Brussels, 17 March 2021
Case No: 78990
Document No: 1186826

Guidance Note relating to the Agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom's membership of the European Union

Part Two – Citizens' Rights

This Guidance Note is purely informative and does not supplement or complete the Agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom's membership of the European Union ("the Separation Agreement" or "SA"). In the event of any discrepancy or inconsistency between the present Guidance Note and the SA, the latter shall prevail. In addition, it is intended to present an overview of the SA based upon the law – including the relevant applicable case law – as it stands as of 1 March 2021. This Guidance Note may be subject to updates in line with future developments.

This Guidance Note has been drafted on the basis of the European Commission's similar Guidance Note concerning Part Two of the EU-UK Withdrawal Agreement[1], in order to contribute to fulfilling the requirement in Article 4(3) SA that the provisions of Part Two of the Separation Agreement shall be interpreted in conformity with the provisions of Part Two of the EU-UK Withdrawal Agreement, in so far as they are identical in substance. Adaptations and adjustments have been made where differences between the two agreements entail or require divergences in implementation and application of provisions of the Separation Agreement compared to those in the EU-UK Withdrawal Agreement.

The case law of the Court of Justice of the European Union ("the CJEU") is relevant to the interpretation of the European Economic Area (EEA) law upon which the SA is based in accordance with Article 6 of the EEA Agreement and Article 3 of the Court and Surveillance Agreement ("SCA"):

- *Provisions that are identical in substance to corresponding rules of the EU treaties shall in their implementation and application be interpreted in conformity with the relevant rulings of the CJEU given prior to the date of signature of the EEA Agreement, i.e. 2 May 1992.*
- *Due account shall be paid to the principles laid down by the relevant rulings of the CJEU given after the date of the signature of the EEA Agreement and which*

[1] Guidance Note relating to 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 Part Two – Citizens' Rights 2020/C 173/01 (OJ C 173, 20.5.2020, p. 1–44).

concern the interpretation of provisions that are identical in substance to corresponding rules of the EU treaties.

Further to the above, and without prejudice to cases decided by the EFTA Court on the basis of the SA itself, the case law of the EFTA Court delivered in accordance with Article 108 of the EEA Agreement is highly relevant to the interpretation of EEA law, upon which the SA is based.

While this Guidance Note has been prepared by staff of the EFTA Surveillance Authority and based on the Commission's Guidance Note, the views contained in the Guidance Note should not be interpreted as stating an official position, either of the EFTA Surveillance Authority, or of the European Commission.

The overall objective of Part Two of the Separation Agreement is to safeguard citizens' rights derived from EEA law exercised by EEA EFTA nationals residing or working in the United Kingdom of Great Britain and Northern Ireland (UK) and by UK nationals residing or working in the EEA EFTA States, and their respective family members, by the end of the transition period provided for in the Separation Agreement (31 December 2020), and to provide for effective, enforceable and non-discriminatory guarantees for this purpose.

1. TITLE I – GENERAL PROVISIONS

Articles 8, 9 and 10 of the Separation Agreement jointly determine the personal and territorial scope for the purposes of the application of Title II of Part Two of the Separation Agreement on rights and obligations relating to residence, residence documents, workers and self-employed persons, and on professional qualifications (Title III on social security coordination has its own personal scope).

The beneficiaries of Title II of the Separation Agreement consist of EEA EFTA nationals and UK nationals having exercised the right to reside or work in accordance with EEA law before the end of the transition period and continuing to do so after that period, as well as their respective family members.

The definitions of an EEA EFTA national and UK national are set out in Article 2(c) and (d) SA.

References to EEA free movement rights or rules in this Guidance Note include rights under:

- Articles 28 and 31 of the EEA Agreement;
- Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, as incorporated into the EEA Agreement ("Directive 2004/38/EC"); and
- Regulation (EU) No 492/2011 on freedom of movement for workers within the Union, as incorporated into the EEA Agreement ("Regulation 492/2011").

1.1. *Article 8 – Definitions*

1.1.1. *Article 8(a): Family members*

Family members are defined by reference to Article 2(2) of Directive 2004/38/EC. This provision also applies with respect to family members of employed and self-employed workers, including frontier workers (Joined Cases *C-401/15 to C-403/15 Depesme and Kerrou*).

As is the case under EEA law, family members of EEA nationals *in principle* do not enjoy an independent right to move and reside freely (unless they are EEA nationals themselves or have acquired an independent right of residence as result of their relationship with an EEA national, the source of their free movement rights). In the same vein, family members do not enjoy rights under the Separation Agreement without these rights being derived from the right holder – a person falling under Article 9(1)(a) to (d) SA.

The only exception are family members falling under Article 9(1)(f) who resided in the host State *"independently"* at the end of the transition period as their right of residence under EEA law at that moment was no longer conditional on continuing to be a family member of an EEA national currently exercising EEA rights in the host State.

1.1.2. *Article 8(b): Frontier workers*

Frontier workers are persons falling under the definition of "workers" who, at the same time, do not reside under the condition set out in Article 12 of the Separation Agreement, in the State in which they are "workers".

Both frontier workers in employed (Article 28 EEA) and self-employed (Article 31 EEA) capacity are covered (see Case C-363/89 *Roux* and the guidance for Articles 23 and 24).

Neither the EEA Agreement nor any legislation incorporated into the Annexes of the EEA Agreement gives a definition of the term "worker" or "self-employed person".

According to the jurisprudence of the EFTA Court and the CJEU, the notion of "worker" has, for the purposes of freedom of movement in the EEA, a specific meaning (for example, Case C-66/85 *Lawrie-Blum*) and must be given a broad interpretation (Case C-139/85 *Kempf)*.

It is not possible to apply diverging national definitions (e.g. a definition of worker in domestic labour law) that would be more restrictive.

Established case law has defined an employed "worker" as "a person who undertakes genuine and effective work for which he is paid under the direction of someone else, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary" (Cases C-138/02 *Collins,* C-456/02 *Trojani or C-46/12 LN*). For comparison, self-employed persons perform tasks under their own responsibility and may thus be liable for damage caused as they bear the economic risk of the business, for example in so far as their profit is dependent on expenses incurred on staff and equipment in connection with their activity (C-202/90 - *Ayuntamiento de Sevilla*).

The essential features of an employment relationship are that:

- for a certain period of time a person performs services (see for example Cases C-139/85 Kempf, C-344/87 *Bettray*, C-171/88 *Rinner-Kühn*, C-102/88 *Ruzius-Wilbrink*);
- for and under the direction of another person (Cases C-152/73 *Sotgiu*, C-196/87 *Steymann*, C-344/87 *Bettray*);
- in return for which they receive remuneration (see for example Cases C-196/87 *Steymann*, C-344/87 *Bettray*, C-27/91 *Hostellerie Le Manoir*).

1.1.3. *Article 8(c): The host State*

This provision distinguishes between EEA EFTA nationals and UK nationals. The host State is defined differently for both groups.

For UK nationals, the host State is the EEA EFTA State as defined in Article 2(b) SA in which they are exercising their right of residence under free movement rules under the EEA Agreement.

1.1.3.1. Having "exercised their right of residence there in accordance with the EEA Agreement"

The exercise of the right of residence means that a UK national lawfully resides in the host State in accordance with free movement law under the EEA Agreement before the end of the transition period.

All possible situations where the right of residence stems from free movement rules under the EEA Agreement are covered.

This includes right of residence, irrespective of whether it is a permanent right of residence, irrespective of its duration (e.g. an arrival in the host State one week before the end of the transition period and residing there as a job-seeker under Article 28 EEA is sufficient) and irrespective of the capacity in which these rights are exercised (as a worker, self-employed person, student, job-seekers, etc.).

It is sufficient that the right of residence was exercised in accordance with the conditions EEA law attaches to the right of residence (Case E-4/19 *Campbell*).

Possession of a residence document is not a prerequisite for lawful residence in accordance with EEA law, because under EEA law, the right of residence is conferred directly on EEA nationals by the EEA Agreement and is not dependent upon their having fulfilled administrative procedures (Recital 11 of Directive 2004/38/EC).

1.1.3.2. "Before the end of the transition period and continue to reside there thereafter"

These notions, which should be read together, incorporate a time stamp that requires that residence in accordance with EEA law qualifies for the purposes of Part Two of the Separation Agreement only when such residence is "continuous" at the end of the transition period (31 December 2020).

Rules on continuity of residence are further covered in Article 10 SA.

Historical periods of residence that have lapsed before the end of the transition period (for example, residence between 1980 and 2001) or periods of residence that commence only after the end of the transition period do not qualify.

1.1.4. *Article 8(d): State of work*

The State of work is only relevant for the purposes of identifying the territorial scope of the rights of frontier workers.

Persons who reside in the State in which they work are not considered as frontier workers.

1.1.5. *Article 8(e): Rights of custody*

The expression "rights of custody" is defined as rights and duties relating to the care of a child, and in particular the right to determine the child's place of residence. The equivalent right under the EU-UK Withdrawal Agreement makes reference to Article 2(9) of Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (the Brussels IIa Regulation). However, this regulation does not apply under EEA law, nor for the EEA EFTA States in any other context, and a separate definition is therefore employed for the purposes of the Separation Agreement.

Article 8(e) covers rights of custody acquired by judgment, by operation of law or by an agreement having legal effect.

1.2. *Article 9 – Personal scope*

1.2.1. *EEA EFTA nationals and UK nationals: Paragraph (1)(a) to (d)*

The definitions of EEA EFTA nationals and UK nationals are set out in Article 2(c) and (d) SA.

Dual EEA EFTA/UK nationals, whether by birth or by naturalisation, are covered by the Separation Agreement if, by the end of the transition period, they have exercised free movement residence rights in the host State of which they hold nationality. Dual EEA EFTA/UK nationals, whether by birth or by naturalisation, are also covered by the Separation Agreement if, by the end of the transition period, they have exercised free movement residence rights in an EEA EFTA State other than that of which the person holds nationality (this is without prejudice to the rights they have as mobile EEA nationals under EEA law on free movement of EEA nationals).

Dual EEA EFTA/UK nationals who have *never exercised their free movement rights* are not covered by the Separation Agreement.

1.2.2. *Out of scope*

1.2.2.1. Posted workers

People relying solely on rights deriving from Article 36 EEA are not covered by the Separation Agreement (see also the guidance on Article 29(1)(e) of Title III of the Separation Agreement).

The Separation Agreement does not confer any entitlement to posted workers to remain in the host State after the end of the transition period.

1.2.2.2. Returning EEA EFTA nationals' and UK nationals' right to family reunification: Case C-370/90 *Singh*

EEA EFTA nationals and UK nationals covered by this line of case law fall outside the scope of the Separation Agreement. Consequently, their family members also fall outside the scope of the Separation Agreement. The residence status of EEA EFTA nationals returning to the EEA EFTA State of which they are nationals will be regulated by Icelandic, Liechtenstein or Norwegian law respectively.

1.2.3. *Article 9(1)(e) and (f) and 9(2) to (5): Family members*

Paragraph 1(e) and (f) and paragraphs 2 to 5 of Article 9 set out which persons fall within the scope of the Separation Agreement by virtue of their family ties with the right holder (a person falling under any provision of Article 9(1)(a) to (d) SA).

On the basis of Directive 2004/38/EC, the Separation Agreement distinguishes between two categories of "family members": "core" family members (defined in Article 8(a) SA and corresponding to Article 2(2) of Directive 2004/38/EC), and "extended" family members (falling under Article 9(2) to (5) SA and corresponding to Article 3(2) of Directive 2004/38/EC).

1.2.3.1. Article 9(1)(e)(i): "Core" family members residing in the host State

This provision covers "core" family members (defined in Article 8(a) SA) who have resided in the host State at the end of the transition period in their capacity as family

members of an EEA EFTA or UK national exercising free movement rights under the EEA Agreement in the host State.

1.2.3.2. Article 9(1)(e)(ii): “Core” family members residing outside the host State

Family members covered by point (e)(ii) of Article 9(1), who have not moved to the host State before the end of the transition period, may join the right holder in the host State at any point in time after the end of the transition period.

The family members in question shall be directly related (i.e. falling within the scope of Article 2(2) of Directive 2004/38/EC as a spouse, registered partner, or direct relatives in the ascending line) to the right holder at the end of the transition period. Direct descendants born before the end of the transition period are also covered by point (e)(ii) of Article 9(1) SA, while direct descendants born after the end of the transition period are covered by point (e)(iii) of Article 9(1) SA.

