

IN THE COURT OF APPEAL
(CIVIL DIVISION)

Appeal No: CA-2024-001773

On appeal from the High Court of Justice (King's Bench Division)
[2024] EWHC 1754 (KB)

B E T W E E N:-

GWLADYS FERTRÉ

Appellant

-and-

VALE OF WHITE HORSE DISTRICT COUNCIL

Respondent

(1) THE3MILLION LIMITED

**(2) SECRETARY OF STATE FOR HOUSING, COMMUNITIES
AND LOCAL GOVERNMENT**

**(3) INDEPENDENT MONITORING AUTHORITY
FOR THE CITIZENS' RIGHTS AGREEMENTS**

(4) SHELTER, THE NATIONAL CAMPAIGN FOR HOMELESS PEOPLE LIMITED

(5) THE AIRE CENTRE

Interveners

WITNESS STATEMENT OF AOIFE O'REILLY

I, Aoife O'Reilly, solicitor at Public Law Project, Design Works, 93-99 Goswell Road, London, EC1V 7EY, make the following statement.

1. I am instructed by the3million ('**T3M**'), the first intervener in this appeal. I am a solicitor qualified in England and Wales. I was admitted to the roll on 16

September 2019 and my roll number is 639691. I have conduct of this case on behalf of T3M.

2. The purpose of this statement is to provide the Court with information, relevant to this appeal, regarding how T3M understands certain member states of the European Union ('EU'), which chose to exercise their right to adopt a constitutive residence scheme under Art.18(1) of the UK-EU Withdrawal Agreement (the 'WA'), have implemented those schemes, for United Kingdom ('UK') nationals living in those member states.
3. This evidence is provided pursuant to paragraph 3 of the order of the Court dated 18 December 2024, in response to the evidence of Ms Fraser filed on behalf of the Second Intervener. T3M will also seek to rely on this evidence in support of its submissions on the correctness of Mr Justice Jay's judgment with respect to the correct interpretation of Arts.18(1), 13(4) and 23 WA and whether it is appropriate for the Court to make a preliminary reference to the CJEU under Art.158 WA. Further detail will be provided in T3M's skeleton argument in due course.
4. This statement consists of:
 - i. An explanation of how T3M obtained the information it is providing to the Court; and
 - ii. An Annex, which summarises the relevant information regarding implementation of the WA constitutive residence schemes vis-à-vis UK citizens in those member states.
5. I have prepared this witness statement myself, with input from T3M employees, T3M's barrister team and colleagues at Public Law Project. In preparing this statement, I have also had discussions via email with lawyers at Allen & Overy Shearman LLP and have relied on information provided by lawyers qualified in the relevant EU member states. Further detail of this is provided below.

6. The source of the information in this statement is my own knowledge and other evidence referenced in the statement. Where information is not within my own personal knowledge, I confirm that it is true to the best of my knowledge and belief and the source of that information is explained in this statement.

A. Introduction

7. T3M is the largest grassroots organisation for EU citizens in the UK, and has a long-standing concern with the issues raised by this appeal. It has since March 2020 been involved in discussions with key stakeholders about the personal scope of the WA and related issues, including the EU Commission, the Independent Monitoring Authority for the Citizens' Rights Agreements and the UK Government.
8. T3M's staff team include EU citizens from different member states. Some members of staff were aware that the WA residence schemes for UK citizens in their country of origin appeared to operate quite differently to the European Union Settlement Scheme ('EUSS') that the UK government had developed, under Art.18(1) WA.
9. During the High Court proceedings, T3M submitted (among other things) that:
 - i. The UK chose a constitutive scheme, under Art.18(1) WA, rather than a declaratory scheme under Art.18(4) WA, enabling its desired level of immigration control;
 - ii. The UK chose a constitutive scheme which granted leave that was not subject to conditions;
 - iii. It might have been possible for the UK to create a constitutive scheme which, for example, provided that in cases where none of the Art.13 rights could be shown any longer to exist, the right of residence could be terminated by the UK; and

- iv. A state operating a constitutive scheme accepts various legal obligations pursuant to the WA, and one of those is the equal treatment right under Art.23 WA.
10. T3M considers that information about the way in which Art.18(1) WA residence schemes have been implemented in other member states is of relevance to the questions of (i) whether the Appellant has been discriminated against under Art.23 WA; (ii) whether any such discrimination is lawful on the basis that it is justified; and (iii) whether it is appropriate for the Court to make a preliminary reference to the CJEU under Art.158 WA.¹
11. T3M note that this information was not before the High Court in the appeal, nor was it aware that any efforts had been made by any parties to understand the way in which Art.18(1) had been implemented in member states that had opted to implement constitutive residence schemes for UK nationals.
12. Given T3M's view that this information may be of relevance to the matters that the Court has to determine in this appeal, I was instructed to take steps to understand whether this information could be obtained for the purpose of this appeal, in the time available, taking into account T3M's limited resources.

B. Methodology

13. With input from T3M and the barrister team, I designed a short survey that aimed to understand how constitutive schemes were being implemented and operated in the EU member states that had exercised their right under Art.18(1) WA to require UK nationals to make an application for a 'new residence status'. A copy of the final survey is exhibited to this statement as **Exhibit/AOR1**. The focus of the survey was to understand:

¹ T3M's written and oral submissions will explain the assistance that it considers this information can provide to the Court in due course.

- i. Whether UK nationals were expected to demonstrate that they had exercised residence rights under the Citizens' Rights Directive 2004/38/EC (the '**CRD**') in order to be eligible for a 'new residence status' under Art.18(1) WA;
- ii. Whether UK nationals needed to continue to exercise rights that were substantially the same as the residence rights under the CRD, to continue to be able to rely on a 'new residence status' under Art.18(1) WA; and
- iii. Whether UK nationals needed to demonstrate that they were exercising rights that were substantially the same as the residence rights under the CRD in order to be eligible for social assistance.

14. The EU member states who had opted to implement constitutive schemes under Art.18(1) are Austria, Belgium, Denmark, Finland France, Latvia, Luxembourg, Hungary, Malta, The Netherlands, Romania, Slovenia and Sweden.² Information about the national residence schemes for each EU country, as set out in a webpage on the EU Commissions' website, is exhibited at **Exhibit/AOR2** and was referred to by the 3million at footnote 5 of its skeleton argument for the High Court proceedings.

15. In light of T3M's limited resources and given the number of EU member states that were potentially relevant for this exercise, Public Law Project approached lawyers in the Pro Bono team at A&O Shearman ('**AOS**') in London, to understand if AOS may be able to assist with this exercise, given that it had offices in a number of relevant EU member states. AOS confirmed that Gauthier van Thuyne, a Partner in AOS's Brussels office, had agreed to accept instructions on a pro bono basis, assisted by a team of lawyers in AOS's London office, who would assist with coordinating the information-gathering exercise. I

² https://commission.europa.eu/strategy-and-policy/relations-united-kingdom/eu-uk-withdrawal-agreement/citizens-rights/information-about-national-residence-schemes-each-eu-country_en. This is the list of states operating a constitutive scheme under the WA that was provided to the High Court by the EU Commission and the SSHD in *R (IMA) v SSHD* [2022] EWHC 3274 (Admin), as recorded at Annex 2 of that judgment. (Annex 2 was not produced with the WLR report).

provided a copy of the survey to AOS and attended a call with certain members of the team who had agreed to assist with this exercise, to ensure there were no outstanding questions before AOS began the information-gathering exercise.

16. I understand from AOS that they took the following steps to identify lawyers qualified in the relevant jurisdictions:

- i. For the relevant EU member states where AOS has offices – France, Hungary, Belgium, Luxembourg and the Netherlands – Partners with responsibility for pro bono matters in those offices were asked to identify lawyers who would be able to answer the survey questions. AOS lawyers who could answer the survey with respect to France, Hungary and Belgium were successfully identified. While lawyers in the AOS office in Amsterdam were not able to assist, Partners recommended another local law firm who agreed to respond to the survey with respect to the Netherlands. AOS were not able to identify any lawyers to answer the survey with respect to Luxembourg.
- ii. For the relevant EU member states where AOS did not have offices – Romania, Sweden, Denmark, Finland, Latvia, Austria, Malta and Slovenia – AOS used its Global Experts and Market Networks group ('**GEM**') to identify law firms to assist with the survey. AOS uses GEM, a network of trusted relationship law firms, where it requires assistance of lawyers in jurisdictions where it does not have its own office.

17. A list of the law firms and lawyers who assisted with this exercise is exhibited as **Exhibit/AOR3**.

18. A team of associate and trainee solicitors in the London office of AOS sent the survey to the lawyers in the twelve relevant EU member state jurisdictions. The lawyers responded with the completed surveys. Associates in the London office

reviewed the survey responses from a common-sense perspective and asked clarification questions of the lawyers where appropriate, to ensure the responses were clear and addressed the questions in the survey.

