



RIGHT OF PERMANENT RESIDENCE UNDER THE WITHDRAWAL AGREEMENT

Basic rules of the Withdrawal Agreement

The Withdrawal Agreement provides its beneficiaries with a new residence status, namely that of Withdrawal Agreement beneficiary.

In turn, this residence status confers the right to reside in the host State, together with a number of connected rights. The right to reside is not limited in time and Withdrawal Agreement beneficiaries retain it for as long as they continue to meet the relevant conditions attached to the right to reside.

Throughout residence in the host State, the residence status remains the same but the rights conferred by it can get better over time.

This principle of “*one residence status with dynamically evolving rights*” applies in all Member States, irrespective of whether they allowed Withdrawal Agreement beneficiaries to reside without having to apply for a new residence status¹ or required Withdrawal Agreement beneficiaries to apply for a new residence status by a certain deadline².

The legal source of the new residence status and all connected rights is the Withdrawal Agreement itself, not a residence document issued under the Withdrawal Agreement (although the acquisition of beneficiary status under the agreement may have been made conditional upon an application within a deadline). While Member States may oblige Withdrawal Agreement beneficiaries to apply for such residence documents, residence documents merely evidence existence of the underlying residence status.³

In other words, Withdrawal Agreement beneficiaries do not have a right to reside in the host State because they hold a residence document issued under the Withdrawal Agreement. In the same vein, they do not lose the right to reside in the host State if their residence document expires or gets lost.

The same applies to all other rights stemming from the right to reside, such as the right to work. The connected rights cannot be made conditional upon presenting a valid residence document. However, without a valid residence document, Withdrawal Agreement beneficiaries must provide alternative evidence proving their residence status and all the rights stemming from it.

Right of permanent residence under the Withdrawal Agreement

Withdrawal Agreement beneficiaries who have resided legally in the host State in accordance with Union law for a continuous period of 5 years acquire the right to reside there permanently.

¹ Bulgaria, Czechia, Germany, Estonia, Ireland, Greece, Spain, Croatia, Italy, Cyprus, Lithuania, Poland, Portugal and Slovakia.

² Belgium, Denmark, France, Latvia, Luxembourg, Hungary, Malta, Netherlands, Austria, Romania, Slovenia, Finland and Sweden.

³ In the EU, residence documents under the Withdrawal Agreement are physical documents that are issued with a minimum validity of five years and a maximum validity of ten years due to document security reasons.

In line with the principle of “*one residence status with dynamically evolving rights*” and the fact that all rights are conferred by the Withdrawal Agreement, Withdrawal Agreement beneficiaries acquire the right of permanent residence in the host State by automatic operation of the Withdrawal Agreement once they meet the relevant conditions.

They acquire the right of permanent residence with effect from the moment when the Withdrawal Agreement confers it, not at the moment they are issued with a residence document evidencing their right of permanent residence, which may be later.

In the same vein, they do not lose the right to reside in the host State just because they fail to apply for a residence document evidencing their right of permanent residence before expiry of their previous residence document.

Residence documents evidencing the right of permanent residence are issued upon application and it is for the Withdrawal Agreement beneficiaries to provide the necessary supporting documents. The application for a residence document evidencing the right of permanent residence can be made as of the moment when the right of permanent residence is acquired.

The host State issues the residence document after checking that the conditions have indeed been met. For this purpose, the host State can check that the applicant has spent five years of continuous residence in compliance with the residence conditions (duration and legality) in the host State.

However, the host State can require Withdrawal Agreement beneficiaries to hold a valid residence document and impose administrative sanctions on those failing to observe their obligation under domestic legislation to apply for, or renew, a residence document in time. Such sanctions must be proportionate, non-discriminatory, effective and cannot include any limitations of the right to reside itself.

Having the right of permanent residence but not holding a residence document attesting this right

Thanks to the principle of “*one residence status with dynamically evolving rights*”, Withdrawal Agreement beneficiaries can sometimes find themselves in a situation where they have acquired the right of permanent residence in the host State but do not hold a residence document evidencing this right.

This is not an unusual situation and Member States have experience dealing with it with respect to mobile EU citizens under EU law on free movement of EU citizens.

Most rights attaching to Withdrawal Agreement beneficiary status do not depend on whether the beneficiary has a non-permanent or a permanent right of residence.

Having the right of permanent residence under the Withdrawal Agreement is relevant in relation to:

- a) allowed periods of absences from the host State;
- b) access to student grants and student loans for economically inactive Withdrawal Agreement beneficiaries;
- c) proportionality considerations for restricting the Withdrawal Agreement beneficiary status based on public policy or public security grounds;
- d) the question whether residence conditions apply for family members of United Kingdom nationals; and
- e) residence of economically non-active Withdrawal Agreement beneficiaries.

As a general point, a clear distinction needs to be made between the legal existence of a right and accessing it in practice.

When such a “desynchronisation” happens, the host State authorities cannot refuse to recognise the right of permanent residence and all the rights stemming from it on the sole ground that the Withdrawal Agreement beneficiary did not present a residence document attesting to the existence of the right of permanent residence.

In such situation, the onus is on the Withdrawal Agreement beneficiary to provide alternative evidence of having the right of permanent residence. In this context, presentation of an expired residence document may help to complement other documents. This procedure may be functionally equivalent to the process of applying for a permanent residence document and can culminate in the issuance of such a residence document.

On the other hand, seeking to rely on the right of residence without a valid residence document (*be it permanent or non-permanent*) will be more challenging when the rights are sought in relation to third parties, such as employers.

Unlike the host State authorities, third parties in general will not be able to determine that the person not showing a valid residence document continues to be a Withdrawal Agreement beneficiary. Third parties may require persons claiming to be Withdrawal Agreement beneficiaries to present a valid residence document issued under the Withdrawal Agreement.

This is without prejudice to any alternatives the host State may put in place to assist third parties in such situations, such as a verification process to check the status with the immigration authority.

For more 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 right of permanent residence are covered in section 2.3 of the Guidance Note.