Moreover, the family member in question shall comply with the conditions of Article 2(2) of Directive 2004/38/EC at the time they seek residence in the host State under the Separation Agreement.

This means, for example, that someone seeking entry as spouse of a right holder in 2025 will be eligible under the Separation Agreement if they were married to the right holder at the end of the transition period and is still married in 2025.

A child of a right holder, who was under 21 years of age at the end of the transition period, will be eligible to join the right holder under the Separation Agreement if they continue to be the child of a right holder when seeking to join the right holder in the host State and is still under 21 years of age or dependent on the right holder.

A parent of a right holder will be eligible to join the right holder under the Separation Agreement if they are dependent on the right holder when seeking to join the right holder in the host State.

1.2.3.3. Article 9(1)(e)(iii): Future children

Persons who are born to, or adopted by, the right holder after the end of the transition period are protected by point (e)(iii) of Article 9(1) SA.

In order to be eligible to join the right holder in the host State, those future children will have to meet the conditions of Article 2(2)(c) of Directive 2004/38/EC when seeking to join the right holder in the host State, namely be under the age of 21, or be dependants.

Paragraph (1)(e)(iii) of Article 9(1) SA applies in any of the following situations:

a) both parents are right holders: no formal requirement for parents to have sole or joint rights of custody of the child;
b) one parent is a right holder and the other one is national of the host State (e.g. a Norwegian-UK couple residing in Norway): no formal requirement for parents to have sole or joint rights of custody of the child (this provision does not require that the non-right holder parent is resident in the host State);
c) one parent is a right holder (this provision covers all situations in which the child has only one parent which is a right holder, except when the parent has lost the custody of the child. It covers families with two parents, for instance a child born from a right holder married after the end of the transition period with an EEA EFTA or UK national who is not a beneficiary of the agreement, and families

with single parents or cases where the non-right holder parent does not reside in the host State or has no right of residence there): requirement for the right holder parent to have sole or joint rights of custody of the child.

Children born before the end of the transition period but recognised as children (for example, when the right holder recognises paternity of the child) only after the end of the transition period are to be treated under Article 9(1)(e)(i) or (ii), depending on the place of residence of children at the end of the transition period.

1.2.3.4. Article 9(1)(f): Family members who have acquired an independent right to reside in the host State

This provision covers “core” family members (defined in Article 8(a) SA) who:

a) at some point in time before the end of the transition period, resided in the host State in their capacity of being family members of an EEA EFTA or UK national exercising free movement rights under the EEA Agreement there;
b) later, but still before the end of the transition period, acquired a right of residence on the basis of free movement law under the EEA Agreement that is no longer dependent on being a family member of an EEA EFTA or UK national exercising free movement rights under the EEA Agreement in the host State (for example under Articles 13(2) or 16(2) of Directive 2004/38/EC);
c) retain that independent right at the end of the transition period.

The specific situation of persons falling under Article 9(1)(f) is the reason why Part Two of the Separation Agreement does not replicate the requirement of Article 3(1) of Directive 2004/38/EC that those family members should “accompany or join” the right holder in the host State.

1.2.3.5. Article 9(2): “Extended” family members already residing in host State

Article 9(2) SA covers “extended” family members (corresponding to Article 3(2) of Directive 2004/38/EC) who have resided in the host State by the end of the transition period by virtue of their relation to an EEA EFTA or UK national exercising free movement rights under the EEA Agreement there. The duration of that residence is immaterial.

The free movement right under the EEA Agreement of residence in the host State of such persons presupposes that they were issued with a residence document by the host State acting in accordance with its national legislation.

The free movement right under the EEA Agreement of residence of such persons in the host State, recognised by the host State acting in accordance with its national legislation, is evidenced by the issuance of a residence document.

1.2.3.6. Article 9(3): “Extended” family members with pending application

“Extended” family members (corresponding to Article 3(2) of Directive 2004/38/EC) who lodged an application under Article 3(2) of Directive 2004/38/EC to join the right holder in the host State before the end of the transition period but whose applications (either for entry visas or residence documents) have been outstanding at the end of the transition period are protected the same way as under the free movement rules under the EEA Agreement.

Their applications should be considered in accordance with the procedure set out in Article 3(2) of Directive 2004/38/EC. A positive decision on the application means that such persons should be considered as persons falling under Article 9(2) SA.

1.2.3.7. Article 9(4): Partners in a durable relationship

Partners in a durable relationship (persons falling within Article 3(2)(b) of Directive 2004/38/EC) of the right holder but who resided outside the host State at the end of the transition period are beneficiaries of the Separation Agreement.

This category covers all other long-term "durable" partnerships, both opposite-sex and same-sex relationships. The requirement of durability of the relationship must be assessed in the light of the objective of the Directive to maintain the unity of the family in a broad sense (see Recital 6 to Directive 2004/38/EC and Case E-1/20 *Kerim*).

Such persons would have to be in a durable relationship at the end of the transition period and still be in a durable relationship at the time they seek residence in the host State under the Separation Agreement.

This provision also covers those persons who were in a durable relationship at the end of the transition period and are married to the right holder at the time they seek residence in the host State under the Separation Agreement.

Their applications should be considered in accordance with the procedure set out in Article 3(2) of Directive 2004/38/EC. A positive decision on an application means that such persons should be considered as persons falling under Article 9(2).

1.2.4. *Article 9(5): Examination by the host State*

The host State should undertake an extensive examination of the personal circumstances when assessing the application for entry or residence by the family member falling under paragraphs 3 and 4 of Article 9 SA in accordance with its national legislation. Any decision refusing the application should be fully reasoned.

1.3. *Article 10 – Continuity of residence*

Article 10 ensures that persons who are temporarily absent from the territory of the host State at the moment of the end of the transition period, under the condition of "continuity" are still considered as lawful residents and consequently protected by the Separation Agreement. This is consistent with Articles 8 and 9 SA which refer to the "right of residence in the host State" and not to "presence in the host State".

Concretely, it means that a person who already has a permanent right to reside will lose it if absent for more than five years (second paragraph of Article 10, referring to the five-year rule of Article 14(3) SA). Those who did not yet reside for five years can only be absent for maximum 6 months a year (first paragraph of Article 10, referring to continuity of residence rules under Article 14(2) SA, which mirrors Article 16(3) of Directive 2004/38/EC).

See further detail in Article 14(2) and (3) SA on the conditions of continuity.

As an example, UK nationals who acquired the right of permanent residence in the host EEA EFTA State in accordance with Directive 2004/38/EC and left the host State four years before the end of the transition period are to be considered as having "exercised their right of residence in accordance with the EEA Agreement" (even if they no longer have the right of permanent residence under Directive 2004/38/EC) at

the end of the transition period because they have not been absent for a period exceeding five consecutive years. They are eligible for the new permanent residence status in the host State, provided they apply within the deadline set out in the first subparagraph of Article 17(1)(b) SA.

1.3.1. *Past periods of residence*

Previous periods of lawful residence in the host State, followed by an absence longer than allowed, are not taken into account.

For example, a UK national who has lived for 15 years in Iceland between 1995 and 2010 and then left Iceland is not considered as residing in the UK for the purposes of the Separation Agreement. Such an individual has voluntarily left Iceland and remained outside Iceland ever since, so there is no existing residence right under the Separation Agreement.

1.3.2. *Past periods of residence, followed by a longer absence and then return to the host State before the end of the transition period*

A person who has been absent for more than five years in the past, but who returns to the host State before the end of the transition period, starts building up periods of lawful residence from scratch upon return to the host State before the end of the transition period.

1.4. *Article 11 – Non-discrimination*

Article 11 SA fully mirrors Article 4 EEA and ensures that discrimination on grounds of nationality is prohibited, when:

a) it is within the scope of Part Two of the Separation Agreement – but without prejudice to any special provisions contained in Part Two (such as Article 22(2)); and
b) it is against the beneficiaries of the Separation Agreement.

This includes, for example, the right of students to the same tuition fees as nationals of the host State.

2. TITLE II – RIGHTS AND OBLIGATIONS

CHAPTER 1 – RIGHTS RELATED TO RESIDENCE, RESIDENCE DOCUMENTS

2.1. *Article 12 – Residence rights*

2.1.1. *Scope*

Paragraphs 1 to 3 of Article 12 lay down the main substantive conditions that underpin the right of residence in the host State for EEA EFTA nationals, UK nationals and their respective family members, irrespective of their nationality.

These conditions to obtain residence rights essentially replicate the conditions free movement rules under the EEA Agreement set with respect to residence rights.

UK nationals and their respective family members irrespective of their nationality, who acquired the right of permanent residence before the end of the transition period, should not be subject to pre-permanent residence requirements, such as those in Article 7 of Directive 2004/38/EC.

There is no discretion in the application of relevant rules, unless in favour of the person in question (see also Article 36 SA).

2.2. *Article 13 – Right of exit and of entry*

2.2.1. *Article 13(1): Entry and exit with a valid national identity card or passport*

Under Articles 4(1) and 5(1) of Directive 2004/38/EC, all EEA nationals have the right to leave one EEA State and enter another EEA State irrespective of whether they are nationals of those EEA States or their residents.

The right of beneficiaries of the Separation Agreement to be absent, as set out in Article 14 SA, and the right to continue working as a frontier worker, as set out in Articles 23 and 24 SA, imply the right to leave the host State or, respectively, the State of work and to return there.

As is the case of Directive 2004/38/EC, Article 13(1) SA requires a valid passport or national identity card for the purpose of exercising entry and exit rights. No other conditions can be attached under domestic law (such as that the travel document must have a certain future validity). Where the right to enter or to leave can be attested by different travel documents, the choice lies with the beneficiary of the Separation Agreement.

As regards the use of national identity cards as travel documents, the second subparagraph of Article 13(1) authorises the host States to decide that, after five years following the end of the transition period, national identity cards can be accepted only if they include a chip compliant with the applicable International Civil Aviation Organisation standards related to biometric identification (as per ICAO standards Doc 9303).

This decision should be duly published in good time, as per Article 35 SA, to allow beneficiaries of the Separation Agreement to apply for a compliant national identity card or a valid passport.

2.2.2. *Article 13(2): Holders of documents issued under the Separation Agreement*

EEA EFTA nationals, UK nationals, their family members, and other persons resident in the host State in accordance with the Separation Agreement will have the right to cross the borders of the host State under the conditions set out in Article 13(1) SA where they provide evidence of being a beneficiary of the Separation Agreement.

Holders of documents issued under Article 17 and 25 SA will therefore be exempted from any exit or entry visa or equivalent formality (in the sense of Article 4(2) and the second indent of Article 5(1) of Directive 2004/38/EC; e.g. electronic travel authorisation).

2.2.3. *Article 13(3): Entry visas and charging for out-of-country residence applications*

Article 13(3) SA replicates the entry visa facilities Directive 2004/38/EC grants to family members of mobile EEA nationals in recognition of the fact that the right of EEA nationals to move and reside freely should, if it is to be exercised under objective conditions of freedom and dignity, be also granted to their family members, irrespective of nationality (see Recital 5 to Directive 2004/38/EC).

While short-term entry visas covered by Article 13(3) should be issued free of charge, the Separation Agreement does not prevent the host State from offering an additional choice to family members to apply from abroad for a new residence status to be obtained pursuant to Article 17. In this case, the choice between the entry visa and the residence document lies with the beneficiary of the Separation Agreement. In such case, the application can be subject to a charge applicable to issuance of residence documents evidencing the residence status.

2.3. *Article 14 – Right of permanent residence*

2.3.1. *Article 14(1): Eligibility*

Article 14 SA mirrors Article 16 of Directive 2004/38/EC concerning eligibility for the right of permanent residence.

Persons who are not eligible to acquire right of permanent residence under Directive 2004/38/EC are not eligible to acquire permanent residence status under the SA. This has the following consequences:

a) residence that is in accordance with free movement rules under the EEA Agreement but not in accordance with the conditions of Directive 2004/38/EC (note that Article 12 SA refers back to Directive 2004/38/EC) does not count for the purposes of the right of permanent residence;
b) holding a valid residence document does not make the residence legal for the purposes of acquisition of right of permanent residence.

By the same token, persons who are eligible to acquire the right of permanent residence under Directive 2004/38/EC are eligible to acquire permanent residence status under the Separation Agreement. Reference in Articles 14(1) and 15 SA to periods of work in accordance with free movement rules under the EEA Agreement refers to periods of employment in the sense of Article 17 of Directive 2004/38/EC.