19. Once the associates in the London office were content with the responses, they sent them to me by email. I reviewed all the survey responses. Where website links were provided, I also reviewed these websites, using the 'Google translate' tool, where webpages were not in English and where this tool was compatible with the website. Where I considered that follow up information was required to understand how particular constitutive schemes worked, I prepared follow up questions. I also asked the lawyers to provide links to any websites that provided information to UK nationals or decision-makers on matters relevant to the 'new residence status' or access to social assistance, where this had not already been provided as part of the survey responses.

20. I provided these follow up questions to the London office lawyers, and I understand that they then asked the lawyers in the relevant jurisdictions to consider these questions. In some instances, lawyers prepared a revised draft of the survey responses or provided further detail in comments or through supplementary emails. The associates in the London office sent me any follow up responses received by email.

21. Based on the information that was provided in the surveys and in response to my follow up questions, and having reviewed the website links that had been provided to me (again, using 'Google translate' tool, where necessary and possible) I prepared summaries of how each EU member state appears to be operating its constitutive scheme, and how access to social assistance is obtained by those with a 'new residence status' under those constitutive schemes. I asked AOS to share these summaries with the lawyers who had completed the surveys, to ask for comments and to ensure they accurately reflected their understanding of how the constitutive scheme operated in their jurisdiction.

22. I began to prepare summaries explaining how each of the 12 EU member states were operating their Art.18(1) constitutive residence scheme, for inclusion as an annex to this statement, under the following headings:

- A. Eligibility of UK citizens for 'new residence status' and information about the 'new residence status'**
- B. Conditions for UK citizens maintaining 'new residence status'**
- C. Eligibility of UK citizen 'new residence status' holders for social assistance**

23. These summaries were based on the survey responses, information available on websites referred to by EU lawyers and any further feedback or information received from the EU lawyers in response to the original summaries or any further questions I had asked AOS to send them.

24. While preparing these summaries for inclusion as part of this statement, I sought to clarify particular points or ask for further information, where I considered that the Court would be assisted by being presented with such clarifications or further information. For example, upon reviewing the summaries, it appeared to me and the barrister team that some local counsel had described benefits that may be more appropriately described (for the purposes of EU law) as a social security benefit, rather than a social assistance benefit. Given that this appeal is concerned with the access of PSS holders to homeless assistance i.e. a social assistance benefit, it may assist the Court if only information about social assistance benefits is included in the summaries. I did this by sending further follow up questions to AOS, who then shared these with the relevant EU lawyers. However, in the time available, it was not possible to obtain the requested clarifications or further information from all EU lawyers.

25. The summaries annexed to this statement therefore reflect the information provided to me by AOS at the time of filing. Should I receive further clarification

or information prior to the hearing that materially impacts the summaries, I will provide updated summaries.

Statement of Truth

I believe that the facts stated in this statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:



Aoife O'Reilly

Dated: 12 February 2025

Annex – summaries of constitutive schemes in 12 EU member states

1. AUSTRIA

A. Eligibility of UK citizens for ‘new residence status’ and information about the ‘new residence status’

1. In general, a UK national who was resident in Austria before 31 December 2020 is eligible for a “residence permit Article 50 EUV”, if they applied for this status before 31 December 2021.³ UK nationals were required to prove compliance with Arts.7 or 16 CRD.⁴
2. The “residence permit Article 50 EUV” is issued with a validity period of five years. If the UK citizen has already acquired the right of permanent residence (Art.15 WA), the residence permit is issued with a validity period of ten years.⁵

B. Conditions for UK citizens maintaining ‘new residence status’

3. UK nationals should continue to comply with CRD conditions while residing in Austria. It is open to the Austrian authorities to terminate residence (referred to as *Aufenthaltsbeendigung*) if the UK national poses a threat to public order or security or other conditions for the right of residence under Arts. 10(2) or (3), 13 or 15 WA are not or no longer fulfilled.⁶

³ Section 3 of the Ordinance on the implementation of the provisions of the WA (Brexit Implementing Regulation – “**Brexit-DV**”).

⁴ Section 7 of the Brexit-DV provides as follows: UK citizens who come within the personal scope of the WA under Art.10(1)(b) WA must provide evidence as follows (under Art.18(1)(k) WA): confirmation from the employer or proof of self-employment; proof of sufficient financial means and comprehensive health insurance cover; etc. UK nationals who were already in possession of a specific residence permit before 31 December 2020 were able to obtain a new “residence permit Article 50 EUV” by providing this specific residence permit, as required under Art.18(1)(h) WA.

⁵ UK nationals with an “Article 50 TEU” residence permit valid for 5 years must apply for the extension before the end of the 5 years. A reminder is not given, so permit holders should make a note to make this application. If a UK national has already acquired a permanent right of residence, the residence permit is valid for 10 years. UK nationals should also apply for an extension prior to the expiry of that permit, though to meet the deadline does not lead to the loss of their right of residence.

⁶ Section 9(2) of the Brexit-DV.

4. There is no express requirement for British citizens to inform the Austrian authorities if they no longer meet CRD/WA conditions.
5. The continued validity of the “residence permit Article 50 EUV” may be reviewed by the Austrian authorities for a specific reason, such as if the authorities learn of the death of a UK national entitled to reside under Art.10 (1)(b) WA or in the case of a relevant divorce.⁷ Austrian legislation does not permit systematic checks on compliance with the CRD, in light of Art.14(2) CRD, which specifically excludes this.⁸
6. The Federal Office for Immigration and Asylum may take actions for the termination of residence, where grounds are identified. If no such actions are taken, the UK citizen may be granted a new residence permit (“*Rot-Weiß-Rot - Karte plus*”). This is a residence permit (Red-White-Red plus permit) granted to third country nationals who are permitted to remain temporarily in Austria, with unlimited access to the labour market. It is a different residence permit to the permit granted to UK nationals who are WA beneficiaries.

C. Eligibility of UK citizen ‘new residence status’ holders for social assistance

7. In general, the right to access social assistance is regulated by, and subject to, specific laws for each social assistance scheme. By way of further detail, in Austria, there is no general right to access social assistance.
8. In Austria, the “minimum income” (*Mindestsicherung*) is a social assistance (financial contributions) for any person who cannot cover his or her living

⁷ Section 9(1) of the Brexit-DV.

⁸ Art.14(2) CRD states: “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.”

expenses and housing needs. In the federal state of Tyrol, the “minimum income” is governed by the Tyrolean Minimum Income Act (Tiroler Mindestsicherungsgesetz – “**TMSG**”). As a general rule, Austrian citizens who live in Tyrol are entitled to the “minimum income”. UK nationals with a “residence permit Article 50 EUV” are treated equally to Austrian citizens and thus are also entitled to the “minimum income”, provided all other conditions are met, such as the person being sufficiently in need.⁹ Amongst other documents, the applicant for the “minimum income” must provide the “residence permit Article 50 EUV” to the granting authority. A person granted with a “minimum income” is not specifically required, under the terms of the relevant legislation, to demonstrate compliance with CRD.

9. However, a failure to comply with the CRD may lead to residence permit Article 50 EUV being examined, and if withdrawn, an individual in receipt of the “minimum income” would be expected to notify the authorities of this relevant change, and this could result in the termination of the “minimum income” award.

2. BELGIUM

A. Eligibility of UK citizens for ‘new residence status’ and information about the ‘new residence status’

10. UK nationals who resided in Belgium before the end of the transition period on 31 December 2020, relying on their EU right to free movement, were eligible for a new residence status, and were expected to make an application to the ‘commune’ between 1 January 2021 and 31 December 2021 to obtain a ‘status of beneficiary of the Withdrawal Agreement’. If the application by the commune was accepted, the commune would then apply for an ‘M card’ on behalf of the applicant.

⁹ Section 3(2) of the TMSG

11. UK nationals who already held a valid EU residence document (appendices 8/8bis/E/E+/F/F+ card) did not have to provide evidence of exercising CRD rights, when applying for the new residence status. These UK nationals were required to provide a copy of their valid residence document, a valid identity card or passport and an extract from the criminal record which was not older than 6 months. UK nationals who did not already have a card needed to provide additional information with their application for status as a WA beneficiary, including proof of exercise of EU free movement/CRD rights.¹⁰

12. UK nationals who have not yet completed five years of continuous residence in Belgium are eligible for an 'M card', which is valid for 5 years.

13. UK nationals who have completed a continuous residence period of at least 5 years are eligible for an 'M card stating permanent residence', which is valid for 10 years.

