State for a period of less than 5 years before the end of the transition period in accordance with the conditions laid down in Article 7 of Directive 2004/38/EC may acquire the right of permanent residence under the conditions set out in Article 15 of this Agreement once they have fulfilled the conditions relating to the periods of residence. The calculation of the threshold period necessary for the acquisition of the right of permanent residence shall take into account the periods of legal residence or employment in accordance with Union law before and after the end of the transition period.	The highlighted text differs from the English text. However, the effect is similar to the English text when read with the Dutch text of Article 15. Article 15 uses the formulation 'hebben het recht' ('have the right'). Article 16 uses the formulation 'kunnen het recht...verwerven' ('may acquire the right').
Polish	**Łączenie okresów** Obywatele Unii i obywatele Zjednoczonego Królestwa oraz członkowie ich rodzin, którzy przed zakończeniem okresu przejściowego legalnie zamieszkiwali w państwie przyjmującym zgodnie z warunkami określonymi w art. 7 dyrektywy 2004/38/WE przez okres krótszy niż 5 lat, mają prawo do nabycia prawa stałego pobytu na warunkach określonych w art. 15 niniejszej Umowy po osiągnięciu wymaganego okresu pobytu. Okresy legalnego pobytu lub pracy zgodnie z prawem Unii, przypadające na czas przed zakończeniem okresu przejściowego i po nim, wlicza się do wymaganego okresu uprawniającego do nabycia prawa stałego pobytu.	**Combining periods** Union citizens and United Kingdom nationals and their family members who, before the end of the transition period, have been legally resident in the host State in accordance with the conditions laid down in Article 7 of Directive 2004/38/EC for a period of less than 5 years shall have the right to acquire the right of permanent residence under the conditions laid down in Article 15 of this Agreement upon reaching the required period of residence. Periods of legal residence or work in	The highlighted text has the same meaning as the English text.

		accordance with Union law, falling before and after the end of the transition period, shall be included in the required period for acquiring the right of permanent residence.	
Portuguese	**Acumulação de períodos** Os cidadãos da União e os nacionais do Reino Unido, bem como os membros das suas famílias, que antes do termo do período de transição tenham residido legalmente no território do Estado de acolhimento, em conformidade com as condições do artigo 7.º da Diretiva 2004/38/CE, por um período inferior a cinco anos, podem adquirir o direito de residência permanente nas condições estabelecidas no artigo 15.º do presente Acordo, desde que tenham cumprido os períodos necessários de residência. Os períodos de residência legal ou de trabalho em conformidade com o direito da União antes e após o termo do período de transição devem ser incluídos no cálculo do período de elegibilidade necessário para a aquisição do direito de residência permanente.	**Accumulation of periods** Union citizens and United Kingdom nationals, as well as members of their families, who before the end of the transition period have legally resided in the territory of the host State in accordance with the conditions of Article 7 of the Directive 2004/38/EC, for a period of less than five years, may acquire the right of permanent residence under the conditions laid down in Article 15 of this Agreement, provided that they have fulfilled the necessary periods of residence. Periods of legal residence or work in accordance with Union law before and after the end of the transitional period should be included in the calculation of the eligibility period necessary for the acquisition of the right of permanent residence	The highlighted text differs from the English text. However, the effect is similar to the English text when read with the Portuguese text of Article 15. Article 15 uses the formulation 'têm direito' ('have the right'). Article 16 uses the formulation 'podem adquirir o direito' ('may acquire the right').
Romanian	**Acumularea perioadelor** Cetățenii Uniunii, resortisanții Regatului Unit și membrii de familie ai acestora care, înainte de încheierea perioadei de tranziție, și-au avut reședința legală în statul-gazdă în conformitate cu condițiile prevăzute la articolul 7 din Directiva 2004/38/CE pentru o perioadă de mai puțin de cinci ani au dreptul de a dobândi dreptul de ședere permanentă în condițiile prevăzute la articolul 15 din prezentul acord, odată ce au acumulat perioadele de ședere necesare. Perioadele de ședere legală sau de muncă derulate în conformitate cu	**Accumulation of periods** Union citizens, United Kingdom nationals and members of their families who, before the end of the transition period, had their legal residence in the host State in accordance with the conditions laid down in Article 7 of Directive 2004/38/EC for a period of less than five years have the right to acquire the right of permanent	The highlighted text has the same meaning as the English text.