2.3.2. *Article 14(2): Residence for less than five years*

As regards continuity of non-permanent residence, Article 14(2) SA refers to continuity of residence being determined in accordance with Article 16(3) and Article 21 of Directive 2004/38/EC.

While Article 16(3) of Directive 2004/38/EC is designed for the purposes of checking the continuity of lawful residence for the purposes of acquiring the right of permanent residence, the same rules apply to residence under the Separation Agreement generally – beneficiaries of the Separation Agreement can be absent for some time without breaking the continuity of their right of residence in the host State.

This means that continuity of residence is not affected by the following temporary absences:

1) absences (NB: plural) not exceeding a total of six months a year;
2) absences (NB: plural) of a longer duration for compulsory military service (there is no time limit); or
3) by one absence (NB: singular) of a maximum of twelve consecutive months for important reasons, such as (NB: the list is not exhaustive):
    a. pregnancy and childbirth
    b. serious illness;
    c. study or vocational training; or

d. a posting abroad.

As an example, UK nationals who arrived to the host State four years before the end of the transition period, worked there and were posted abroad by their employer eight months before the end of the transition period (point 3(d) above) still retain their right of residence at the end of the transition period under EEA law on free movement of UK nationals for the purposes of the Separation Agreement, and are eligible for the new residence status in the host State, provided they return back to the host State before their absence exceeds twelve consecutive months.

This also means that continuity of residence is broken by any expulsion decision lawfully enforced against the person concerned (essentially, that right of residence has been terminated as such by any expulsion decision duly enforced against the person concerned).

2.3.3. *Article 14(3): Residence for more than five years*

Article 14(3) SA provides that the right of permanent residence should be lost only through absence from the host State for a period exceeding five consecutive years (see guidance on Article 10 with respect to beneficiaries who are absent at the moment of the end of the transition period).

The right of permanent residence under the Separation Agreement can also be lost through an expulsion decision lawfully taken on grounds of Article 19 SA.

The right of permanent residence acquired before the end of the transition period to which Article 10 SA refers should be understood as right of permanent residence under EEA law (Articles 16(1) or (2) of Directive 2004/38/EC) that determines whether one is eligible to become beneficiary of the Separation Agreement (it should not be understood as referring to the right of permanent residence acquired under the Separation Agreement).

To reflect the specific context of the Separation Agreement (under which it is not possible to simply re-exercise the right to move and reside freely even after the loss of previous right of permanent residence), Article 11 SA goes beyond the rule on the allowed two-year absence for loss of right of permanent residence under Directive 2004/38/EC (Article 16(4) of Directive 2004/38/EC) by providing for a maximum absence of five consecutive years. This extension of absence periods from two to five years (as compared to the rules under Directive 2004/38/EC) allows the persons concerned to keep their right of permanent residence under the Separation Agreement when returning to the host State after a period of absence of up to five consecutive years.

As an example, UK nationals who acquired the right of permanent residence in the host State under the conditions set out in the Separation Agreement by the end of the transition period and who leave the host State six years after the end of the transition period for a period of four years (e.g. for a professional posting abroad) can still return in the host State and retain their right of permanent residence and all attached rights under the Separation Agreement.

2.4. *Article 15 – Accumulation of periods*

Article 15 SA complements Article 14 SA by covering the situation in which the beneficiaries of the Separation Agreement have not yet acquired the right of permanent residence before the end of the transition period. The period of legal

residence in accordance with free movement rules under the EEA Agreement that a person has before the end of the transition period will be counted for the completion of the period of residence of 5 years necessary to acquire the right of permanent residence. Article 15 confers on such beneficiaries the right to acquire permanent residence status later (after accumulating the sufficient period of legal residence).

2.5. *Article 16 – Status and changes*

2.5.1. *Article 16(1): Changing the status*

The first part of Article 16(1) provides that EEA EFTA nationals and UK nationals who have the right of residence in the host State in accordance with Article 12(1) SA can change their status and remain beneficiaries of the Separation Agreement.

Their residence right (permanent/non-permanent) under the Separation Agreement is not affected when they change their status (i.e. the provision of the EEA Agreement on free movement of EEA nationals [and, by implication, UK nationals] on which their right of residence is based), as long as their residence is in accordance with the conditions of Article 12(1) SA (and, via it, EEA law on free movement of EEA nationals). It is also possible to hold multiple statuses (e.g., a student who is simultaneously a worker).

Change of status does not attract any consequences (such as the issuance of a new residence document) and does not have to be reported to national authorities.

The list of “statuses” in Article 16(1) (student, worker, self-employed person, and economically inactive person) is illustrative, not exhaustive.

While Article 16(1) also applies to beneficiaries of the Separation Agreement who have acquired permanent residence status under the Separation Agreement, such persons are unlikely to find any effective protection in this provision, given that their residence status is no longer conditional and cannot become conditional again (see the difference between residence based on Article 7 of Directive 2004/38/EC and permanent residence based on Articles 16 or 17 of Directive 2004/38/EC).

2.5.1.1. Specific situation of family members

Family members who have the right of residence in the host State in accordance with Article 12(2) or (3) SA can also change their status and remain beneficiaries of the Separation Agreement.

However, the second sentence of Article 16(1) expressly prevents them from becoming right holders (i.e., persons referred to in Article 9(1)(a) to (d) SA). In practice, this means that they have no autonomous right under the Separation Agreement to be joined by their own family members.

This limitation applies only with regard to those persons whose residence status under the Separation Agreement is *exclusively* derived from their being family members of right holders. UK nationals who reside in the host State at the end of the transition period, both as family members and, at the same time, as right holders (for example, the 20-year-old UK national son of an UK national worker who also works in the UK) are not covered by the second part of Article 16(1) and, consequently, they enjoy all the rights that right holders enjoy.

2.5.2. *Article 16(2): A child who is no longer dependent*

As under the provisions of the EEA Agreement on free movement of EEA nationals, family members of beneficiaries of the Separation Agreement whose residence status is derived from their being dependent on the right holder do not cease to be covered by the Separation Agreement when they cease to be dependent, for example by making use of their rights under Article 21 to take up employment or self-employment in the host State.

Article 16(2) provides that such family members maintain the same rights even when they cease to be dependent, irrespective of the mode of loss of dependency.

By the same token, family members of beneficiaries of the Separation Agreement whose residence status is derived from their being under 21 years of age remain covered by the Separation Agreement when they become 21 years.

2.6. *Article 17 – Issuance of residence documents*

In a departure from the fundamental principles of free movement rules under the EEA Agreement, Article 17 obliges the host State to make a choice – either to operate a constitutive residence scheme (Article 17(1)), or a declaratory residence scheme (Article 17(4)).

In a declaratory residence scheme (as per Directive 2004/38/EC), the residence status is conferred directly on the beneficiaries by operation of the law and is not dependent upon their having fulfilled administrative procedures. In other words, the "*source*" of the residence status and the entitlements stemming thereof is the fact of meeting the conditions the EEA Agreement attaches to the right of residence – no decision of national authorities is needed to have the status, although there may be an obligation to apply for a residence document attesting the status.

In a constitutive residence scheme, beneficiaries acquire residence status only if they make an application for the status and the application is granted. In other words, the *"source"* of the residence status and entitlements stemming thereof is the decision of national authorities granting the status.

2.6.1. *First subparagraph of Article 17(1): Constitutive status*

Article 17(1) stipulates that the host State has the choice to operate a constitutive residence scheme.

In accordance with the last subparagraph of the introductory phrase of Article 17(1), a person who files an application must comply with the conditions set out in Title II of Part Two of the Separation Agreement, in order to be granted the new residence status.

2.6.1.1. Residence document

Where the applicant complies with the conditions set out in Title II, Article 17(1) requires the host State to issue a residence document evidencing the new residence status. It does not provide for the format of the residence document, but paragraph (1)(q) of Article 17 requires that the residence document includes a statement that it has been issued in accordance with the Separation Agreement (so that their holders can be distinguished as beneficiaries of the Separation Agreement).

2.6.1.2. Digital or paper form

Article 17(1) makes it possible for the host State to issue the residence document in a digital form. This essentially means that the residence status is primarily recorded in a database operated by national authorities and that beneficiaries of the Separation Agreement are given means of accessing and verifying their status and sharing the status with interested parties.

2.6.2. *Article 17(1)(a): The purpose of the application*

The competent authorities should take a decision as to whether an applicant is entitled to the new residence status under Article 17(1) upon having assessed whether the conditions under Article 17(1) are fulfilled.

2.6.3. *Article 17(1)(b): Deadlines for and certificate of application*

2.6.3.1. Deadlines

Applications for the new residence status under Article 17(1) should be made at the latest *within the deadline set by the host State, which must not be shorter than six months as from the end of the transition period* – unless Article 17(1)(c) applies (see below). This deadline will need to apply to all beneficiaries of the Separation Agreement who were lawfully residing in the host State at the time of the end of the transition period, including persons who are temporarily absent at that moment as per Article 14(2) and (3) SA.

Family members and partners in a durable relationship who wish to join an EEA EFTA national or UK national beneficiary of the Separation Agreement after the end of the transition period should apply for the new residence status *within three months of their arrival, or, within six months as from the end of the transition period, whichever is later*.

2.6.3.2. Certificate of application

A certificate of application should be issued immediately after the competent authority has received the application. That certificate is to be distinguished from the new residence document, and the national authorities are obliged under the Separation Agreement to help the applicant completing the application in order to receive the certificate of application.

Once a person files an application within the deadlines set out in Article 17(1)(b) (last subparagraph of the introductory phrase of Article 17(1), the competent authority should take the following steps:

1) the competent authority issues immediately a certificate of application (last subparagraph of Article 17(1)(b));
2) the competent authority checks that the application is complete. If that is not the case (for example, where the identity has not been proved or, in the event payment of a fee is requested upon making application, the relevant fee has not been paid), the competent authority helps the applicant to avoid any errors or omissions in the application (Article 17(1)(o)), before it takes a decision to refuse the submitted application;
3) where the application is complete, the competent authority checks that the applicant is entitled to the residence rights set out in Title II;
4) where the application is well founded, the competent authority issues the new residence document (Article 17(1)(b)).

A decision to refuse an application is subject to judicial and, where appropriate, administrative redress in accordance with Article 17(1)(r).

An applicant is deemed to enjoy the right of residence under the Separation Agreement until the competent authority has taken a final decision as per Article 17(3).

2.6.3.3. Certificate of application

Issuance of the certificate of application confirms that:

a) the application has been successfully made;
b) the applicant has complied with the obligation to apply for a new residence status;
c) the applicant is deemed to have all rights under the Separation Agreement until the final decision on the application is made (Article 17(3)).

Article 17(1)(b) does not harmonise the format of the certificate of application, it merely requires that it should be issued (digital form is acceptable as well).

2.6.3.4. Out-of-country applications

Applications for the new residence status may also be made from abroad, for example by persons who are temporarily absent but considered as lawful residents in the host State (see guidance to Article 14(2) and (3) SA).

Out-of-country applications can also be made by family members who are not yet residing in the host State (see guidance to Article 9(1)(e)(ii) and (iii) and Article 9(3) and (4) SA).

2.6.4. *Article 17(1)(c): Technical problems and the notification thereof*

Article 17(1)(c) concerns the situation where applications for the new residence status are impossible due to technical problems of the application system of the host State.

In such a situation, if the technical problems occur in the UK, it is for the UK authorities to make a notification to the EEA EFTA States in accordance with the applicable rules. If the technical problems occur in an EEA EFTA State, it is for that EEA EFTA State to make the notification to the UK in accordance with the applicable rules. The deadline for submitting an application for a new residence status will be automatically prolonged by one year when a notification provided for by this paragraph is made.

If the host State makes such notification, it must publish it. The host State must also provide appropriate public information for the persons concerned in good time, because it affects their legal situation in the host State.

The effects of Article 17(1)(c) are not deployed if no notification is made, even if technical problems exist.

In this respect, Article 5 SA regarding good faith is particularly relevant, for example to assess whether the technical problems are sufficiently serious to trigger the notification procedure or are strictly temporary (for example, a Distributed Denial of Service (DDoS) attack on servers running the on-line application procedure, a civil service strike …). In case of strictly temporary problems, it may be more appropriate to prolong the application deadline via domestic law or assure the affected persons that their out-of-time applications will be accepted under Article 17(1)(d).

2.6.5. *Article 17(1)(d): Applications beyond deadline*

A failure to submit an application for a new residence status within the deadline can have serious consequences in a constitutive residence scheme operated under Article 17(1). It can result in an inability to acquire the new residence status to which the applicant would otherwise be entitled.