B. Conditions for UK citizens maintaining 'new residence status'

14. According to statements made in the 'parliamentary preparations' for the Act of 16 December 2020, UK nationals are expected to meet the same conditions as EU citizens to remain in Belgium and rely on their new residence status. This was also confirmed by Article 47/5 of the Residency Act¹¹, which states that all

¹⁰ <https://dofi.ibz.be/en/themes/brexit/procedures/procedures-residence-card-beneficiaries-withdrawal-agreement/you-are-uk>

¹¹ The law of 15 December 1980 regarding the entry, stay, settlement and removal of foreign nationals ("de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen" / "la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers", as amended (the '**Residency Act**'). The Residency Act was amended by the law of 16 December 2020 regarding beneficiaries 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 ("wet van 16 december 2020 betreffende de begunstigden van het akkoord inzake de terugtrekking van het Verenigd Koninkrijk van Groot-Brittannië en Noord-Ierland uit de Europese Unie en de Europese Gemeenschap voor Atoomenergie" / "Loi du 16 décembre 2020 relative aux bénéficiaires de l'accord sur le retrait du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord de l'Union européenne et de la Communauté européenne de l'énergie atomique" (the '**Act of 16 December 2020**') The Act of 16 December 2020 (i) defined the term "beneficiary of the Withdrawal Agreement" by way of reference to any person within the personal scope of Art.10 of the WA and (ii) created a new residence status for such beneficiaries.

the legal provisions regarding residency of EU nationals and their family members in Belgium are applicable to beneficiaries of the Withdrawal Agreement, except in such cases where the Residency Act or WA provide otherwise.

15. As such, the Belgian authorities treat UK nationals who have not yet obtained permanent residence rights the same as EU citizens who have not yet obtained permanent residence rights. For example, if a relevant EU citizen (and, by extension, a UK national protected under the WA) no longer meets the conditions in Art.6 or Art.7 of the CRD, such as if they become an unreasonable burden to the social security system in Belgium, a decision may be taken by the relevant authorities to terminate residence status, subject to exceptions, such as those that apply for those who are temporarily ill or those who are seeking employment or who are in vocational training.

16. Under Belgian law, there is an express power to deny entry or revoke residence status if an individual provided misleading information in an application for a residence status, or where the individual's conduct warrants this course of action, for reasons related to public order, national security or public health.

17. As noted further below, in the context of applications for certain social assistance, applicants are informed that such applications may have an impact on residency rights, and the fact that they have made an application/are in receipt of social assistance is shared with Belgian immigration services.

C. Eligibility of UK citizen 'new residence status' holders for social assistance

18. Social assistance is provided at both the federal and regional level in Belgium.¹²

It is accepted by the Belgian Federal public planning service for Social Integration, anti-Poverty Policy, Social Economy and Federal Urban Policy ('**PPS SI**') that UK nationals who are WA beneficiaries are entitled to the same social assistance or social integration support as EU citizens.¹³

19. In general, Belgian legislation provides that all residents should have a right to social services, which has the purpose of giving every person the possibility to live a life which respects human dignity.¹⁴ The notion of 'social service' is very broad and there is no exhaustive list of social services that the public centres for social welfare can offer. Article 57 of the law of 8 July 1976 states that social assistance can have a material, social, medical, socio-medical or psychological nature, and can be soothing, curative or preventive in nature.

20. A non-exhaustive list of examples is given on the Flemish website for foreign nationals: Financial support, employment, assistance with residential lease deposits, grants for homeless people to purchase basic furniture once they move into a new residence and legal advice and support.¹⁵ Other sources provide a variety of other examples such as psychological or emotional support, help with debt consolidation or debt management, assistance in finding housing or paying for central heating.¹⁶

¹² Federal social assistance and social integration is granted through 'public centres for social welfare', known as the OCMW (in Dutch) or CPAS (in French). These are coordinated by the PPS SI and Belgian social security legislation requires them to provide a wide range of benefits. In Belgium, there are two separate types of support available – i) social assistance ("maatschappelijke dienstverlening" / "assistance sociale")¹² and ii) social integration. By way of example only, this includes the 'integration income', which is a minimum, guaranteed family income for families who do not have sufficient means to support themselves. An example of assistance provided at the regional level is social housing.

¹³ The PPS SI made clear that the right to social assistance and social integration are extended to holders of the "beneficiary of the Withdrawal Agreement" status under the same conditions as for EU citizens and their families, in a notice on its [website](#) on 6 January 2021.

¹⁴ Article 1 of the law of 8 July 1976 regarding the public centres for social welfare ("Organieke wet betreffende de openbare centra voor maatschappelijk welzijn" / "Loi organique des centres publics d'action sociale")

¹⁵ <https://www.vreemdelingenrecht.be/sociale-rechten/ocmw-steun/maatschappelijke-dienstverlening/wat-houdt-maatschappelijke-dienstverlening>

¹⁶ See, for example: https://www.mis.be/sites/default/files/documents/wegwijs_in_maatschappelijke_dienstverlening_0.pdf

21. Social integration consists of: i) an 'integration income', which is a minimum, guaranteed family income for families who do not have sufficient means to support themselves and/or ii) provision of employment to a person or assisting them to find employment.
22. All foreign nationals (with limited exceptions, including illegal residents) have an entitlement to social assistance, whereas social integration support is only available to Belgian nationals and certain categories of foreign nationals. EU citizens (and, by extension, UK nationals) typically are entitled to both social assistance and social integration support.
23. In principle, EU citizens who reside in Belgium for more than 3 months (and, by extension, UK nationals who are WA beneficiaries) have a right to social integration support from the public centre for social welfare in their municipality, under article 3, 3^o, second indent of the Social Integration Law.¹⁷
24. The PPS SI's 'Primabook' (an online handbook for the public centres for social welfare) provides further detail on eligibility of EU citizens for 'social integration' and 'social services'. EU citizens who have applied for and been granted: (i) an EU card in recognition of their exercise of free movement rights for more than the initial 3 month period or (ii) a EU+ card, in recognition of permanent residence rights are entitled to social integration support upon presentation of those cards. As the PPS SI has confirmed that UK nationals who are WA

¹⁷ The law of 26 May 2002 regarding the right to social integration ("Wet van 26 mei 2002 betreffende het recht op maatschappelijke integratie" / "Loi du 26 mai 2002 concernant le droit à l'intégration sociale" (the '**Social Integration Law**'). The relevant provision states (as translated by the Belgian lawyers): "*In order to have a right to social integration, the person must, at the same time and without prejudice to the special conditions laid down in this law: [...] belong to one of the following categories of persons: [...] either as a citizen of the European Union, or as a member of his family accompanying or joining him, enjoy a right of residence for more than three months, in accordance with the law of 15 December 1980 on access to the territory, residence, establishment and expulsion of foreigners. This category of persons only enjoys the right to social integration after the first three months of this residence.*" The Social Integration Law does not refer to "beneficiaries of the Withdrawal Agreement". However, as noted above, the Belgian authorities treat "beneficiaries of the Withdrawal Agreement" the same as EU citizens for the purpose of "social integration".

beneficiaries are to be treated the same as EU nationals, it is understood that UK nationals with a M or M+ card are also entitled to the same support upon presentation of their card.

25. 'Social services' are available to EU cardholders, provided that they did not obtain their EU card as a job-seeker.¹⁸ Any EU citizens who obtained an E card as a job-seeker are advised to re-apply to their commune for an updated document, if they are residing in Belgium based on an alternative free movement right (such as being an employee).¹⁹ E+ card holders are automatically entitled to social services.
26. Those applying for social services and/or social integration support are informed that making the application may impact their residence rights, because this information is shared with Belgium's immigration services.
27. Belgian lawyers completing the surveys considered three regional regimes – Flanders, Brussels and Wallonia – to understand how UK citizens with WA beneficiary status would be entitled to social housing.
28. In Flanders, an individual who wishes to join the social housing register must be registered on the Belgium national register of Belgian nationals or foreigners with a right of residency. In practice, any foreigner with a right of residency who remains in Belgium for longer than 3 months is registered on that register. No distinction is made between individuals on the housing register based on nationality, though in order to have obtained a right of residency (evidenced by a residence card) it would have been necessary for EU citizens (and, by extension, UK nationals with WA beneficiary status) to demonstrate compliance

¹⁸ Job-seekers are only entitled to urgent medical care.

¹⁹ Belgian counsel did not identify any legislation or guidance as to whether UK national jobseekers were to be treated differently, for these purposes. Belgian counsel noted that the M card did not record the reason for a person's stay in Belgium.

with EU free movement rules at some point. A similar situation applies in Brussels and Wallonia.

3. DENMARK

A. Eligibility of UK citizens for 'new residence status' and information about the 'new residence status'

29. UK nationals who resided in Denmark before the end of the transition period on 31 December 2020, relying on their EU right to free movement, were eligible for a new residence status, and were expected to make an application before 31 December 2023 for this new residence status.

30. UK nationals who have not yet completed five years of continuous residence in Denmark are eligible for a temporary residence document, which is valid for 5 years. UK nationals who have completed a continuous residence period of at least 5 years in Denmark are eligible for a permanent residence document, which is issued with indefinite validity, provided the UK national is not absent from Denmark for more than 5 years continuously.

31. The residence document that evidences WA residence status is unique to WA beneficiaries. It is distinct from residence permits issued to other third-country nationals under the Danish Aliens Act.²⁰ The documents are referred to as "Opholdsdokument" for temporary residence status and "Permanent opholdsdokument" for permanent residence status. In English, they are commonly translated as "residence document" and "permanent residence document."

32. The residence document explicitly refers to the WA. It mentions Article 18(1) of the WA and includes references to Brexit or the UK Withdrawal Agreement.

²⁰ Udlændingeloven (Aliens Act), Consolidated Act No. 1917 of 03/10/2023

This ensures that the holder can clearly identify that their residence status is based on the WA rather than on national immigration rules.