	dreptul Uniunii înainte și după încheierea perioadei de tranziție se includ în calculul perioadei de vechime necesare pentru dobândirea dreptului de ședere permanentă.	residence under the conditions laid down in Article 15 of this Agreement, once they have accumulated the necessary periods of stay. Periods of legal residence or work completed in accordance with Union law before and after the end of the transition period shall be included in the calculation of the period of seniority required to acquire the right of permanent residence	
Slovak	**Kumulácia období** Občania Únie a štátni príslušníci Spojeného kráľovstva, ako aj ich rodinní príslušníci, ktorí sa pred skončením prechodného obdobia oprávnene zdržiavali v hostiteľskom štáte v súlade s podmienkami stanovenými v článku 7 smernice 2004/38/ES počas obdobia kratšieho ako päť rokov, majú právo získať právo na trvalý pobyt na základe podmienok stanovených v článku 15 tejto dohody po dosiahnutí potrebných období pobytu. Obdobia oprávneného pobytu alebo legálnej práce v súlade s právom Únie pred skončením prechodného obdobia alebo po jeho skončení sa započítajú do výpočtu obdobia oprávňujúceho na získanie práva na trvalý pobyt.	**Cumulation of periods** Union citizens and United Kingdom nationals, as well as their family members who, before the end of the transition period, were legally resident in the host State in accordance with the conditions laid down in Article 7 of Directive 2004/38/EC for a period of less than five years have the right to acquire the right of permanent residence under the conditions laid down in Article 15 of this Agreement upon reaching the necessary periods of residence. Periods of legal residence or work in accordance with Union law before or after the end of the transition period shall be counted in the calculation of the period entitling to acquire the right of permanent residence.	The highlighted text has the same meaning as the English text.
Slovenian	**Seštevanje obdobij** Državljani Unije in državljani Združenega kraljestva ter njihovi družinski člani, ki so pred koncem prehodnega obdobja zakonito prebivali v državi gostiteljici v skladu s pogoji iz člena 7 Direktive 2004/38/ES manj kot pet let, imajo pravico do pridobitve pravice do stalnega prebivanja pod pogoji iz člena 15 tega	**Accumulating periods** Union citizens and United Kingdom nationals and their family members who have been lawfully resident in the host Country before the end of the transitional period in accordance with the	The highlighted text has the same meaning as the English text.

	sporazuma, potem ko so izpolnili pogoj glede trajanja prebivanja. Obdobja zakonitega prebivanja ali dela v skladu s pravom Unije pred koncem prehodnega obdobja in po njem se upoštevajo v izračunu predpisanega obdobja za pridobitev pravice do stalnega prebivanja.	conditions laid down in Article 7 of Directive 2004/38/EC shall have the right to obtain the right of permanent residence under the conditions laid down in Article 15 of this Agreement after having fulfilled the term of residence. Periods of legal residence or work under Union law before and after the end of the transitional period shall be taken into account in the calculation of the prescribed period for acquiring the right of permanent residence.	
Finnish	**Ajanjaksojen yhdistäminen** Unionin kansalaisilla ja Yhdistyneen kuningaskunnan kansalaisilla sekä heidän perheenjäsenillään, jotka ovat ennen siirtymäjakson päättymistä oleskelleet vastaanottavassa valtiossa laillisesti ja direktiivin 2004/38/EY 7 Artiklassa vahvistettujen edellytysten mukaisesti vähemmän kuin viisi vuotta, on oikeus pysyvään oleskeluoikeuteen tämän sopimuksen 15 Artiklan ehtojen mukaisesti sen jälkeen kun heidän oleskelunsa on kestänyt vaaditun ajan. Ajanjaksot, joiden kuluessa henkilö on unionin oikeuden nojalla oleskellut tai työskennellyt vastaanottavassa valtiossa laillisesti ennen siirtymäkauden päättymistä ja sen jälkeen, on laskettava osaksi aikaa, joka oikeuttaa pysyvän oleskeluoikeuden saamiseen.	**Accumulated periods** Union citizens and nationals of the United Kingdom and their family members who, before the end of the transition period, have resided legally in the host State and under the conditions laid down in Article 7 of Directive 2004/38/EC for less than five years shall be entitled to the right of permanent residence in accordance with the conditions laid down in Article 15 of this Treaty after the required period of their stay. The periods during which a person has lawfully resided or worked in the host State under Union law before and after the end of the transitional period shall be counted as part of the period justifying the acquisition of the right of permanent residence.	The highlighted text has the same meaning as the English text.
Swedish	**Ackumulering av perioder** Unionsmedborgare och medborgare i Förenade kungariket, och deras respektive familjemedlemmar, som före övergångsperiodens utgång uppehållit sig lagligen i värdstaten i enlighet med villkoren i artikel 7 i direktiv 2004/38/EG i	**Accumulative periods** Union citizens and United Kingdom nationals, and their respective family members, who before the end of the transition period have legally	The highlighted text has the same meaning as the English text.