Paragraph 1(d) of Article 17 prohibits competent authorities from automatically rejecting applications lodged after the expiry of the deadline and requests them to process such applications where there were "reasonable grounds" for the failure to respect the deadline. Such applications should be processed in accordance with the other provisions of Article 17(1).

The decision by the competent authorities to allow an application submitted (or to be submitted) beyond the deadline should be made upon an assessment of all the circumstances and reasons for not respecting the deadline.

The "reasonable grounds" test establishes a safeguard that softens the hard edge of failing to submit an application within the deadline that will ensure that out-of-time applications are treated in a proportionate manner.

2.6.6. *Article 17(1)(g): Fees for the issuance of the residence document*

Fees may be charged as per Article 25(2) of Directive 2004/38/EC for the issuance of the residence document concerned.

This means that those fees cannot exceed those imposed on the nationals of the host State for the issuing of similar documents.

2.6.7. *Article 17(1)(h): Possession of a permanent residence document*

Paragraph 1(h) of Article 17 applies only when the applicant holds a valid permanent residence document, not when they hold a permanent residence status but no document to that effect. Persons holding the permanent residence status but not the permanent residence document will have to lodge their applications via the standard procedure under Article 17(1).

A permanent residence document includes documents issued under Directive 2004/38/EC and any similar domestic immigration documents, such as the UK Indefinite Leave to Remain.

2.6.8. *Article 17(1)(i): National identity cards*

UK nationals seeking to establish their nationality and identity can rely on their valid national identity cards even if such identity cards are no longer accepted as travel documents under Article 13(1) SA.

As is the case for Directive 2004/38/EC, paragraph 1(i) of Article 17 only requires is that the travel document is valid. No other conditions can be attached under domestic law (such as that the travel document must have a certain future validity).

2.6.9. *Article 17(1)(j): Supporting documents in copies*

Article 17(1)(j) does not preclude national authorities, where objectively justified, from requiring, in specific cases, that certain supporting documents be provided in original form when there is "reasonable doubt as to the authenticity".

2.6.10. *Article 17(1)(k) to (n): List of supporting documents*

Articles 8(3) and (5) and 10(2) of Directive 2004/38/EC (see also Recital 14) provide for an exhaustive list of supporting documents the host State can require EEA nationals and their family members to present with their applications for a registration certificate issued under Article 8(2) of Directive 2004/38/EC, or a residence card issued under Article 10(1) of Directive 2004/38/EC.

However, Directive 2004/38/EC does not lay down such an exhaustive list of supporting documents with respect to all possible situations (such as residence documents issued to workers retaining worker status or to family members retaining right of residence under Articles 12 or 13 of Directive 2004/38/EC) or for other residence documents issued under Directive 2004/38/EC (document certifying permanent residence issued under Article 19(1) of Directive 2004/38/EC or permanent residence card issued under Article 20 of Directive 2004/38/EC).

Article 17(1)(k) to (n) SA replicates Directive 2004/38/EC's approach to supporting documents. Where Directive 2004/38/EC provides for an exhaustive list of supporting documents, so does the Separation Agreement.

Paragraph 1(k) of Article 17 SA applies with respect to right holders residing in the host State at the end of the transition period. It is based on Article 8(3) of Directive 2004/38/EC.

With respect to point 1(k)(iii) of Article 17 SA, "establishment accredited or financed by the host State" corresponds to the first indent of Article 7(1)(c) of Directive 2004/38/EC.

Paragraph 1(l) of Article 17 SA applies with respect to family members of right holders (including "extended" family members) who have already resided in the host State at the end of the transition period. It is based on Articles 8(5) and 10(2) of Directive 2004/38/EC and it is adjusted to the fact that family members concerned are already resident in the host State and do not enter it from abroad.

Paragraph 1(m) of Article 17 SA applies with respect to family members of right holders who have not resided in the host State at the end of the transition period. It is based on Articles 8(5) and 10(2) of Directive 2004/38/EC.

Paragraph 1(n) of Article 17 SA serves as a catch-all provision covering all cases where paragraphs 1(k) to (m) do not apply. It builds on the principle of Directive 2004/38/EC that administrative practices constituting an undue obstacle to the exercise of the right of residence should be avoided. Beneficiaries can only be asked to provide evidence that they meet the conditions, including evidence of residence, but nothing more.

As an example: children born to two right holders after the end of the transition period merely need to show that they are children of the right holders. Consequently, they would need to present the following documents with their applications:

- *a valid passport (or identity card, if they are EEA EFTA or UK nationals) to establish their identity;*
- *a proof of family ties with their parents (for example a birth certificate) to establish their family ties with "the source" of their rights;*
- *a proof that their parents are right holders (for example, their residence documents issued under the SA) to establish that their "source" of rights are two right holders; and*

- *[if they are over 21 years of age when they apply] a proof that they are dependent on the right holders.*

The choice of which supporting document to present lies with applicants – the host State cannot oblige them to present particular documents and refuse to accept applications supported by other documents.

2.6.11. *Article 17(1)(o): Help to applicants*

Paragraph 1(o) of Article 17 SA ensures that the competent authorities help the applicants with the handling of the application and the documents required. Applicants must be given the opportunity to furnish supplementary evidence and to correct any deficiencies, errors, or omissions (for example where identity has not been proved or, in the event payment of a fee is requested upon making the application, the relevant fee has not been paid) in their applications. This is an important safeguard in a constitutive residence scheme because otherwise, after the end of the transition period, applicants will not be entitled to apply again under the Separation Agreement.

When applying paragraph 1(o), the host State should pay particular attention to vulnerable citizens (for example elderly, non-digital or persons in care/institutions).

2.6.12. *Article 17(1)(p): Criminality checks*

Article 17(1)(p) authorises the host State operating a new constitutive scheme to carry out systematic criminal record checks.

Such systematic checks have been accepted in the Separation Agreement, given its unique context.

Applicants may be required to self-declare those past criminal convictions that still appear in their criminal record in accordance with the law of the State of conviction at the time of the application. Spent convictions should not be part of that self-declaration. The State of conviction can be any country in the world.

Making an untruthful declaration does not, *in itself*, make any rights under the Separation Agreement void and null – it can nevertheless have consequences under public policy or fraud rules. The burden of proof in such cases lies with national authorities. The host State may also lay down provisions on proportionate sanctions applicable to untruthful declarations.

Paragraph 1(p) of Article 17 does not prevent the host State from checking its own criminal record databases, even systematically.

Checks of criminal record databases of other states can be requested, but only if that is considered essential and in accordance with the procedure set out in Article 27(3) of Directive 2004/38/EC that requires that such enquiries are not made as a matter of routine.

Criminality and security checks under paragraph 1(p) of Article 17 correspond to checks on grounds of public policy or public security carried out in accordance with Chapter VI of Directive 2004/38/EC for the purpose of restricting the rights in accordance with Article 19(1) SA.

Any restrictive measures taken on the grounds of criminality and security checks under paragraph 1(p) of Article 17 must comply with the rules laid down in Article 17(1)(r), and Articles 19 and 20 SA.

2.6.13. *Article 17(1)(q): Statement on the new residence document*

The only format requirement under the Separation Agreement is that the new residence document includes a statement showing that the legal basis for the rights of the document holder is the Separation Agreement.

2.6.14. *Article 17(1)(r): Redress procedure*

Paragraph (1)(r) of Article 17 ensures that any decision taken for the purposes of an application for the new residence status as per Article 17(1)(a) can be contested by the person in question under redress procedures examining both the legality of the decision and the facts and circumstances leading to it.

2.6.15. *Article 17(2): Deemed residence rights*

Without prejudice to the restrictions set out in Article 19 SA, no restrictive measures can be applied by the authorities of the host State or any economic or non-economic operator in the host State until the end of the deadline for applications for the new residence status set out in Article 17(1)(b).

2.6.16. *Article 17(3): Deemed right to reside until final decision is taken*

Without prejudice to the restrictions set out in Article 19 SA, no restrictive measures can be applied by the authorities of the host State or any economic or non-economic operator in the host State until the final decision on the application is made as per Article 17(1)(a).

This safeguard ensures that the applicant's status is protected until:

a) national authorities decide on the application (safeguard against administrative delays);
b) national courts decide on the appeal (safeguard against wrong decisions and judicial delays).

2.6.17. *Article 17(4): Declaratory procedure*

Paragraph 4 of Article 17 SA mirrors Article 25(1) of Directive 2004/38/EC as it allows the host States to continue operating the declaratory scheme, i.e. not making the new residence document a condition for lawful residence in the host State.

If the host State decides to do so, the rules set out in Directive 2004/38/EC, such as deadlines, fees, supporting documents and residence documents to be issued apply.

Those eligible for a new residence status *should have the right to receive, upon application, a residence document* (which may be in a digital form) that includes a statement that it has been issued in accordance with the Separation Agreement.

2.7. *Article 18 – Issuance of residence documents during the transition period*

2.7.1. *Article 18(1): Applications during the transition period*

It follows from Article 127 of the EU-UK Withdrawal Agreement that Union law continued to apply to and in the UK until the end of the transition period. This included treating the UK as an EU Member State for the purposes of international agreements concluded by the Union, or by the European Union and its Member States jointly. In tandem with this, the EEA EFTA States agreed that, during the transition period, they would continue to treat the UK as an EU Member State for the purposes of the EEA

Agreement and its protocols and annexes.[2] Consequently, EEA law continued to apply as regards the UK until the end of the transition period.

However, applications for the new constituent of rights residence document under Article 17(1), and for the declaratory residence document under Article 17(4), could be made already during the transition period (Articles 18 and 71 SA).

The decision to operate such a voluntary application of the scheme for the new residence status under Article 17(1) did not affect the application of free movement rules under the EEA Agreement.

An application for the new residence status under Article 17(1) of the Separation Agreement during the transition period did not prevent the applicants from applying simultaneously for a residence document under Directive 2004/38/EC.

Similarly, the decision to operate a voluntary scheme did not absolve the host State from its obligations under free movement rules under the EEA Agreement, such as to decide on pending applications or to process new applications.

2.7.2. *Article 18(2): Effect of granting or refusing the application*

Lodging an application under the voluntary constitutive scheme could have been desirable for applicants to acquire legal certainty about their status as soon as possible, despite the postponed entry into effect of the decision (since a favourable decision could not be withdrawn before the end of the transition period as per Article 18(3)).

It follows from paragraph 2 of Article 18 that decisions – both positive and negative – taken under the procedure set out in Article 17(1), the constitutive scheme, would have no effect until after the end of the transition period, i.e. such decisions were valid but their legal effects were postponed, given that the applicants would enjoy parallel free movement rights.

Similarly, a refusal of an application made under the procedure set out in Article 17(1) could warn the applicant that certain changes were needed to qualify for the new residence status – such changes could be effected until the end of the transition period, and the person could re-apply as set out in paragraph 4 of Article 18.

A residence document granted under Article 17(4) becomes immediately valid and applicable (after all, it only has declaratory effects). It does not affect parallel free movement rights of the applicants. Similarly, while refusal of an application under the voluntary declaratory scheme becomes immediately valid, it does not affect parallel free movement rights of the applicants.

2.7.3. *Article 18(3): No withdrawal of granted residence status during the transition period*

Paragraph 3 of Article 18 precludes the host State from withdrawing the residence status that it granted under the voluntary constitutive scheme before the end of the transition period. It could only do so on grounds of public policy, public security or

[2] Note Verbale from the Delegation of the European Union to Iceland of 27 January 2020 and Note Verbale from the Ministry for Foreign Affairs of Iceland of 27 January 2020; Note Verbale from the Delegation of the European Union to Liechtenstein of 28 January 2020 and Note Verbale from the Office for Foreign Affairs of Liechtenstein of 29 January 2020; Note Verbale from the Delegation of the European Union to Norway of 27 January 2020 and Note Verbale from the Royal Norwegian Ministry of Foreign Affairs of 27 January 2020. See also Article 44a of and Article 1 of Protocol 9 to the Surveillance and Court Agreement.

public health or abuse or fraud in accordance with the rules of Directive 2004/38/EC that were applicable in parallel.

This provision serves to assure applicants that there was no risk in applying early during the transition period because the application, once granted, could not be reviewed on administrative grounds (i.e., those related to the conditions attached to the right of residence).

In the scheme under Article 17(4) (declaratory procedure), it remains open to national authorities to withdraw the issued residence documents or status but this, on its own, does not affect the right of residence of the person concerned.