B. Conditions for UK citizens maintaining 'new residence status'

33. Temporary residence status holders must continue to meet the conditions under which their status was granted, including maintaining continuous residence in Denmark with only absences permitted under the WA allowable. If a temporary residence status holder ceases to be self-employed, employed, a student or self-sufficient, without having obtained permanent residence rights or being able to fulfil any other conditions under the CRD, there is a risk that the Danish authorities will, after an individual assessment, decide that the status holder has lost their residence rights.²¹ If the Danish authorities are considering whether to make a new decision with respect to a status holder's grounds of residence, the status holder will be given an opportunity to provide comments and additional documents in relation to this decision. The Danish authorities may decide that a right to residence can be retained, taking into account, for example, the status holder's ties to Denmark, length of residence and degree of attachment to the labour market.

34. UK nationals must also comply with Danish laws, and conduct that poses a threat to public policy or security may result in residence rights being lost.

C. Eligibility of UK citizen 'new residence status' holders for social assistance

35. A UK national must present evidence of legal residence when applying for social assistance. This is done through presenting their WA residence document. Legal residence is the primary requirement for applying for social

²¹ Further information is provided on the 'new to denmark' Brexit [website](#). This is administered by the Danish Immigration Service and the Danish Agency for International Recruitment and Integration (SIRI).

assistance. An applicant for social assistance must also meet other specific conditions under Danish law (Lov om aktiv socialpolitik / Act on Active Social Policy).

36. Any claim for social assistance will be notified to SIRI, the Danish immigration authorities. SIRI may review an individual's residence status, as a result of this notification. This could potentially lead to revocation, if the authorities consider that an individual no longer meets the residence conditions.

37. The municipalities (kommuner) responsible for granting social assistance are not permitted to independently deny an application, where they consider an applicant may not be entitled to their residence status. Their role is to notify SIRI of claims for social assistance, as SIRI has the exclusive competence to assess and revoke residence rights, if necessary.

38. The Danish authorities' Brexit website provides information to UK citizens on how this may work in practice. With respect to self-sufficient UK citizens who have not yet obtained permanent residence, the following advice is given on whether such individuals can access public funds:

“As a rule, you must be able to support yourself and your family financially during your stay in Denmark based on the Withdrawal Agreement, you must normally be able to support yourself and your family financially. Depending on your grounds for residence, this means that you, amongst other things, may not receive cash benefits or other forms of public assistance regulated by the Active Social Policy Act (lov om aktiv socialpolitik).

If you or a family member receive such benefits while living in Denmark, your grounds for residence and thereby your right of residence can be terminated and you can lose your right to stay in Denmark.

Benefit payments from the municipality or any other public authority to you will be reported to SIRI. SIRI will then assess whether or not this affects your grounds for residence.

If you meet the conditions for status as a person with sufficient funds under the Withdrawal Agreement receiving the above-mentioned benefits will normally not in and of itself lead to termination of your right of residence. This also applies if you have grounds for residence as a family member to a person with sufficient funds.”²²

39. Danish legislation does expressly provide that those who are job-seekers (and who do not retain workers status) or who are within their first 3 months of residence are not entitled to claim social assistance.²³ This is in accordance with Art.24(2) CRD and Art.23(2) WA.

4. FINLAND

A. Eligibility of UK citizens for ‘new residence status’ and information about the ‘new residence status’

40. UK nationals who resided in Finland before the end of the transition period on 31 December 2020, relying on their EU right to free movement, were eligible for a new residence status, and were expected to make an application between 1 October 2020 and 30 September 2021 for this new residence status.

41. Those applying for a right of residence under the WA must demonstrate their grounds for residence in Finland, which would be (i) employment or self-employment, (ii) studies or (iii) family ties. If these criteria do not apply, the applicant must evidence that they are sufficient financial resources to reside in

²² <https://www.nyidanmark.dk/en-GB/You-want-to-apply/Brexit/Brexit---no-to-residence-doc/Brexit-sufficient-funds>

²³ Lov om aktiv socialpolitik (Active Social Policy Act), § 11 and § 25.

Finland, and social assistance or other equivalent benefits cannot be the main means of support. However, the Finnish Immigration Service will take the applicant's personal circumstances into account when considering what are sufficient financial resources needed for each applicant.

42. Those applying for a permanent right of residence must show their grounds of residence in Finland continued for a period of 5 years, which can include residing based on different grounds (including periods of time where a person was unemployed or unable to work due to illness). UK nationals who already held a certificate of permanent residence from the police or Finnish Immigration Service were entitled to change their status to a permanent residence status under the WA, by making an application before the end of the transition period. Such an applicant would receive a residence permit confirming their status under the WA.

43. Residence permits (including permanent residence permits) are valid for up to 5 years, depending on personal circumstances. Underlying residence rights do not depend on a residence permit being valid.

B. Conditions for UK citizens maintaining 'new residence status'

44. WA status can be lost if the residence status holder is absent from Finland for an impermissible period of time. For those without a permanent right to reside, this means status can be lost if someone is absent for more than six months in any twelve month period.

45. According to the Finnish Immigration Service, the right of residence under the WA includes the right to study, the right to work and the right to operate a business. UK nationals and their family members who have been granted the right of residence under the WA do not need to reapply if they change jobs, start a business, transition from studying to employment, or move from employment to retirement.

46. In order to be lawfully resident UK nationals should continue to exercise CRD rights, as provided for in the WA. When considering whether a UK national has acquired the right to permanent residence, the UK national's livelihood in Finland over the relevant 5 year period cannot have been based solely on social assistance. Thus, if a UK citizen no longer meets any of the conditions of legal residence and did not have sufficient means to support themselves for a significant time period in their years in Finland (and still does not have the means to do so), the authorities might deny the UK national the right of permanent residence.

47. It is also possible that the Finnish authorities might treat a UK national's residence rights as expired, if they no longer meet the requirements of the WA residence permit. According to the Finnish Immigration Office, the registration of right of residence of EU citizens expire in the following cases: where an EU citizen permanently leaves Finland, where an EU citizen no longer meets the requirements of their residence permit (where a fixed-term permit has been granted) or where an EU citizen has knowingly given false information in their application. While no guidance expressly states that the same policy applies for UK citizens, it is possible that Finnish authorities would look to apply the same policy to UK citizens with fixed-term permits, who are no longer exercising CRD rights.

C. Eligibility of UK citizen 'new residence status' holders for social assistance

48. UK nationals who obtain a residence document under the WA will retain their right to benefits provided by the Social Insurance Institution of Finland ("**Kela**") and to municipal health and social services. Kela considers that WA beneficiaries are protected by the same EU law provisions on social security, and that protection under the WA is life-long, or for so long as the UK national's circumstances warrant the application of the WA.

49. In general, entitlement to social assistance requires legal residence and an intention of being permanently resident in Finland. Certain assistance (parental allowance, child benefits, housing allowance and public medical care) can be granted from the first day of residence (even within the first 3 months of residence) if the conditions of the benefit are otherwise met. Foreigners who are residing in Finland based on a valid residence permit will typically be considered to be permanently residing in the country, where their residence permit is either continuous or permanent. Individuals with a continuous or permanent residence permit usually have a registered domicile in the population register. In such cases, the permanent municipality of residence is obliged to grant comprehensive social assistance if the general conditions for granting social assistance are met.
50. 'Social assistance', a last-resort financial benefit, is available, if a person cannot secure adequate subsistence through employment, entrepreneurial activities, other benefits, or other income and assets. Social assistance would only be paid if an individual was unable to obtain other benefits, such as sickness allowance, child benefit, unemployment allowance, or labour market subsidy, Kela decides on claims for basic social assistance based on need.
51. A person aged 17–64 applying for social assistance is required to register as a job seeker.²⁴ Job-seekers are entitled to a labour market subsidy, which would be payable before social assistance.
52. However, even third country nationals who are resident in Finland on a temporary residence permit or without a residence permit are entitled to essential subsistence and care, where their needs are urgent and they cannot secure their subsistence by other means.²⁵

²⁴ Section 2a of the Social Assistance Act.

²⁵ Section 19(1) of the Constitution states that everyone who is unable to secure the means necessary for a life of dignity has the right to essential subsistence and care.

53. It is the Finnish Immigration Service who is responsible for making decisions on whether someone is residing in Finland legally. Possession of a valid permit should suffice as evidence of legal residence with permanent intention, without a need to demonstrate continued compliance with CRD requirements.

5. FRANCE

A. Eligibility of UK citizens for 'new residence status' and information about 'new residence status'

54. UK nationals who exercised the right to reside in France under the conditions provided for by the provisions of Title II of Book I of the Code of Entry and Residence of Foreigner and the Right of Asylum before 1 January 2021 (with no minimum length of stay) and who continued to reside there thereafter were eligible to apply for a new residence status in the form of a 'Withdrawal Agreement Residence Permit' ('**WARP**').²⁶ It was expected that these applications would be made to the prefecture of the department of residence by 4 October 2021.