	mindre än fem år ska ha rätt att förvärva permanent uppehållsrätt enligt villkoren i artikel 15 i detta avtal när de fullgjort de nödvändiga uppehållsperioderna. Perioder av lagligt uppehåll eller arbete i enlighet med unionsrätten före och efter övergångsperiodens utgång ska inkluderas i beräkningen av den tid som krävs för att kvalificera sig för permanent uppehållsrätt.	resided in the host State in accordance with the conditions laid down in Article 7 of Directive 2004/38/EC for less than five years shall have the right to acquire the right of permanent residence under the conditions laid down in Article 15 of this Agreement upon completion of the necessary residence periods. Periods of legal residence or work in accordance with Union law before and after the end of the transitional period shall be included in the calculation of the time required to qualify for the right of permanent residence.	

Which EU Member States with constitutive schemes require a second application to be made in order for a person to enjoy the right of permanent residence in Article 15

A. EUROPEAN COMMISSION'S RESPONSE

Member States operating a constitutive scheme under the Withdrawal Agreement

- Acquisition of permanent residence

Within the EU, the implementation of Article 18 WA is framed by Commission Implementing Decision (EU) 2022/1945 of 21 February 2020 on documents to be issued by Member States pursuant to Article 18(1) and (4) and Article 26 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (notified under document C(2020) 1114) (Official Journal L 268, 14.10.2022, p. 26–28, annexed hereto[6]).

Articles 1 and 2 of the Commission Implementing Decision permit Member States to choose the duration of validity of the residence documents issued to UK beneficiaries of the WA (respectively as residents in a host State or as frontier workers) within a range between 5 and 10 years.

The rationale for the expiry of documents is found in recital 9 to the Implementing Decision, which explains "(9) In order to ensure that the identity of the holder can be checked without doubts, the documents should have a minimum period of validity of five years and a maximum validity of 10 years so as to enable updating the picture of the holder". In other words, the expiry of the documents provided for in the decision does not in any way imply the expiry of the underlying rights of residence.

The Commission Implementing Decision applies to both EU Member States operating a constitutive scheme and EU Member States operating a declaratory scheme and it permits the issuing of residence documents of up to 10 years' duration, including to WA beneficiaries who only meet the conditions for non-permanent residence at the time of issuance. These features confirm that within the legal framework which applies to all EU Member States there is no expiry of either non-permanent residence rights or residence status under the WA after 5 years.

[6] The Implementing Decision became applicable as indicated in Article 4 thereof, although published at a later date.

Member States operating a constitutive scheme under the Withdrawal Agreement

Article 18(1) Member State[7]	**Where a non-permanent residence document has been issued (Article 13), is a second successful application of a constitutive nature required for the person to keep the Withdrawal Agreement beneficiary status and to enjoy the rights associated with permanent residence (Article 15)?**[8]
Austria	No*
Belgium	No*
Denmark	No*
Finland	No*
France	No*
Hungary	No (permanent residence status is granted to all those making a successful first application, as more generous national provision)
Latvia	No*
Luxembourg	No*
Malta	No*
The Netherlands	No*
Romania	No*
Slovenia	Yes[9]
Sweden	No*

* However, WA beneficiaries may, depending on the Member State in question, have an **administrative** obligation to make an application for the renewal/extension of their WA residence document before the initially issued document expires. Failure to comply with such an administrative obligation does not have any impact on the continued existence of WA beneficiary status and the enjoyment of the connected rights.

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7 Identification of a Member State as declaratory or constitutive is shown at: Information about national residence schemes for each EU country | European Commission (europa.eu)

8 The information provided as regards EU Member State legislation represents the Commission's knowledge based on verification with Member States to the extent possible in the time available. It is without prejudice to the position which the Commission may take as regards compliance of Member State legislation with EU rules, including the WA.

9 Further verification of the precise nature of the Slovenian constitutive scheme is being sought from the Slovenian authorities.

B. SECRETARY OF STATE FOR THE HOME DEPARTMENT'S RESPONSE

Article 18(1) Member State[10]	Where a non-permanent residence document has been issued (Article 13), is a second successful application required for the person to enjoy the rights associated with permanent residence (Article 15)?
Austria	Yes
Belgium	Yes
Denmark	Yes
Finland	Yes: https://migri.fi/en/frequently-asked-questions
France	Yes
Hungary	No (permanent residence status is granted to all those making a successful first application, as more generous national provision)
Latvia	Yes
Luxembourg	Not known
Malta	No
The Netherlands	Yes: Permanent residency Brexit | IND
Romania	Yes
Slovenia	Yes
Sweden	Yes

Member States operating a constitutive scheme under the Withdrawal Agreement (17.11.22)

[10] Information about national residence schemes for each EU country | European Commission (europa.eu)