2.7.4. *Article 18(4): Re-applications*

Paragraph 4 of Article 18 ensures that applicants refused the new residence status under Article 17(1) before the end of the transition period could reapply within the deadline set out in Article 17(1)(b).

The right to apply again during the transition period is covered by the redress procedures set out in Article 17(1)(r).

2.7.5. *Article 18(5): Redress*

All applicants enjoy all the redress rights as set out in Chapter VI of Directive 2004/38/EC.

2.8. *Article 19 – Restrictions on the right of residence*

Article 19 covers all persons exercising their rights under Title II of Part Two – this means it also covers, for example, frontier workers, family members or “extended” family members.

2.8.1. *What is conduct?*

Paragraphs 1 and 2 of Article 19 are triggered by the conduct of the persons concerned. The notion of conduct under the Separation Agreement is based on Chapter VI of Directive 2004/38/EC (for more details, see the Commission’s guidelines for better transposition and application of Directive 2004/38/EC – COM(2009)313 final, Section 3.2).

2.8.2. *Conduct before and conduct after the end of the transition period*

Paragraphs 1 and 2 of Article 19 set out two different regimes that regulate the way in which conduct representing a genuine, present, and sufficiently serious threat to public policy or public security is to be treated, depending on whether the conduct occurred before or after the end of the transition period.

Paragraph 1 of Article 19 establishes a clear obligation (“shall be considered”) to apply Chapter VI of Directive 2004/38/EC to certain facts, while paragraph 2 of Article 19 authorises the application of national immigration rules to facts occurring after the end of the transition period.

Therefore, paragraphs 1 and 2 of Article 19 intend to separate the actions that occurred before and after the end of the transition period. National immigration rules should not be applied, even in part, to actions that are governed by paragraph 1 of Article 19 SA. However, any decision on restricting the right of residence due to

conduct occurring after the end of the transition period has to be taken in accordance with the national legislation.

2.8.3. *Continued conduct*

Under certain circumstances, persons concerned may be engaged in a *continued conduct* (i.e., conduct whose individual components are conducted with a single purpose, are connected by the same or similar manner of commission and by a close coincidence of time and object of the attack) *that started before the end of the transition period and continues afterwards*.

In the hypothesis of a continued conduct, the national authorities called upon to decide whether restrictive measures can be applied to a person, are likely to be confronted to, inter alia, the following scenarios:

a) the set of actions on the part of the person concerned which occurred after the end of the transition period, taken alone, is sufficient to adopt a restrictive measure under national immigration rules – in which case measures based on paragraph 2 of Article 19 can be adopted;
b) the set of actions which occurred after the end of the transition period, taken alone, is not sufficient to take measures under national immigration rules – in which case, measures based on paragraph 2 of Article 19 cannot be adopted;
c) in the case mentioned in (b), the national authorities can nevertheless examine under paragraph 1 of Article 19, whether the set of actions pre-dating the end of the transition period would justify restrictions on grounds of public policy or public security. This assessment, insofar as it has to establish the threat represented by personal conduct of the person concerned, can take account also of actions occurred after the end of the transition period.

Each restrictive measure must carefully consider the circumstances of the relevant case.

2.8.4. *Article 19(3) and (4): Abuse of rights or fraudulent or abusive applications*

Paragraphs 3 and 4 of Article 19 authorise the host State to remove from its territory applicants who abused their rights or committed fraud, in order to obtain rights under the Separation Agreement.

Such removal can take place even before a final judgment has been handed down in case of judicial redress sought against rejection of such an application. However, it must comply with the conditions set out in Article 31 of Directive 2004/38/EC.

This means that persons concerned may not be removed from the host State where they appealed against the removal decision and applied for an interim order to suspend enforcement of the removal decision.

Actual removal may not take place until such time as the decision on the interim order has been taken, except either of the following situations:

a) where the expulsion decision is based on a previous judicial decision;
b) where the persons concerned have had previous access to judicial review;
c) where the expulsion decision is based on imperative grounds of public security under Article 28(3) of Directive 2004/38/EC.

Where domestic rules envisage that enforcement of the removal decision is suspended by the appeal, there is no need to apply for an interim order to suspend enforcement of the removal decision.

In accordance with Article 31(4) of Directive 2004/38/EC, the *host State may exclude the removed persons from its territory pending the appeal procedure*, but it may not prevent them from submitting their defence in person, except when their appearance may cause serious troubles to public policy or public security.

2.9. *Article 20 – Safeguards and right of appeal*

This provision covers all situations in which residence rights under the Separation Agreement can be restricted or denied.

It ensures that the procedural safeguards of Chapter VI of Directive 2004/38/EC fully apply in all situations, i.e.:

a) abuse and fraud (Article 35 of Directive 2004/38/EC);
b) measures taken on grounds of public policy, public security, or public health (Chapter VI of Directive 2004/38/EC) or in accordance with national legislation; and
c) measures taken on all other grounds (Article 15 of Directive 2004/38/EC) which include situations such as when an application for a residence document is not accepted as made, when an application is refused because the applicant does not meet the conditions attached to the right of residence or decisions taken on the ground that the person concerned does no longer meet the conditions attached to the right of residence *(such as when an economically non-active EEA national becomes an unreasonable burden to the social assistance scheme of the host State)*.

It also ensures that the material safeguards of Chapter VI of Directive 2004/38/EC fully apply with regard to restriction decisions taken on the basis of conduct that occurred before the end of the transition period.

Restriction decisions taken in accordance with national legislation must also comply with the principle of proportionality and with fundamental rights protected by EEA law.

2.10. *Article 21 – Related rights*

This provision protects the right of family members, irrespective of nationality, to take up employment or self-employment in the host State, as per Article 23 of Directive 2004/38/EC.

This means that both family members who were not workers before the end of the transition period, but who become workers after, and family members who were already workers either in the host State or in the State of work (frontier workers) are protected by the SA.

2.11. *Article 22 – Equal treatment*

This provision mirrors Article 24 of Directive 2004/38/EC that provides for a specific rule on equal treatment as compared to Article 11 SA.

The same rule is “extended” to family members with a right of (permanent) residence in the host State. They are to be treated as nationals of the host State, not as family members of nationals of the host State.

The same exemptions as in Article 24(2) of Directive 2004/38/EC apply.

CHAPTER 2 – RIGHTS OF WORKERS AND SELF-EMPLOYED PERSONS

2.12. *Article 23 – Rights of workers*

2.12.1. *Article 23(1): Rights*

Article 23(1) SA grants all EEA law-based workers' rights to beneficiaries of the Separation Agreement who are workers, including those who change status to that of worker after the end of the transition period (see also Article 16(1) and Article 21 SA). Other categories of beneficiaries of the Separation Agreement are not covered by this Article.

2.12.1.1. Limitations

The same limitations on grounds of *public policy, public security and public health* as set out in Article 28(3) and (4) EEA apply.

The Separation Agreement does not cover employment in the public service as per Article 28(4) EEA. Consequently, the host State or the State of work may reserve to its own nationals access to posts that involve the exercise of powers of public law and the safeguarding of the general interests of the State where this restriction would be in accordance with Article 28(4) EEA.

2.12.1.2. Points (a)–(h) of paragraph 1: a non-exhaustive list of rights

Workers enjoy the full panoply of rights stemming from Article 28 EEA and Regulation (EU) No 492/2011. As a general rule, rights set out in paragraph 1 of Article 23 SA have the same scope and meaning as defined in Article 28 EEA and Regulation (EU) No 492/2011.

In principle, this entails that the scope and meaning of Article 23 should be interpreted in light of Article 28 EEA and Regulation (EU) No 492/2011 as applicable on 31 December 2020, cf. Article 6 SA.

However, the rights of workers enumerated in paragraph 1 of Article 23 SA are not exhaustive and any development of those rights in the EU may be relevant under the Separation Agreement. This is the case because Article 4(3) SA prescribes that the provisions of Part Two of the Separation Agreement shall, in their implementation and application, be interpreted in conformity with the provisions of Part Two of the EU-UK Withdrawal Agreement, in so far as they are identical in substance. Article 23 SA is identical in substance to Article 24 of the EU-UK Withdrawal Agreement.

2.12.2. *Article 23(2): Right of a child of a worker to complete education*

Article 23(2) SA protects the right of children of workers to complete their education in the host State. Thus, a child whose UK parent used to work in the host State, as a beneficiary of the Separation Agreement, can continue to reside in the host State and complete their education there, even after that parent has ceased to reside in the host State lawfully (i.e. has left the host State, has deceased or no longer fulfils the conditions for lawful residence). The child in question has also the right to be accompanied by a primary carer as long as the child is minor or, even after the age of majority, if the presence and care of the primary carer is needed to complete their education.

2.12.3. *Article 23(3): Frontier workers*

Frontier workers can continue working in the State of work if they did so by the end of the transition period, i.e. 31 December 2020.

If they stopped working before the end of the transition period, they can retain their status as workers in the State of work, if they fulfil any of the circumstances set out in points (a), (b), (c) or (d) of Article 7(3) of Directive 2004/38/EC, however, without having to change residence to the State of work. This allows them to enjoy the relevant rights set out in Article 23(1)(a) to (h) SA.

Frontier workers retain the status in the State of work, *inter alia,* where:

a) they are temporarily unable to work as the result of an illness or accident;
b) they are in duly recorded involuntary unemployment after having been employed for more than one year and have registered as a job-seeker with the relevant employment office;
c) they are in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first 12 months and have registered as a job-seeker with the relevant employment office *(in this case, the status of worker is retained for no less than six months)*; or
d) they embark on vocational training *(for those voluntarily unemployed, the training must be related to the previous employment)*.

2.13. *Article 24 – Rights of self-employed persons*

2.13.1. *Article 24(1): Rights*

The rights of paragraph 1 of Article 24 are granted to all beneficiaries of the Separation Agreement who are self-employed persons – not only to those who are self-employed persons at the end of the transition period, but also to persons who change status (see also Article 16(1), which provides for the right to become a self-employed person).

According to established case law (e.g., case 63/86 *Commission v Italy*), self-employed persons falling under Article 31 EEA can enjoy the rights under Regulation (EU) No 492/2011 that apply by analogy. This means, for example, that Article 23(1)(d) SA cannot apply with respect to dismissal, since a self-employed person is, by definition, not in a relation of subordination to an employer and cannot be dismissed.

The rights of paragraph 1 of Article 24 SA are also granted to self-employed frontier persons. There is a difference between the following categories:

(i) a person who resides in State A and pursues an activity as self-employed person in State B; and
(ii) (ii) a person who resides in State A and pursues an activity as self-employed person in State A while also providing services in States B and C – either through the occasional provision of services or through secondary establishment.

The first category corresponds to that of a frontier self-employed person while the second category does not.

In this regard, it is noted that setting up an office in a State different from that of residence for the purpose of providing services in that State does not necessarily amount to establishment in the State where those services are provided. The activity

in question may still be considered as falling under the rules on freedom to provide services rather than those of establishment. Therefore, a person with an office in the State of work will not always be regarded as a self-employed frontier worker.[3]

Articles 4(3) and Article 6 SA entail that the notion of self-employed person is interpreted in the same way the EFTA Court and the CJEU has interpreted Article 31 EEA and Article 49 TFEU in relevant case law.

2.13.1.1. Limitations

The rights of Article 24(1) SA are subject to the same restrictions as set out in Articles 32 and 33 EEA.

Consequently, these rights can be subject to limitations justified on grounds of public policy, public security, or public health (Article 33 EEA) and the State of work may discriminate against self-employed persons with respect to activities that are connected, even occasionally, with the exercise of official authority (Article 32 EEA).

2.13.1.2. Article 24(1)(a): The rights to take up and pursue activities as self-employed persons and to set up and manage undertakings

The Separation Agreement protects the rights to take up and pursue activities as self-employed persons and to set up and manage undertakings in accordance with Article 31 EEA, under the conditions laid down by the host State for its own nationals.

However, the Separation Agreement should not be understood as granting UK nationals the possibility to rely on EEA law to provide services in other EEA States or to establish themselves in other EEA States.

2.13.1.3. Article 24(1)(b): Reference to the non-exhaustive list of rights of Article 23(1)

Self-employed workers enjoy the full panoply of the relevant rights stemming from Article 28 EEA and Regulation (EU) No 492/2011 in the State of work.

2.13.2. *Article 24(2): Right of a child of a self-employed worker to complete their education*

Article 24(2) protects children whose EEA EFTA or UK parent was a worker, but who has ceased to reside lawfully in the host State of the child as per Article 23(2) SA, to the extent provided for by EEA law.