55. In order to obtain a 5-year WARP, UK nationals had to provide evidence they were complying with Art.7 CRD. Evidence required included evidence of employment, self-employment, self-sufficiency and studies.²⁷

56. In order to obtain a 10-year WARP, UK nationals needed to provide the permanent residence permit they had obtained pursuant to Article L.122-1 of the Code on the Entry and Residence of Foreigners and the Right of Asylum,

²⁶ Decree n° 2020-1417 of 19 November 2020, Art.3.

²⁷ Sufficiency of resources is to be assessed in light of the applicant's personal situation, but the amount required could not exceed the minimum amount of the minimum income mentioned in Article L.26202 of the French Social Action and Families Code for a single person without children. Those relying on rights as self-sufficient persons must also have insurance coverage for the benefits mentioned in Articles L.160-8 and L.160-9 of the French Social Security Code.

or evidence that they were settled in France for a period of five years or more and living there regularly.

57. UK nationals who entered France as jobseekers prior to 31 December 2020 and who continue to be jobseekers can obtain a temporary WARP referring to “Withdrawal agreement of the United Kingdom from the UE”, which is valid for 6 months.

B. Conditions for UK citizens maintaining ‘new residence status’

58. UK nationals who hold a 5 year WARP are expected to continue to comply with the CRD. Provided they continue to meet the same conditions they met at the time the WARP was granted, the 5 year WARP will be automatically renewed.²⁸

59. Pursuant to the Code of Relations between the Public and the Administration and the Code of Entry and Residence of Foreigners and the Right of Asylum, an individual decision conferring rights, notably a temporary resident permit, can be revoked at any time by the administrative authorities if its continuation is contingent upon a condition that is no longer satisfied (for example, the requirement to hold a job or actively seek employment). Therefore, in principle, a WARP could be withdrawn before its expiration if the holder no longer satisfies the conditions for its issuance.

60. The ‘new residence status’ can be lost or not renewed if the permit holder engages in conduct such as criminal activity that allows French authorities to remove it, of which there are examples in recent caselaw. Loss of status or non-renewal of the WARP can be decided on the ground that the presence of the applicant poses a threat to public order.

²⁸ Decree No. 2020-1417 of 19 November 2020, Art.20. For workers, it is explicitly accepted that they will retain their residence permit where they are 1° temporarily unable to work resulting from an illness or accident; 2° involuntarily unemployed duly recorded after having carried out his professional activity and is registered on the list of jobseekers; 3° undertakes vocational training. (Art.13).

61. Any withdrawal of a WARP would require an express decision by the authorities, and would be subject to legal proceedings.

C. Eligibility of UK citizen 'new residence status' holders for social assistance

62. Pursuant to domestic provisions pertaining to equal treatment,²⁹ being in possession of a WARP (regardless of whether that is a temporary, 5 year or permanent WARP) entitles the holder to social benefits and allowances set out in Books III, IV, V and VIII of the French Social Security Code. Such benefits include social insurance, workplace-related accident and illness, family allowances, allowances for the elderly, allowances for the disabled, employment benefits for young children, and supplementary healthcare. Additionally, WARP holders are entitled to the minimum income (revenue de solidarité active, or 'RSA'), provided the other conditions of the RSA, set out in Art. L.262-4 of the Social Action and Families Code, are met.³⁰

63. It is a pre-condition for receipt of social assistance that a WARP is held, so UK nationals could, in principle, cease to be entitled to social assistance if the WARP was withdrawn or if the WARP was not renewed upon expiry, including for reasons related to the UK national no longer exercising CRD rights.

²⁹ Decree n° 2020-1417 of 19 November 2020, Art 29 to 32. By way of example, Art. 30 states:

"The residence permit bearing the words "Article 50 TEU/Article 18(1) Agreement on the withdrawal of the United Kingdom from the EU" or "Permanent residence - Article 50 TEU/Article 18(1) Agreement on the withdrawal of the United Kingdom from the EU" or the movement document bearing the words "Article 50 TEU - Cross-border worker/Agreement on the withdrawal of the United Kingdom from the EU - Non-resident" issued pursuant to Articles 12 respectively, 21 and 26 of this Decree entitle the holder to affiliation to and benefit from the social benefits or allowances established in Books III, IV, V and VIII of the Social Security Code, as well as to the members of his or her family within the meaning of Article L. 161-1 of the same Code, subject to fulfilling the conditions of 3° and 4° of Article 3 of this Decree and specific to each benefit or allowance concerned."

³⁰ Art.31.

6. HUNGARY

A. Eligibility of UK citizens for 'new residence status' and information about 'new residence status'

64. Hungarian authorities require EU citizens living in Hungary for more than 90 days out of 180 days to obtain a registration certificate (*regisztrációs igazolás*). This is issued to EU citizens who could evidence compliance with Art.7 CRD. EU citizens who had obtained permanent residence rights were entitled to receive a permanent residence card (*állandó tartózkodási kártya*).

65. After 31 December 2020, UK nationals who wanted to remain in Hungary were entitled to apply (until 31 December 2021) for a national permanent residence permit, without any examination of their length of prior residence, housing, livelihood, health insurance or Hungary's national interests.

66. In order to be eligible for this, UK nationals needed to provide a registration certificate or a permanent residence card, or otherwise credibly prove that they were residing habitually prior to 1 January 2021 or had been pursuing gainful activities as frontier workers or self-employed frontier workers in Hungary. The Hungarian legislative framework does not define what is meant by 'habitual residence'. As there is no specific requirement to a person meeting the requirements set out in the CRD, evidencing habitual residence does not require a UK national to evidence exercise of CRD rights. Authorities' guidelines suggested that habitual residence would be evidenced by, for example, a long-term lease agreement.

67. A national permanent residence permit (*nemzeti letelepedési engedély*) (now the national residence card (*nemzeti tartózkodási kártya*)) would be granted to a UK national who made an application prior to 31 December 2021, provided they held a registration certificate/permanent residence card or could prove they were habitually resident and there was no basis for not granting them a

national permanent residence permit/national residence card, such as the UK national providing false information, constituting a threat to public or nationality security, possessing a criminal record which has not been rehabilitated or being subject to expulsion already.

68. The new residence status, now known as the national residence card (*nemzeti tartózkodási kártya*) is originally valid for 5 years, and can be extended by an additional 5 years upon request. This same permit is also given to other third country nationals, but UK nationals who were resident in Hungary before 31 December 2020 can obtain it on a preferential basis. The permit does not refer to the WA.

B. Conditions for UK citizens maintaining 'new residence status'

69. The national permanent residence permit/national residence card will only be revoked if the permit holder departs from Hungary and remains absent for a period of more than 5 years, threatens public or nationality security, is subject to expulsion or exclusion or requests revocation of their permit. There is no requirement that a permit holder complies with any of the specific conditions in the CRD/WA to retain residence rights.

C. Eligibility of UK citizen 'new residence status' holders for social assistance

70. The rules and regulations regarding various forms of social assistance are not uniform in Hungary, with some social assistance available at the central level, and some at the local level. That said, generally, permanent residents in Hungary are eligible for the same assistance as Hungarian citizens. Therefore, UK nationals covered by the WA should be entitled to the same social assistance as Hungarian citizens in comparable circumstances.

71. Central support available includes the *benefit for persons of active age*, designed to ensure a minimum standard of living for working-age people who: (i) have lost at least 67% of their working ability, (ii) have a health impairment of at least 50%, (iii) receive blind persons' annuity or disability assistance, (iv) are unemployed, but no longer entitled to job-seeker benefit (or not entitled to any kind of income supplement at all) or (v) cooperated with the state employment service or rehabilitation authority for at least one year within the two years preceding the application, provided that they have no alternative source of living, they are not engaged in any income-generating activities, the family's monthly income per consumption unit does not exceed 90% of the current minimum old-age pension, and they do not possess any assets.

72. Local social assistance will vary depending on region and municipality. For example, the *utility subsidy* provided by the municipality of Budapest is available for low-income, disabled and vulnerable persons living in Budapest (among others, to those who receive job-seeker benefit, or participate in the public work programme, or receive other types of social assistance or aid). While local assistance may be subject to local requirements (including local residence and personal need), Hungarian counsel were not aware of any social assistance eligibility entitlements that would depend on holding Hungarian citizenship and which would not also be open to UK nationals with WA rights, documented through having the permanent residence permit.³¹

7. LATVIA

A. Eligibility of UK citizens for 'new residence status' and information about 'new residence status'

73. UK nationals who resided in Latvia before the end of the transition period on 31 December 2020, relying on their EU right to free movement, were eligible for a

³¹ Hungarian law prohibits discrimination based on citizenship.

new residence status, and were expected to make an application to the Office of Citizenship and Migration Affairs ('OCMA') by 30 June 2021 to receive a new document attesting to their rights of residence.

