



LATE APPLICATIONS UNDER ARTICLE 18(1) OF THE WITHDRAWAL AGREEMENT

(concerns only host States with a constitutive residence scheme)

Article 18(1)(d) of the Withdrawal Agreement provides for the possibility of making an application for Withdrawal Agreement beneficiary status even after the application deadline in countries that operate a constitutive residence scheme under Article 18(1) of the Withdrawal Agreement.¹

This provision on late applications constitutes a safeguard that ‘softens’ the hard edge of failing to apply within the application deadline under Article 18(1)(b) of the Withdrawal Agreement.

This safeguard is complemented by Article 18(2) and (3) of the Withdrawal Agreement, which provide for so-called “temporary protection” that confers rights until the end of the application deadline and until a final decision by the competent authorities on any application, respectively.

Article 18(2) of the Withdrawal Agreement ensures that EU citizens and UK nationals residing in the host State are considered legally resident there in the period between the end of the transition period (*31 December 2020*) and the application deadline.

Article 18(3) of the Withdrawal Agreement then protects applicants for Withdrawal Agreement beneficiary status in their host State until they get a final decision on their application, thus making their residence lawful from the moment they have applied for Withdrawal Agreement beneficiary status.

Article 18(3) of the Withdrawal Agreement applies in full also to late applicants and confers on them temporary protection if the late application is allowed (*that is, if the host State authorities have concluded that there are indeed reasonable grounds for applying late in an individual case, which makes the host State authorities proceed to the next phase of assessing the application on substance*) and until it is decided. This is because Article 18(3) of the Withdrawal Agreement applies to “*any application referred to in paragraph 1*”, which includes late applications under Article 18(1)(d) of the Withdrawal Agreement.

There is no indication in the Withdrawal Agreement that the rights of such Withdrawal Agreement beneficiaries should differ from those who applied in time, even though there is no explicit rule in the Withdrawal Agreement that would govern the legal nature of residence of a late applicant between the end of the application deadline and the decision on whether there were reasonable grounds for applying out of time.

¹ United Kingdom and 13 EU Member States (Belgium, Denmark, France, Latvia, Luxembourg, Hungary, Malta, the Netherlands, Austria, Romania, Slovenia, Finland and Sweden).

In other words, where the national authorities accept that there were indeed reasonable grounds for not applying in time, Article 18(3) of the Withdrawal Agreement applies to such Withdrawal Agreement beneficiaries in the same way as to in-time applicants.

The objective of temporary protection is to ensure that there is no “gap” during which an applicant’s residence would be considered unlawful. For successful late applicants, this objective is met only if the concept that considers residence as lawful is extended to the period preceding the submission of the late application (*period in-between the end of the application deadline and the submission of the eventually successful late application*).

Given the overall unique context of departure from the declaratory nature of EU law on free movement of EU citizens in constitutive schemes in which Article 18(1)(d) of the Withdrawal Agreement finds itself, the entire period of residence of late applicants should retroactively (*ex tunc*) be considered lawful if they are successful in being granted Withdrawal Agreement beneficiary status based on a late application.

Practical example

Liliana came to the host State in 2016 and works there since. She applied for Withdrawal Agreement beneficiary status only in 2022, after the application deadline.

The host State accepted that she had reasonable grounds for applying late. After examining her application on substance, the host State granted her Withdrawal Agreement beneficiary status and issued her with a residence document, confirming her right of permanent residence.

The grant of Withdrawal Agreement beneficiary status based on a successful late application means that her entire residence period is considered lawful, even the period between the application deadline and the grant of residence document. The host State must then also reconsider any previous decisions that would be based on considering that period of her residence as unlawful, for example refusing her application for a social assistance benefit or healthcare.

For more information about the Withdrawal Agreement see [Commission Notice — 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](#) (C/2020/2939, OJ C173, 30 May 2020, p. 1) that this document supplements, without amending it.

Rules on late applications are covered in section 2.6.5. of the Guidance Note.