2.13.3. *Article 24(3): Self-employed frontier workers' rights and limitations on those rights*

Self-employed frontier workers enjoy the same rights as employed frontier workers pursuant to Article 23(3) SA, with the same reservations as to relevance as described in the guidance to Article 24(1) (e.g. dismissals).

[3] A person who equips himself with some form of infrastructure in the host State which is necessary for the purposes of performing the activities in that State (including an office, chambers, or consulting rooms) may fall under the provisions on freedom to provide services in the EEA Agreement, rather than those of establishment. This would depend on the duration of the provision of the service, but also its regularity, periodicity, or continuity (C-55/94, *Gebhard and* E-6/00 *Tschannett*).

2.14. *Article 25 – Issuance of a document identifying frontier workers' rights*

Article 25 obliges the State of work to issue frontier workers covered by the SA with a document certifying their status if those frontier workers so request. At the same time, Article 25 also allows the State of work to require frontier workers covered by the SA to apply for such a document.

Unlike the residence document issued under Article 17(1) SA, this document does not grant a new residence status – it recognises a pre-existing right to pursue an economic activity in the State of work which continues to exist.

Given that frontier workers regularly leave and re-enter the State of work, it is essential that they are issued with the document certifying their status as soon as possible, so that they are not prevented from exercising their rights and can easily demonstrate proof of those rights (notably those related to border crossing under Article 13 SA).

Frontier workers who are not in employment at the date of application are entitled to be issued with the document provided they retain their status as worker in accordance with Articles 23(3) or 24(3) SA (those provisions in turn refer to Article 7(3) of Directive 2004/38/EC).

CHAPTER 3 – PROFESSIONAL QUALIFICATIONS

Chapter 3 of Title II of Part Two of the Separation Agreement deals with the cases of persons covered by the SA who have obtained, or who were in the course of obtaining at the end of the transition period, recognition of their professional qualifications in their host State or State of work, as appropriate.

For those persons, the SA guarantees the following:

a) the validity and effectiveness of national decisions recognising their UK or EEA EFTA professional qualifications (grandfathering of decisions); and
b) their corresponding right to practice and to continue practicing the relevant profession and activities in their host State or State of work (for frontier workers).

On the contrary, this Chapter does not guarantee or grant to UK nationals covered by the personal scope of the Separation Agreement any internal market right relating to the provision of services to EEA EFTA States other than their host State or State of work, as appropriate.

The Separation Agreement does not guarantee UK nationals covered by the personal scope of the SA the right to rely on EEA law in order to obtain additional recognitions of their professional qualifications after the end of the transition period, be it in the host State, State of work or in any other EEA State.

The Separation Agreement does not deal with the treatment of professional qualifications obtained in the UK or in the EEA EFTA States before the end of the transition period but not recognised or not in the course of being recognised on the other side before that date.

2.15. *Article 26 – Recognised professional qualifications*

2.15.1. *Overall approach*

Article 26 describes the type of recognition decisions that are grandfathered under the SA, the States in which these decisions are grandfathered (host State or State of

work), the persons benefitting from the grandfathering of the decisions (those persons covered by the SA), and the effects of the grandfathering of the decisions in the respective states.

What is grandfathered?

In essence, Article 26 SA covers recognition decisions which have been adopted in accordance with four specific EEA legal instruments, namely the Professional Qualifications Directive (Directive 2005/36/EC), the Lawyers Establishment Directive (Directive 98/5/EC), the Statutory Auditors Directive (Directive 2006/43/EC) and the Toxic Products Directive (Directive 74/556/EEC).

2.15.2. *Articles 26(1)(a) and 26(2): Recognitions under the Professional Qualifications Directive*

The SA covers all three types of recognition for establishment purposes provided for by Title III of Directive 2005/36/EC:

a) recognitions under the general system (Article 10 and seq. of Directive 2005/36/EC);
b) recognitions on the basis of professional experience (Article 16 and seq. of Directive 2005/36/EC); and
c) recognitions on the basis of coordination of minimum training conditions (Article 21 and seq. of Directive 2005/36/EC).

These recognitions include the following:

- *Under Article 26(2)(a) SA:* recognitions of third country professional qualifications which are covered by Article 3(3) of Directive 2005/36/EC.

  These are recognitions by an EEA EFTA State or the UK of third country professional qualifications which have already been previously recognised in another EEA State or in the UK under Article 2(2) of Directive 2005/36/EC and which have been assimilated to domestic (EEA EFTA or UK) qualifications because the holder has, subsequently to the first recognition in an EEA EFTA State or in the UK, obtained three years' professional experience in the profession concerned in the State (EEA State or the UK) which initially recognised them.

  The SA does not therefore cover the first recognition of third country qualifications in an EEA EFTA State or in the UK, only subsequent ones and to the extent that the conditions provided under Article 3(3) of Directive 2005/36/EC have been fulfilled.

- *Under Article 26(2)(b):* decisions on partial access under Article 4f of Directive 2005/36/EC.

- *Under Article 26(2)(c):* recognition decisions for establishment purposes obtained under the electronic procedure of the European Professional Card.

  The European Professional Card recognition procedures are currently available for nurses responsible for general care, pharmacists, physiotherapists, mountain guides and real estate agents.

It is important to note that the Separation Agreement only ensures the continuous validity and effect of the recognition decision itself; it does not ensure continuous access to the underlying electronic network *(the IMI European Professional Card module)* of the authorities and professionals concerned. This is the same as under the EU-UK Withdrawal Agreement (see Articles 8 and 29 of that agreement). Access by professionals to the EPC's online interface for information purposes will not however be impaired. Article 27 SA also foresees that the EEA EFTA States and the UK put in place any necessary arrangements to ensure completion of the procedures required for ongoing procedures on recognition of professional qualifications.

A specific effect of the grandfathering offered by the Separation Agreement to recognition decisions covered by Directive 2005/36/EC is that any knowledge of language requirements and/or approval by health insurance funds that might be required by the host State will continue to be considered taking into account the relevant provisions of Directive 2005/36/EC, namely its Articles 53 and 55.

2.15.3. *Article 26(1)(b): Recognitions under the Lawyers Establishment Directive*

The Separation Agreement grandfathers, for persons covered by its personal scope, decisions under which EEA EFTA or UK lawyers have gained admission to the profession of a lawyer in a host State or State of work under Article 10(1) and (3) of Directive 98/5/EC (which facilitates practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained).

The grandfathering effect waives, in respect of UK nationals, any local nationality requirement that might limit access to the profession of a lawyer in the host State or State of work.

The grandfathering effect is limited to the host State or State of work.

Therefore, as regards UK lawyers, nationals of the UK who might have benefitted from these provisions in any EEA State, the Separation Agreement does not provide for the application of the two relevant directives incorporated into the EEA Agreement, namely Directive 98/5/EC and Directive 77/249/EEC (on temporary cross-border provision of lawyers' services), beyond the host State or State of work concerned.

2.15.4. *Article 26(1)(c): Recognitions under the Statutory Auditors Directive*

As regards the persons covered by the personal scope of the Separation Agreement, approvals in the host State or State of work of statutory auditors who have initially obtained their approval in an EEA EFTA State or in the UK under Article 14 of Directive 2006/43/EC will continue to produce their effects in the host State or State of work and the beneficiaries will continue to have access to the profession as before.

2.15.5. *Article 26(1)(d): Recognitions under the Toxic Products Directive*

As regards the persons covered by the personal scope of the Separation Agreement, approvals for the purpose of establishment obtained in the host State or State of work under the relevant provisions of Directive 74/556/EEC will continue to produce their effects under the Separation Agreement.

1.1.6. *Overall effects*

The grandfathering effects offered by Article 26 entail the assimilation of the established beneficiaries to nationals of their host State or State of work, as appropriate, as regards their access to and their pursuit of the profession and the professional activities concerned in those territories.

Such assimilation does not, however, extend to the granting of any other single market right under EEA law to the beneficiaries as regards the provision of services in territories other than those covered by these specific grandfathering effects.

2.16. *Article 27 – Ongoing procedures on the recognition of professional qualifications*

2.16.1. *Scope*

Article 27 mirrors Article 26 SA as regards its personal and material scope and captures all relevant requests for recognition of professional qualifications that had been formally submitted by, and were pending at, the end of the transition period. All such pending procedures will be continued and completed (including any compensation measure that may have been required) in accordance with the rules and procedures provided for by the relevant EEA provisions until a final decision is taken by the competent authority.

Two specific aspects should be mentioned:

- Article 27 covers not only pending administrative procedures but also any judicial procedures and appeal which may be launched post-end of the transition period. The provision also captures relevant judicial proceedings pending at the end of the transition period;
- As regards pending requests for recognition of qualifications under the European Professional Card process, Article 27 second subparagraph confirms that they are to be completed under the relevant Union law provisions.

As mentioned under point 2.15.2, the Separation Agreement does not ensure continued access to the relevant underlying electronic network (IMI module, network, and database). Instead, the third paragraph of Article 27 SA foresees that the EEA EFTA States and the UK put in place any necessary arrangements to ensure completion of the procedures required for ongoing procedures on recognition of professional qualifications.

2.16.2. *Effects*

The effects of the proceedings to be completed under Article 27 SA should be identical to the effects of the recognition decisions grandfathered under Article 26 SA and explained above.

2.17. *Article 28 – Administrative cooperation on recognition of professional qualifications*

Article 28 ensures that competent authorities of the UK and of the EEA EFTA States should continue to be bound by the general obligation of cooperation during the period of examination of all pending proceedings of recognition covered by Article 27 SA.

This provision also constitutes a general waiver on any national provision that might impede the exchange of relevant information with foreign authorities on the applicants,

their professional qualifications and general and professional conduct, pending recognition of their professional qualifications and their insertion in the profession of their host State or State of work.

Such obligation and waiver are necessary to ensure that public safety concerns are properly managed during the recognition process.

3. TITLE III – COORDINATION OF SOCIAL SECURITY SYSTEMS

In the context of social security coordination, there are three categories of persons:

1. persons to whom the coordination rules in Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 apply and continue to apply, based on Article 30 SA;
2. persons to whom only part of the coordination rules continue to apply or become applicable in the future due to specific circumstances, based on Article 31 SA;
3. persons outside the scope of the Separation Agreement, to whom the coordination rules in the relationship between the UK and the EEA EFTA States will not apply.

3.1. *Article 29 – Persons covered*

3.1.1. *General remarks*

Article 29 SA determines the persons to whom the full social security coordination rules will apply:

- the first paragraph lists the different situations covered when persons are in a social security cross-border situation involving the UK and an EEA EFTA State;
- the second paragraph determines the time-limit of the application of Article 29(1) to these persons;
- the third paragraph contains a residual clause by which persons covered by the personal scope of Title II of Part Two of the SA are also covered by Title III even if not or no longer under the scope of Article 29(1);
- the fourth paragraph determines the time-limit of the application of Article 29(3) to these persons;
- the fifth paragraph explains that family members and survivors are only covered by Article 30 if they derive rights and obligations in that capacity in accordance with Regulation (EC) No 883/2004.

As mentioned in Article 30(2) SA, the notions used under this Title are to be understood by reference to the notions used in Regulation (EC) No 883/2004.

Article 29(1) SA refers to persons who are "*subject to the legislation of*" an EEA EFTA State or the UK. This situation is to be determined pursuant to the conflict-of-law rules in Title II of Regulation (EC) No 883/2004.

The personal scope of social security coordination is specific to Title III of Part Two of the Separation Agreement and does not necessarily correspond to that of Title II. For instance, there may be circumstances in which persons who do not fall under the scope of Title II do nevertheless fall under the scope of Title III (e.g. those under the scope of Article 31 SA).

Because the aims of Titles II and III of Part Two of the Separation Agreement are different, terms used in both titles (for instance, for the notion of "residence", "frontier worker" or "posting") may have different meanings in accordance with the different personal scopes of the provisions of EEA law that they apply and their interpretation in case law.

For instance, the notion of "habitual residence" used in Title III of Part Two of the Separation Agreement is to be understood as defined in Article 1(j) of Regulation (EC) No 883/2004 (the place where the person habitually resides) and as further explained in Article 11 of Regulation (EC) No 987/2009 (hereinafter "habitual residence"). More details on the notion of "habitual residence" within the meaning of social security coordination rules may be found in the Practical Guide on the applicable legislation in the European Union, the European Economic Area and in Switzerland, as approved by the Administrative Commission for the Coordination of Social Security Systems. This notion under Regulation (EC) No 883/2004 has a different meaning and should not be confused with the notion of "residence" in Title II of Part Two of this Agreement, which is borrowed from Chapter III of Directive 2004/38/EC.