74. UK nationals who had an EU citizen's registration certificate or permanent residence card were required to submit an application for a new WA document, accompanied by their valid travel document. If a UK national did not have this EU citizen document, they needed to submit an application to OCMA, attaching documents that confirmed their lawful residence in Latvia before 31 December 2020. Eligibility for the 'new residence status' therefore assumed compliance with the CRD, evidenced by being in possession of a pre-existing EU citizen document or evidence of lawful residence in accordance with the CRD.³²

75. Section 2(4) of the Latvian WA law indicates that the OCMA "*shall examine the applications... and issue a new document attesting to the rights of residence for citizens of the United Kingdom and their family members in accordance with the laws and regulations regarding the procedures by which citizens of the European Union and their family members enter and reside in Latvia and in accordance with Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals.*"

76. The new residence status is evidenced by the grant of a residence permit/identity card called the *uzturēšanās atļauja*. A temporary residence permit is issued for 5 years and a permanent residence permit is issued for 10 years. (Section 2(5) of the Latvian WA law). The document itself is the same (in form and function) to documents issued to other foreign nationals, apart from the entry "LES 50. pants" ("Section 50 LES"), indicated on the document.

B. Conditions for UK citizens maintaining 'new residence status'

³² Section 2(1)-(2) of the On Judicial Cooperation and Protection of Persons' Rights during the Transition Period after the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union" (the 'Latvian WA law')

77. UK nationals who received a document are required “to reside in Latvia in accordance with the laws and regulations regarding the procedures by which citizens of the European Union and their family members enter and reside in Latvia”³³.

78. Foreign citizens who have not yet obtained a permanent residence permit are obliged to inform OCMA if the circumstances which were the basis for obtaining a temporary residence permit no longer exist.

79. A temporary residence permit can be annulled if the purpose for which the permit was granted no longer exists and the person is unable to show any other purpose for holding a temporary residence permit, or if the requirements for obtaining a temporary residence permit are no longer met. If a residence permit is annulled, the individual would no longer be permitted to reside in Latvia and would be excluded from accessing social assistance. Someone who ceased to meet the conditions for holding a temporary residence permit would also be unable to obtain a permanent residence permit. As such, ongoing compliance with the previous CRD regime appears to be necessary to ensure continued lawful residence.

C. Eligibility of UK citizen ‘new residence status’ holders for social assistance

80. Social benefits are provided at both the state and municipality level.³⁴ Most benefits available at the state level would be considered ‘social security’ for the purposes of EU law, with the exception of support aimed at disabled people, which appears to be a form of special non-contributory benefit, under EU law. Municipal social benefits are a form of social assistance.

³³ Section 2(5) of the Latvian WA law.

³⁴ State social benefits are regulated by the Law on State Social Allowances and municipal social benefits are regulated by the Law on Social Services and Social Assistance.

81. Latvian legislation governing state and municipal social assistance provide that such support will be available to (as relevant) Latvian citizens, permanent residence permit holders and EEA nationals who are entitled to reside in Latvia. Latvian legislation does not make provision for support to be provided to temporary residence permit holders.³⁵ As such, the Latvian legislative framework indicates that UK nationals who hold a temporary residence permit under the WA are not eligible for social assistance.

82. Applicants for social support are required to provide evidence that they meet the necessary residence requirements, and so permanent residence permit holders (including UK nationals who hold a permanent residence permit under the WA) and EU nationals who are entitled to reside in Latvia, would be required to provide evidence of their permanent residence permit or EU residence card, respectively. Applicants for social support will also be required to present evidence that they meet the eligibility requirements for individual benefits. By way of example, for the guaranteed minimum income (payable by the municipality), an applicant would need to demonstrate they are in need or have a low income. Applicants are not expected to provide evidence of being in employment or self-employment, in order to be eligible. The eligibility requirements are the same for all applicants, regardless of nationality, once they meet the necessary residence requirements (i.e. Latvian national,

³⁵ Section 4(2) of The Law on State Social Allowances explicitly excludes holders of temporary residence permits from access to state social benefits. As EEA nationals do not hold temporary residence permits, they can qualify for support under Section 4(1) if they have a personal identification number, an active status in the Register of Natural Persons and must permanently reside in Latvia. Possession of a Permanent Residence Card of a Union citizen is not required. No legislative provisions or guidance state that UK national WA beneficiaries should be treated the same as EEA nationals. Section 3 of the Law on Social Services and Social Assistance sets out the persons who have the right to receive social services and social assistance. This includes (section 3(2) and (3) foreigners who have a permanent residence permit or who have been issued with the status of long-term resident of the EU and EU citizens who have acquired a right of permanent residence, who are entitled to reside in Latvia and have resided for more than 3 months and who have stayed in Latvia for at least 6 months and the purpose has been to establish employment relations. The law does not provide specific regulations for UK nationals with WA rights. In general, temporary residence permit holders would not be eligible for municipality supports.

permanent residence permit holder, EU citizen meeting requirements or falling within another limited exception).

83. As Latvian counsel were unable to identify legislative provisions or guidance that specifically explained whether UK citizens with temporary residence permits under the WA should be treated differently from other third country nationals with temporary residence permits, Latvian counsel consulted (on a no-names basis) the State Social Insurance Agency ('SSIA') and the Social Assistance Department of Riga Social Service of Riga city municipality (the 'Department'). Both confirmed that the legislation governing state and municipality social benefits on their face treat UK nationals with a temporary residence permit under the WA in the same way as other third country nationals with a temporary residence permit. However, both the SSIA and the Department advised that each application for support is reviewed individually, and a final decision regarding a person's access to support is only reached after reviewing all relevant documents that a person submits when applying for a particular benefit, which would include a review of such person's residence status from the perspective of Latvian and European law. Thus, although the legislation does not provide a specific right to support for UK nationals with WA rights and a temporary residence permit, it is fair to assume that in practice, the SSIA and the Department may decide to grant a UK national with WA rights and a temporary residence permit access to support.

8. MALTA

A. Eligibility of UK citizens for 'new residence status' and information about 'new residence status'

84. Eligibility for the 'new residence status' for UK nationals under Subsidiary Legislation 217.25, depends on several requirements aligned with the WA and

CRD.³⁶ UK nationals are required to have been physically present in Malta prior to 31 December 2020 and to have complied with the CRD, in order to establish the lawful residence required to be eligible for the new residence status. UK nationals were expected to make an application to Identità by 30 June 2021 for the new residence status.

85. The residence document issued to applicants who are accepted as beneficiaries under the WA is valid for 10 years. The residence permit documents that the residence status is based on the WA.

B. Conditions for UK citizens maintaining 'new residence status'

86. While Subsidiary Legislation 217.25 only makes provision for residence status to be lost where there is criminal conduct, Identità's position is that WA beneficiary status is lost if a person is absent for more than 6 months in a 12 month period (or for more than 12 months where a special circumstance applies) or where the purpose of stay has changed since a person has been issued with a residence document, and the new purpose no longer aligns with the CRD/WA.

87. With respect to purpose of stay, Identità's website states that:

"If the purpose of your stay has changed, and you meet any of the conditions for other grounds for residence, you do not lose your grounds for residence. You are covered by the Withdrawal Agreement as long as you meet the conditions for at least one of the categories. You can therefore change your status between, for example, employee, student, self-employed person or person with sufficient funds for self-support."

³⁶ CRD requirements were transposed into Maltese law by Subsidiary Legislation 460.17.

88. Whether Maltese authorities would look to revoke a residence permit for someone who has not accrued permanent residence rights is likely to depend on policy decisions. In practice, anecdotal evidence suggests that Maltese authorities are seeking evidence of continued physical residence in Malta, where authorities consider that a UK national who has not obtained permanent residence rights may have been absent for more than six months.

89. Regulation 5(2) of the Subsidiary Legislation 217.25 makes clear that a residence document will not be renewed on expiry if the beneficiary “*ceases to meet the conditions set out in these regulations and the Agreement.*”

C. Eligibility of UK citizen ‘new residence status’ holders for social assistance

90. UK nationals who have obtained a 10 year residence document under the WA are entitled to rely on WA rights, including the right to equal treatment and social assistance.

91. Holding a valid residence document appears to be the evidence that is required for demonstrating a right of residence, and therefore a right to equal treatment under Reg 6 of Subsidiary Legislation 217.25.³⁷

92. While Subsidiary Legislation 217.25 does not refer explicitly to social security, Subsidiary Legislation 460.17 (transposing the CRD) does. Reg 13(1) states (with respect to EU citizens):

“A person who ceases to have the right to reside by virtue of this Order or who becomes an unreasonable burden on the social assistance system, may be removed from Malta

³⁷ Regulation 4 states that: “In order to enjoy the rights laid down in the Agreement, beneficiaries of these regulations shall submit an application for a residence document”.

Provided that a removal order shall not be the automatic consequence of the person's recourse to the social assistance system of Malta."

9. THE NETHERLANDS

A. Eligibility of UK citizens for 'new residence status' and information about 'new residence status'

93. UK nationals who have exercised CRD rights can be granted a 5-year residence permit or a permanent residence permit, depending on whether they have completed 5 years of continuous legal residence in the Netherlands.