An example where the two notions of "residence" included in the EEA acts do not correspond concerns the situation of students. For the purpose of social security coordination rules, students in principle keep their habitual residence in the EEA State of origin and are temporarily staying in the EEA State where they study. At the same time, students enjoy, under the conditions of Directive 2004/38/EC, a right of residence in the EEA State where they study.

Another example to illustrate the relationship between Title II and Title III of Part Two of the Separation Agreement would be of a UK national who:

- works and habitually resides in Iceland at the end of the transition period;
- in 2022, acquires the permanent residence in Iceland based on Article 15 SA;
- in 2025, returns to the UK, starts working and moves their habitual residence there;
- at the same time, maintains the permanent residence right under Title II of Part Two of the Separation Agreement in Iceland for the five consecutive years.

As long as that UK national maintains a permanent right of residence in Iceland within the meaning of Title II of Part Two of the Separation Agreement, they will be entitled to benefit from the provisions of Title III if they return to Iceland. Furthermore, as long as that national maintains a permanent right of residence in Iceland, they will have the right to export social security benefits there.

For persons covered by Title III of the SA, the application of the coordination rules of Regulation (EC) No 883/2004 resulting from Title III does not in itself constitute the right to move or reside in a host state. It only determines the legal consequences for social security cover of such a situation. For instance, based on the Separation Agreement, the posting of workers for the provision of services from or to the UK will no longer be possible after the end of the transition period.

3.1.2. *Article 29(1): Personal scope (general clause)*

3.1.2.1. Article 29(1)

Article 29(1) SA refers to the following categories of persons:

- *EEA EFTA nationals*– as defined under the national legislation of the respective EEA EFTA States.
- *UK nationals* – as defined under its national legislation.
- *Stateless persons and refugees* habitually residing in an EEA EFTA State or in the UK.
- *Family members and survivors* of the above categories.

These persons come within the scope of Title III of Part Two of the Separation Agreement if they fulfil the conditions outlined in paragraph 1 of this Article:

Points (a) and (b): EEA EFTA nationals who are subject to the UK legislation at the end of the transition period and *vice versa* (irrespective of the habitual residence of that person). This includes any person subject to UK legislation or the legislation of an EEA EFTA State under Title II of Regulation (EC) No 883/2004 including the cases mentioned under Article 11(2) of that Regulation.

Points (c) and (d): EEA EFTA nationals who are subject to the legislation of an EEA EFTA State (in the same meaning as under the previous bullet point) at the end of the transition period and habitually reside in the UK and *vice versa.*

Point (e): EEA EFTA nationals who pursue a gainful activity in the UK at the end of the transition period, but are subject to the legislation of an EEA EFTA State under Title II of Regulation (EC) No 883/2004 and *vice versa*. The receipt of benefits mentioned in Article 11(2) of the Regulation has to be treated as exercise of a gainful activity for that purpose. This applies regardless of the place of habitual residence.

Point (f): Refugees and stateless persons in one of the situations mentioned above with the additional condition that they legally reside in the UK or in an EEA EFTA State.

Points (a) to (f): Family members (as defined in Article 1(i) of Regulation (EC) No 883/2004) of one of the persons mentioned in one of the bullet points above, irrespective of their nationality (further details can be found at the end of this chapter). Also family members born after the end of the transition period are covered (e.g. new-born child or new partner) who are living with the right holder and who are in situation covered by Article 29(1) SA.

Points (a) to (f): Survivors of one of the persons mentioned in one of the bullet points above, when the deceased person fulfilled the conditions at the end of the transition period and the death of that person occurred after the end of the transition period. If this is not the case, the survivor can only be entitled to the benefits as provided under Article 31 SA.

3.1.3. *Article 29(2): The meaning of "without interruption"*

The SA ensures the application of Regulations (EC) No 883/2004 and (EC) No 987/2009 for as long as the situation concerned remains unchanged or the persons continue to be in a situation involving both the UK and an EEA EFTA State at the same time without interruption.

Not every change in a situation of the person concerned is to be treated as one. Switches between the different categories mentioned in Article 29(1) SA maintain the status of a person covered by Article 29(1) SA to whom Regulations (EC) No 883/2004 and (EC) No 987/2009 apply. If such a switch takes place, of course, the condition under Article 29(1) SA referring to the situation at the "end of the transition period" cannot be applied.

In cross-border situations, “without interruption” has to be understood in such a flexible way that also short periods in between two situations are not harmful, for instance a break of for example one month before starting a new contract (by analogy, Case E-4/19 *Campbell).*

3.1.4. *Article 29(3): Personal scope (residual clause)*

Article 29(3) contains a residual clause by which persons covered by Article 9 concerning the personal scope of Title II of Part Two of the Separation Agreement who are not or no longer under the scope of points (a) to (e) Article 29(1) should also benefit from the provisions on full social security coordination of Title III of Part Two of the SA.

For instance, children born after the end of the transition period who are under the scope of Title II of Part Two of the SA would also benefit from the provisions of Title III.

If, for instance, a UK national studies in Norway at the end of the transition period, without habitually residing therein in the sense of Article 1(j) of Regulation (EC) No 883/2004, such a situation is not covered by Article 29(1) SA. However, the student maintains a right of residence under Title II of Part Two of the Separation Agreement if, for instance, they gain access to the labour market. In this case, they will then benefit from the provisions of Title III as well pursuant to Article 29(3) SA.

Persons who are both UK nationals and EEA EFTA nationals may also be covered by Article 29(3) SA if they are covered by Title II of the Separation Agreement (see Section 1.2 of this Guidance on Article 9 SA).

This residual clause also applies to family members and survivors of the beneficiaries of Title II of Part Two of the Separation Agreement (see, however, Article 29(5) SA, below).

3.1.5. *Article 29(4): The link to the host State or State of work for persons covered by paragraph 3*

Article 29(4) ensures the application of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to the persons covered by Article 29(3) for as long as the situation concerned remains unchanged: that is, for as long as the persons covered by Article 29(3) retain a right to reside in their host State under Article 12 SA or a right to work in their State of work under Articles 23 or 24 SA.

3.1.6. *Article 29(5): Family members and survivors*

This provision explains that, to the extent that the expression “family members and survivors” must be understood by reference to the notions used in Regulation (EC) No 883/2004 (see also Article 30(2) SA), “family members and survivors” are covered under Article 29 only to the extent that they derive rights and obligations in that capacity in accordance with social security legislation.

3.2. *Article 30 – Social security coordination rules*

3.2.1. *Article 30(1): Material scope*

Article 30(1) ensures the application of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 in their entirety to the persons mentioned in Article 29(1).

The coordination rules will be maintained as amended by the Regulations listed in Annex I to the Separation Agreement with the possibility of making any necessary adaptations in the future in accordance with Article 34 SA.

Where there are exceptions regarding the UK under the current rules, such as special entries in the Annexes to the Regulations, these will continue to apply under the same conditions. For instance, the UK does not apply Article 28(2) to (4) of Regulation (EC) No 883/2004. The Separation Agreement will not change this.

In addition to the Regulations, the EEA EFTA States and the UK shall take due account of all the relevant decisions and take note of recommendations of the Administrative Commission for the coordination of social security systems set up by Article 71 of Regulation (EC) No 883/2004 which are listed in Annex I to the Separation Agreement.

3.2.2. *Article 30(2): Definitions*

The notions used in Title III of Part Two of the Separation Agreement shall be understood by reference to the same notions used in Regulation (EC) No 883/2004.

For instance, the definition of "family member" under Article 8 SA is not relevant in the context of social security coordination provisions and the definition in Article 1(i) of Regulation (EC) No 883/2004 will apply.

3.3. *Article 31 – Special situations covered*

Article 31 governs special situations in which the rights deriving from the social security coordination rules need to be protected even if the persons are not or are no longer within the scope of Article 29 SA.

For these special categories of persons, some provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 need to be maintained. These provisions apply in accordance with the general principles of these two regulations, such as for instance non-discrimination or the unicity of the applicable legislation.

3.3.1. *Article 31(1)(a) and (2): Past and future periods*

Article 31(1)(a) protects existing and future rights based on past periods of insurance, employment, self-employment, and residence.

This provision ensures that EEA EFTA nationals with previous periods in the UK and *vice versa* will be able to claim benefits and, if needed, to rely on the aggregation of periods. The provision concerns any kind of social security benefit based on periods of insurance, employment, self-employment, or residence, such as old-age pensions, invalidity benefits, accidents at work benefits, sickness benefits or unemployment benefits.

This provision is also applicable when a benefit is granted exclusively on past periods in the State which examines entitlement to benefits under its legislation (irrespective of whether they have been completed before or after the end of the transition period), when no aggregation is needed because past periods are sufficient to grant a benefit.

At the same time, all rights and obligations deriving directly (or indirectly) from such periods are maintained. "Rights and obligations deriving from such periods" means entitlements provided under the UK or an EEA EFTA State's legislation in accordance with the provisions of Regulation (EC) No 883/2004, deriving from those periods [or the granting of a benefit based on these periods, and any consequent entitlement to

benefits,] as well as the corresponding obligations. For sickness and family benefits of persons covered by Article 31(1)(a) SA, the special rules under Article 31(2) SA are applicable (see below and also Section 3.3.6 of this document), so these rights are in addition to “rights and obligations deriving from such periods”.

This may cover, for instance, the right to receive periodical medical check where a person habitually resides in order to continue receiving an invalidity benefit (based on Article 87 of Regulation (EC) No 987/2009); the right to receive a supplement based on Article 58 of Regulation (EC) No 883/2004.

The social security coordination rules will apply both to periods completed before the end of the transition period and those completed by the same persons after that date.

At the same time, the second paragraph of this provision ensures that the coordination rules on sickness and family benefits will apply to persons covered by Article 31(1)(a).

Article 31(2) concerning sickness benefits refers to rules on competence for sickness for the person who receives a benefit under 31(1)(a) SA. It covers the situations where there is a change of competence because this person comes back to an EEA EFTA State or the UK or because she/he starts receiving another pension.

The conflict rules for determining the competence for sickness cover are to be seen as a whole and future changes that might appear in the habitual residence of the person or the receipt of an additional benefit have to be taken into account and the relevant rules of Regulation (EC) No 883/2004 remain applicable.

3.3.2. *Article 31(1)(b): Ongoing planned treatment*

3.3.2.1. Scope

Article 31(1)(b) SA ensures that the right to receive planned treatment under Regulation (EC) No 883/2004 is protected for persons who have begun to receive such treatment or at least have requested the prior authorisation to receive it before the end of the transition period. As the freedom to provide services is not extended beyond the end of the transition period, other forms of rights connected to patient mobility, especially the cases under Directive 2011/24/EU on the application of patients’ rights in cross-border healthcare, will not be covered any longer by EEA law if the treatment takes place after the end of that period.

As this provision refers to “persons”, it covers EEA EFTA nationals, UK nationals, stateless persons or refugees habitually residing in the UK or an EEA EFTA State.

This provision concerns persons who are not covered by Article 29 SA.

Whenever Regulation (EC) No 883/2004 is mentioned, it should be understood that the relevant provisions of Regulation (EC) No 987/2009 shall apply accordingly.

3.3.2.2. Travel-related issues

Until the end of the treatment, the *persons undergoing planned treatment* who are benefiting from Article 31(1)(b) as described above (patients) have the right to enter and exit the State of treatment in accordance with Article 13 SA (which relates to the right for the beneficiaries of Title II of Part Two of the Separation Agreement to enter and exit the host State), “*mutatis mutandis”* (meaning that Article 13 SA applies with some adjustments to take account of the differences in situation, but the main point remains the same).

The existing Portable Document S2 issued under Regulation (EC) No 883/2004 is sufficient evidence of personal entitlement to such planned treatment for the purposes of Article 31(1)(b) SA.

Concretely, a UK national who holds the Portable Document S2 and the necessary travel documents provided for in Article 13(1) SA has the right to enter and exit the State of treatment in accordance with Article 13(2) (i.e. visa free).

Patients benefitting from Article 31(1)(b) SA who are neither EEA EFTA nationals nor UK nationals may, in accordance with applicable legislation, be required to have an entry visa.

In individual cases, patients benefitting from Article 31(1)(b) SA may, in order not to be deprived of their right to receive the course of planned treatment, require the presence and care provided by other persons (accompanying person).

An _accompanying person_ may be a family member or any other person who takes care of the person in need of a planned treatment. The EEA EFTA States and the UK will consider how to provide evidence of the status of accompanying persons and the ensuing rights under the Separation Agreement.

The accompanying person has the right to enter and exit the State of treatment with a valid travel document provided for in Article 13(1) SA. The State of treatment may require the accompanying person to have an entry visa in accordance with applicable legislation.

Whenever the State of treatment requires patients or their accompanying persons to have an entry visa, it must grant those persons every facility to obtain the necessary visas in accordance with Article 13(3) SA. Such visas must be issued free of charge as soon as possible and on the basis of an accelerated procedure.

No exit visa or equivalent requirement can be required from patients or accompanying persons.

Article 31(1)(b) SA does not grant any residence rights in the meaning of Directive 2004/38/EC to patients and accompanying persons during their stay in the State of treatment. They have the right to stay on the territory of the EEA EFTA State or the UK for as long as it is needed for the effective provision of the treatment to the patient. They are not subject to Articles 17 or 18 SA.

If a treatment has to be prolonged for medical reasons, the Portable Document S2 could be renewed or prolonged for this period. Potential unforeseen occurrences related to the treatment will be analysed on a case-by-case basis.

3.3.3. *Article 31(1)(c): Ongoing unplanned treatment*

The purpose of Article 31(1)(c) is to ensure that the right to receive unplanned necessary treatment is protected for persons who are on temporary stays that extend beyond the transition period, via the European Health Insurance Card (EHIC) or a replacement certificate.

The notion of "stay" is to be understood as defined in Article 1(k) of Regulation (EC) No 883/2004, meaning temporary residence (in application of Article 30(2) SA). The maximum duration of stay is not determined by law and depends on the factual circumstances in each case. In practice, this could be e.g. a holiday period or a period of study (if not accompanied by a change in habitual residence). A stay which from the

beginning is planned for a longer period (e.g. for the purpose of studies) is not regarded as ending when the person concerned stays in between for a short period in another State. Therefore, such a person remains covered by Article 31(1)(c) SA also after returning again to the State of stay e.g. of studies.

This provision concerns only persons who are not covered by Article 29 SA. If a person is covered by Article 29, then all the social security coordination rules, including those concerning unplanned treatment, will apply for holidays ongoing at the end of the transition period as well as for future holidays. Whenever Regulation (EC) No 883/2004 is mentioned, by virtue of Article 6(4) SA, the relevant provisions in Regulation (EC) No 987/2009 apply accordingly.

3.3.4. *Article 31(1)(d): Export of family benefits*

This provision fills a gap left by Article 29 SA for cases in which the person opening entitlements is not in a cross-border situation between an EEA EFTA State and the UK, but the family members of such a person are. In the situations set in Article 31(1)(d)(i) and (ii) SA, *the entitlement to family benefits* is to be understood as referring to:

- entitlement to the full benefit paid by the primary competent State;
- entitlement to a differential supplement paid by the secondary competent State; and
- a suspended entitlement to benefits when the benefit in the secondary competent State is lower than the benefit in the primary competent State.

This provision will continue to apply even if there are changes between primary and secondary competence.

Article 31(1)(d) SA applies also to additional or special benefits for orphans coordinated under Article 69 of Regulation (EC) No 883/2004. It is not relevant if the entitlement to additional or special family benefits for orphans existed already at the end of the transition period or afterwards, provided that in the latter situation there was an entitlement to “standard” family benefits at the end of the transition period.

3.3.5. *Article 31(1)(e): derived rights as family members*

Article 31(1)(e) also protects any derived rights as family members.

“Family member” is to be understood as defined in Article 1(i) of Regulation (EC) No 883/2004. As a rule, it includes the spouse and minor or dependent children who have reached the age of majority.

This provision protects those rights that exist at the end of the transition period, whether they are exercised or not.

It concerns situations set in Article 31(1)(d)(i) and (ii), without it meaning that it applies only to those family members for which family benefits are paid based on this provision. So, it is possible that a spouse is protected by Article 31(1)(e), even if the couple has no children and no family benefits are paid based on Article 31(1)(d).

The determinant factor is that the family member relationship exists at the end of the transition period. The provision is not covering future spouses or further and future children, but all the rules of the Regulations apply to the existing ones.

3.3.6. *Article 31(2): Changes of competence*

The first sentence of Article 31(2) ensures that persons who have been subject to the legislation of an EEA EFTA State or of the UK before the end of the transition period and who, based on rules of Article 31(1)(a) SA, start receiving a social security benefit before or after the end of the transition period, will continue to be subject to the provisions of the Regulation (EC) No 883/2004 concerning sickness benefits. This means that, as a result of receiving a benefit under Article 31(1)(a) before or after the end of the transition period, the competence for sickness may change, but the relevant sickness rules will be applied by that competent State accordingly to the concerned persons.

Underpinned by a similar logic, the second sentence of Article 31(2) ensures that rules regarding family benefits under the Regulation (EC) No 883/2004 will also continue to apply where relevant to a person in a situation as described above.

A situation covered by Article 31(2) could be illustrated by the following example:

A UK non-active national residing in the UK starts receiving a pension from Norway where they previously worked. The UK becomes competent for their sickness benefits. If they are entitled to family benefits, the conditions under the UK legislation will apply as regards family benefits for members of their family residing with him/her in the UK.

See also further explanations on this Article in Section 3.3.1 above as the provision operates in conjunction with Article 31(1) SA.

3.4. *Article 32: European Union citizens*

According to Article 32, Title III of Part Two of the Separation Agreement applies not only to UK nationals and EEA EFTA nationals but also to citizens of the EU Member States, under the following two cumulative conditions:

- the European Union must have concluded and applies a corresponding agreement with the UK which applies to EEA EFTA nationals; and
- the European Union must have concluded and applies a corresponding agreement with the EEA EFTA States which applies to UK nationals.

Article 32(2) states that, if those agreements enter into force, the Joint Committee is empowered to take a decision setting out the date from which Article 32 will apply. Such agreements have been entered into by the European Union with the UK and the EEA EFTA States, respectively.[4] At the first meeting of the Joint Committee on 18 December 2020, it set the date of application for the so-called “triangulation” to 1 January 2021.[5]

The aim of Article 32 is to protect the rights of the citizens of the EU Member States as provided under Title III of the Separation Agreement just as if these citizens were nationals of an EEA EFTA State or the UK, in situations where there is a triangular situation (e.g. an EEA EFTA State, the UK, and, as applicable, one of the EU Member

[4] As regards the UK: Decision No 2/2020 of the Withdrawal Joint Committee on the triangulation of social security coordination between the UK, EU, European Free Trade Agreement (EFTA) States, available online at https://www.gov.uk/government/publications/social-security-coordination-between-the-uk-eu-and-efta-states. As regards the EEA EFTA States: Decision No 210 of 2020 of the EEA Joint Committee amending Annex VI (Social Security) to the EEA Agreement, available online at https://www.efta.int/sites/default/files/documents/legal-texts/eea/other-legal-documents/adopted-joint-committee-decisions/2020%20-%20English/210-2020.pdf.

[5] See press release dated 18 December 2020, available online at the website of the EFTA Secretariat at https://www.efta.int/EEA/news/First-meeting-EEA-EFTA-UK-Joint-Committee-under-Separation-Agreement-521341.

States). In the same vein, rights of UK nationals and EEA EFTA nationals in such type of triangular situations should be protected.

The solution to the triangular situation is particularly relevant for the application of the aggregation principle as provided by Article 31(1)(a) SA.

For instance, a French citizen who:

- worked in France between 2005-2007;
- worked in Norway between 2007-2018;
- worked in the UK between 2018-2020; and
- in 2021 claims benefits based on their previous periods of insurance,

would be covered by Article 32 SA (if the conditions for the application of that Article are met) and would thus be assimilated to an EEA EFTA national or UK national covered by Article 29(1) SA.

3.5. *Article 33: Reimbursement, recovery, and offsetting*

The aim of Article 33 is to ensure that the rules regarding reimbursement, recovery, and offsetting of Regulations (EC) No 883/2004 and (EC) No 987/2009 will continue to apply, even if the full coordination rules will no longer apply to a specific person.

This provision applies in relation to events that relate to persons not covered by Article 29 SA that occurred before the end of the transition period. It also covers events that occurred after the end of the transition period but relate to persons who used to be covered, when the event occurred, by Article 29 SA or by Article 31 SA.

In particular, it applies to three categories of events:

a) events which occurred before the end of the transition period and relate to persons not covered by Article 29 SA,
b) events which occurred after the end of the transition period and relate to persons covered by Article 31 SA when the event occurred,
c) events which occurred after the end of the transition period and relate to persons covered by Article 29 SA when the event occurred.

While in most of the cases the persons concerned might have past periods and are covered by Article 31 SA, this is not necessary in order to apply this provision.

The provision concerns “events” that happened in a specific time frame. This is a broad term, which covers for instance benefits in kind provided, benefits in cash paid, contributions paid, but as well contributions that were just due before the end of the transition period or the end of the application of the Regulations in the cases mentioned in Articles 29 and 31 SA.

On the basis of this provision, all procedures related to the Audit Board will continue to apply including the reimbursement based on fixed amounts.

3.6. *Article 34 – Development of law and adaptations of acts incorporated into and in force under the EEA Agreement*

The Separation Agreement ensures the application of Regulations (EC) No 883/2004 and (EC) No 987/2009 as amended or replaced after the end of the transition period and where amendments or replacements to those Regulations are incorporated into and in force under the EEA Agreement.

Article 34 SA sets out an update mechanism in respect of amendments to these Regulations after the end of the transition period.

The update is done by the Joint Committee, which shall revise Annex I to the Separation Agreement in order to align it with any act amending or replacing the Regulations. This is provided that the EU-UK Withdrawal Agreement has been aligned accordingly, and that the act has been incorporated into and is in force under the EEA Agreement. The revision does not take place until both of these event are completed, cf. the last sentence of Article 34(1).

When amendments are decided at EU level and in the EEA, the Joint Committee will assess these amendments and the scale of changes. Both the UK and the EEA EFTA States are strongly committed to ensuring the continued good functioning of the social security coordination rules for the persons covered by the Separation Agreement.

The Joint Committee will also, in this context, consider in good faith the need to ensure an effective coverage for the persons concerned especially when the changes in the exportability of a benefit are determined by a change in determining the competent State, be it an EEA EFTA State or the UK.

4. TITLE IV – OTHER PROVISIONS

4.1. *Article 35 – Publicity*

This provision is modelled on Article 34 of Directive 2004/38/EC.

It imposes an obligation on the EEA EFTA States and the UK. It does not impose any obligation on others, such as on employers, the EFTA Surveillance Authority, the European Commission, or the Joint Committee.

4.2. *Article 36 – More favourable provisions*

4.2.1. *Effects of applying more favourable treatment*

It is for each State to decide whether it will adopt domestic laws, regulations or administrative provisions that are more favourable to the beneficiaries of the Separation Agreement than those laid down in the Separation Agreement.

4.2.2. *More favourable treatment and coordination of social security schemes*

Article 36 provides that Part Two of the Separation Agreement does not affect any laws, regulations or administrative provisions that would be more favourable to the persons concerned.

This provision does not apply to Title III on coordination of social security systems, other than what Regulations (EC) No 883/2004 and (EC) No 987/2009 allow, given the specificity of these rules whereby persons are subject to the social security scheme of only one EEA State, in order to prevent the complications which could result from overlapping of applicable provisions.

4.3. *Article 37 – Life-long protection*

4.3.1. *Life-long protection and its interaction with different Titles*

Article 37 provides for an important safeguard that the rights under the Separation Agreement do not have an *“expiry date”*.

Beneficiaries of the new residence status under Title II of Part Two of the Separation Agreement will retain their residence status – *and all connected rights* – for as long as they meet the conditions Title II attaches to the right of residence (to the extent it attaches any conditions).

Beneficiaries of rights under Title III of Part Two of the Separation Agreement will retain their rights for as long as they meet the conditions Title III requires.

Article 37 clarifies that the rights stemming from different Titles may be disconnected – rights under Title III are not necessarily lost when the residence status under Title II is lost, for example.

It should also be highlighted that some provisions of Part Two of the Separation Agreement do not require that their beneficiaries continue to meet any conditions – for example, a recognition decision made under Chapter 3 of Title II of Part Two of the Separation Agreement before the end of the transition period remains valid.