94. In order to be eligible for a 5-year 'new residence status', UK citizens had to demonstrate that they had legal residence in the Netherlands, for more than 3 months, in accordance with the CRD. In essence, this meant that UK citizens needed to prove that they:

- i. Were workers or self-employed persons in the Netherlands (or had retained worker status);
- ii. Had sufficient resources for themselves and family members not to become a burden on the social assistance system of the Netherlands and had comprehensive sickness insurance cover in the Netherlands; or
- iii. Were enrolled at a private or public establishment for the purpose of following a course of study (including vocational training) and had comprehensive sickness cover and declared that they had sufficient financial resources not to become a burden on the social assistance system.

95. When deciding whether to grant a new residence status, the immigration authorities consider whether past residence constituted legal residence, for the purpose of the CRD. If a UK citizen had received social assistance and had become, upon assessment by the authorities, an 'unreasonable burden' on the

social assistance system, authorities could conclude that their legal residence had come to an end and that they therefore were not entitled to a WA residence status. However, claiming social assistance did not automatically mean that legal residence had come to an end and so whether this had happened would depend on an individual assessment.³⁸

96. The authorities would also treat legal residence as having come to an end if the UK national represented a danger for public policy or security, based on individual assessment in accordance with principle of proportionality. Such UK nationals would also not be granted a new residence status.

97. If the UK national could prove that they had had five continuous years of legal residence in accordance with the CRD, they could apply for a permanent residence permit on the basis of the WA.

B. Conditions for UK citizens maintaining 'new residence status'

98. UK nationals are required, in principle, to continue complying with the CRD conditions. The immigration services may revoke a 5-year residence permit if a person accesses welfare benefits and subsequent investigations by the immigration service indicate that a person is no longer complying with the terms of their permit (i.e. no longer exercising a right to reside). In those circumstances, the immigration services will make an individual assessment to determine if a UK national has become an 'unreasonable' burden.

³⁸ The authorities would determine if recourse to social assistance had created an unreasonable burden by considering: (i) period of residence in the Netherlands prior to the claiming of social assistance, (ii) duration, frequency and extent of social assistance received, (iii) nature of reliance on social assistance, (iv) reasons why a person could not (temporarily or permanently) support themselves without recourse to social assistance, (v) probability of recourse to social assistance in the future and (vi) individual personal situation, including ties to the Netherlands, family circumstances, medical circumstances, age and prior contributions to social assistance system.

C. Eligibility of UK citizen 'new residence status' holders for social assistance

99. Legal residence is one of the requirements for recourse to the social assistance system in the Netherlands. The labour authority can verify whether someone has legal residence through an electronic registry. However, the labour authorities do not check whether someone meets the conditions of their permit or whether claiming social assistance has consequences for the foreign national's legal residence. The labour authority will notify the immigration service about the recourse to social assistance. The immigration service will then investigate whether the recourse to social assistance can lead to a revocation of the WA residence permit. This should always be an individual assessment.

100. If the UK citizen receives social assistance after receiving a five-year residence permit on the basis of the WA, the residence permit can be revoked. The revocation must be in accordance with the principle of proportionality and requires an individual assessment by the immigration service. The 'new residence status' cannot be terminated automatically. A weighing of interests is necessary before revoking the residence permit. The individual interests of a person are weighed against the interest of the State. Interests of the person include: the reasons for not being able to provide resources for themselves, family situation, medical condition, age, social security, their level of integration and the likelihood of possible need for further social aid required.

10. ROMANIA

A. Eligibility of UK citizens for 'new residence status' and information about 'new residence status'

101. UK nationals who resided in Romania before the end of the transition period on 31 December 2020 are eligible for WA residence permit. The main

requirements for obtaining a residence permit are similar to those established under EU law. Decisions to grant the new resident status on the basis of the WA will rely on objective criteria established and on similar requirements as those provided for in the CRD.

102. An application for the new residence status was expected to be made to the territorial formations of the General Inspectorate for Immigration by 31 December 2021, with residence permits issued by the Ministry of Internal Affairs. The permit contains an indication “Article 50 TEU” and under the ‘comments’ section of the permit states: “Article 18(1) of the WA.”

103. Those who have resided in Romania for less than 5 years will receive a temporary residence permit (**TRP**), valid for 5 years. To make an application for a temporary residence permit, a UK national must complete an application form and provide their original travel document for entering Romania, evidence of valid health insurance, proof of legal ownership of a living space and proof of means of maintenance. Proof of maintenance can include a salary certificate, pension stub, single declaration on income tax and social contributions due by individuals, bank account statement or equivalent documents. Students can prove their means of maintenance through a declaration on their own responsibility. The legislative requirement is that British citizens can (among other things) prove that they have sufficient means for themselves and their family members, at the Romanian minimum wage level.³⁹

104. Those who have resided in Romania for more than 5 years will receive a permanent residence permit, valid for 10 years, unless the status holder is under 14, in which case the permit is valid for 5 years. UK nationals who had already obtained permanent residency by 31 December 2020 according to the CRD are required to apply for a permanent residency permit (**PRP**). They do not need to meet the self-sufficiency requirement.⁴⁰

³⁹ Art 7(3)(d) of the Emergency Ordinance 204/2020

⁴⁰ Art 12 of the Emergency Ordinance 204/2020

B. Conditions for UK citizens maintaining 'new residence status'

105. All UK nationals who are WA beneficiaries have broad duties towards the state, such as to comply with Romanian law, not to overstay their residency permit, and notify the Ministry of Internal Affairs of any changes in their circumstances, and particularly name changes, citizenship changes, residency changes, marriage-related issues, child birth or adoption, death of family members residing in Romania.⁴¹
106. TRP holders who want to apply for permanent residency can apply for a PRP if the following cumulative conditions are met: (i) they have had a TRP for five continuous years prior to submitting the request for the PRP; (ii) they can prove they have a place to live; and (iii) they are not a threat to national security or public order.⁴² There is no requirement to demonstrate they continue to be self-sufficient.
107. TRP holders will lose their rights if they are found to be a threat to national security. The Ministry of Internal Affairs can cancel a TRP if the right was obtained illegally or through using false documents or through a sham marriage or civil partnership.⁴³
108. PRP holders will lose their rights if they are a national security threat or were absent from Romania for more than 5 consecutive years. PRPs can also be cancelled if they were obtained through using false documents or through a sham marriage or civil partner.⁴⁴

⁴¹ Art 5 of the Emergency Ordinance 204/2020

⁴² Art.13 of the Emergency Ordinance 204/2020. Continuity of residence will not be broken if the UK national is absent from Romania for less than 6 months every 12 months (as in the UK), absent for mandatory military service, absent for good reasons e.g. pregnancy, illness, education, professional training, work (for up to 12 months) and imprisonment for less than 6 months (Art.13(4)).

⁴³ Arts.10 and 11 of the Emergency Ordinance 204/2020

⁴⁴ Arts.15 and 16 of the Emergency Ordinance 204/2020

109. Art.23 of the Emergency Ordinance 204/2020 makes clear that there is an obligation to leave Romania after rights lapse, and it is a criminal offence not to apply for an extension to your status and to overstay, for example. It is also a criminal offence not to notify the government of any changes to your personal circumstances, within 10 days under Art.5. The specific changes referred to in legislation are that are referred to in Art.5 are changes to (i) name, (ii) nationality; (iii) domicile or residence; (iv) marital status (i.e., the conclusion, dissolution or annulment of marriage); (v) the birth or adoption of a child; or (vi) the death of a family member living in Romania. As proof of self-sufficiency is required in order to be granted a TRP, a prudent interpretation of the law may indicate that a UK national should inform the authorities of a change in the ability to sustain themselves, where their income falls below the minimum guaranteed wage in Romania.

110. However, Romanian law does not provide for routine or ad hoc assessment by any authorities of a TRP holder's financial situation or reliance on state support, after a TRP is granted. Romanian law also does not expressly indicate that a loss of financial means or reliance on state support would lead to withdrawal or revocation of a TRP.

111. If a TRP holder needed to extend their TRP, self-sufficiency and other conditions relevant for the initial grant would be re-assessed, and a lack of means may result in an extension not being granted. However, provided the TRP holder meets the criteria for obtaining a PRP (i.e. have had a TRP for 5 years and can prove they have a place to live and are not a threat to national security or public order), proof of self-sufficiency is no longer required, as the requirement that PRP applicants demonstrate self-sufficiency was repealed in 2024.

C. Eligibility of UK citizen 'new residence status' holders for social assistance

112. Under Romanian law, individuals without shelter, irrespective of their residency status (i.e., holding a temporary residency permit, long term residency permit, citizens), are entitled, upon request, to certain facilities. Such facilities are mainly regulated by the Romanian social assistance legislation package and include, among others: public shelters, social canteens, minimum inclusion income and temporary social housing opportunities. Social assistance is based on an applicant's financial need, rather than prior contributions.

113. Such social assistance is administered at the municipality level, and the information and documentation that is required to access such assistance may vary across municipality. An identity document will usually be required, though where emergency support is required, this may not be insisted upon.

114. The general position is that legal residents are entitled to social assistance, and no laws or guidance identified indicates that Romanian authorities would investigate a UK national's residence rights, if an application for social assistance has been made. However, this possibility cannot be ruled out, and it is possible that an application for social assistance could be refused if a UK national was found to be not lawfully resident, because they were not self-sufficient. As noted above, there is a requirement to inform the authorities about changes in circumstances, and a prudent interpretation of this obligation may also include notifying authorities of a change in financial circumstances. Where a UK national has not provided this notification, and subsequently claims social assistance, it is possible that they would be considered to have been in breach of Romanian immigration laws.

11. SLOVENIA

A. Eligibility of UK citizens for 'new residence status' and information about 'new residence status'

115. UK nationals who resided in Slovenia before the end of the transition period on 31 December 2020, relying on their EU right to free movement, were eligible for a new residence status, and were expected to make an application before 31 December 2021 or before the expiry of their previous valid residence permit (if earlier) for this new residence status.
116. UK nationals who have been legally resident in Slovenia for less than 5 years are eligible for a temporary residence permit under the WA, valid for 5 years. An application for a temporary residence permit should be supported by evidence of work, self-employment, studying (along with evidence of self-sufficiency and health insurance) or self-sufficiency as an economically inactive person (along with evidence of health insurance). A temporary residence permit can be extended under the same conditions as those that applied when it was originally issued.⁴⁵
117. UK nationals who are eligible for a permanent residence permit (having legally resided in Slovenia for 5 years) may exchange their current permanent residence document for a new permanent residence permit under the WA. If UK nationals have not previously held a permanent residence document, a permanent residence permit under the WA can be obtained, though evidence of being legally continuously resident for 5 years needs to be provided as part of the application. Applicants for a permanent residence permit may not be granted the new residence status if there are reasons for refusal related to public policy/national security or criminality.
118. Applications are made to the Administrative unit (Upravna enota) in person.⁴⁶

⁴⁵ The Slovenian authorities' website confirms that expiry of a permit does not lead to rights being lost, given the life long protection afforded by Art.39 WA: "*The temporary residence permit issued to the beneficiaries of the Withdrawal Agreement on the basis of Article 141.b of the Foreigners Act cannot expire and is thus not lost upon expiry of the temporary residence permit card, which is issued with a validity of five years, as the Withdrawal Agreement gives the beneficiaries rights in relation to the residence for life, unless they cease to meet the conditions established for obtaining the right (so-called life-long protection).*"

⁴⁶ <https://www.gov.si/en/registries/projects/brexit/>

B. Conditions for UK citizens maintaining 'new residence status'

119. UK nationals with a temporary residence permit are not required to continue to be in employment or self-employed in order to enjoy their residence status. However, they must continue to have sufficient means of subsistence and adequate health insurance coverage.

120. If conditions as to self-sufficiency/health insurance or as to being in employment/self-employment are no longer met, the Slovenian authorities may revoke a UK national's temporary residence permit by issuing a decision (made by the Minister of the Interior), which would be subject to appeal.⁴⁷

C. Eligibility of UK citizen 'new residence status' holders for social assistance

121. Article 3 of the Social Assistance Payment act governs the right to financial social assistance and income support. Article 3(1) provides that eligible beneficiaries include "citizens of the Republic of Slovenia who have permanent residence in the Republic of Slovenia⁴⁸ and aliens (hereinafter: aliens) who have a permanent residence permit and permanent residence in the Republic of Slovenia.⁴⁹

⁴⁷ Article 141.d, paragraph 1 of the Foreigners Act. It should be noted that Article 120, paragraph 2 of the Foreigners Act states that (with respect to EU citizens, and also as applicable to UK citizens) a residence permit enjoyed by someone who was previously in employment does not expire if the person is temporarily unable to work due to illness or an accident; has lost their job without it being their fault, which lasted for at least one year in Slovenia, and they are registered as a job seeker, for which a certificate is issued by the competent employment authority; is enrolled in vocational training. Those who were in employment for less than 12 months can retain their temporary residence permit for 6 months, after which their temporary residence permit will be annulled unless they meet other conditions in Article 141.d.

⁴⁸ Slovenian citizens can acquire permanent residence by submitting a form via the E-Uprava website or in person at any administrative unit. The Slovenian national is required to prove they have a legal right to reside at the address they are claiming as their permanent residency. This can be through property ownership, a rental agreement or another equivalent right.

⁴⁹ Article 3(2) makes provision for the right to financial social assistance and protection allowance to be made available to people who are in Slovenia based on international acts binding on Slovenia i.e. persons granted international protection and their family members residing in Slovenia based on family reunification rights.

122. As such, UK nationals must hold a permanent residence permit to be eligible for such social assistance. When an application for social assistance is made, the Centre for Social Work reviews official records to confirm whether the applicant holds a permanent residence permit.

123. Other forms of specific assistance are governed by Slovenian legislation that involves mandatory insurances i.e. the Health Care and Health Insurance Act, the Parental Care and Family Benefits Act and the Labour Market Regulation Act.

124. For example, UK nationals are entitled to receive unemployment benefits under the Labour Market Regulation Act under the same conditions as Slovenian nationals. They are required to:

- i. have a temporary or permanent residence permit in Slovenia,
- ii. be registered as unemployed with the Employment Service of Slovenia,
- iii. have paid unemployment insurance contributions,
- iv. not have terminated their employment through their own accord or due to their own fault, and
- v. have been insured against unemployment in Slovenia for at least 10 months in the last 24 months prior to the onset of unemployment, or, if they are younger than 30 years, have been insured in Slovenia for at least 6 months in the 24 months prior to unemployment, and
- vi. fulfil other conditions as laid down by law.

12. SWEDEN

A. Eligibility of UK citizens for 'new residence status' and information about 'new residence status'

125. UK nationals who resided in Sweden before the end of the transition period on 31 December 2020, relying on their EU right to free movement, were eligible for a new residence status, and were expected to make an application to the Swedish Migration Agency by 31 December 2021.⁵⁰

126. The 'new residence status' is evidenced by a residence status card, which is granted to UK nationals who can evidence they have residence status or permanent residence status under the WA, referred to in Sweden as "uppehållsstatus". A UK national with proof of *uppehållsstatus* may be issued an "uppehållsstatuskort". This is a residence permit card with a remark stating that "the residence permit is based on the right of residence pursuant to Article 18(1)".

127. The card's period of validity is five years. There is no obligation to extend the residence status card. If a UK citizen has proof of residence status or permanent residence status but has not renewed their residence status card, they will retain their status as long as they continue to meet the residence requirements. However, the card facilitates entry and exit from Sweden, if renewed prior to expiry. It is possible for residence status card holders to apply for a permanent residence card, if they choose. Permanent residence status comes into effect after at least five years in Sweden with the right of residence. To get proof of permanent residence status you need to apply for it.

B. Conditions for UK citizens maintaining 'new residence status'

128. Residence status can be lost if a UK national is rejected or expelled. In those circumstances, WA rights associated with the new residence status can no longer be enjoyed.

129. The Swedish authorities consider that Art.39 WA provides life-long protection to UK nationals, unless they cease to meet the conditions set out in

⁵⁰ [Chapter 3b, Section 3 of the Immigration Act](#)

the WA. UK nationals can temporarily lose their right of residence, if they are no longer exercising the types of free movement rights that EU citizens are typically expected to exercise in order to enjoy a right to reside (i.e. CRD rights). However, UK nationals can, like other EU citizens, meet the right to reside conditions in the future, even if they do not, temporarily, meet those conditions.

130. As such, UK nationals must be exercising CRD type rights (as enshrined in WA) to enjoy residence status, which is a legal prerequisite to asserting WA rights.⁵¹

131. Residence status is thus a legal prerequisite for UK citizens and their family members to be able to assert rights such as right of residence under the provisions of the Withdrawal Agreement. In principle, a residence status card could be revoked if a UK citizen was no longer exercising a right to reside. This would require the Swedish Migration Agency to take a decision to revoke it, after initiating a case against a UK national.⁵²

C. Eligibility of UK citizen 'new residence status' holders for social assistance

132. In order to be eligible for social assistance, a UK national with a residence status card must also demonstrate that they are exercising rights that mean they have a right to reside under Art.13 of the WA.

133. A communication from the Swedish National Board of Health and Welfare explains that "residence status under WA does not in itself imply an unconditional right to reside in Sweden, but a UK citizen with a document proving residence status must still demonstrate that he or she meets the

⁵¹ [Government Bill 2019/20:178, p. 58](#)

⁵² A no-names telephone conversation with a Swedish Migration Agency employee indicated that that employee was not aware of whether the authorities had so far revoked a residence status for a UK citizen.

conditions for the right of residence. This means that the Swedish social services must make their own assessment of the right of residence when dealing with cases involving UK citizens, in the same way as for EU/EEA citizens".⁵³

134. This means that a UK national applying for social assistance in Sweden will inevitably have to prove that they have the right of residence (i.e. meets the conditions as set out in Arts. 7(1)(a), (b) or (c), 7(3), 16(1) or 17(1) CRD).

⁵³ <https://www.socialstyrelsen.se/globalassets/sharepoint-dokument/artikelkatalog/meddelandebblad/2020-12-7131.pdf>, p.2