British in Europe/the3million: Comments on the EC Guidance Note relating to the Withdrawal Agreement

1. Executive Summary

British in Europe and the3million welcome the EC Guidance Note on the Withdrawal Agreement ("WA"). It provides helpful clarification and guidance concerning the implementation of the provisions of the WA in the EU27 (and the UK) and their application to UK citizens in the EU ("UKinEU") and EU citizens in the UK ("EUinUK"). While primarily aimed at officials, the clear explanations and the practical examples, in particular, the many helpful examples in Title III: social security, also provide assistance for those groups following and monitoring closely the implementation of the WA, such as the3million and British in Europe.

We cover first issues that are not dealt with in the Guidance Note and where we consider that guidance is critical, and then raise questions and requests for clarification as regards the drafting of the Guidance Note itself.

a. Issues not dealt with in the Guidance Note

The following important issues that we have raised in the past are not covered by the Guidance Note:

- **The ability of UKinEU to combine the WA status with other third country national statuses, which provide for mobility rights.**

  The WA status does not give UKinEU any mobility rights across the EU, whereas Third Country Nationals ("TCNs") in similar circumstances may access these if they acquire EU Long Term Residence (under the Long Term Residence Directive 109/2003 ("LTRD")) or an EU Blue Card, or the status under the Single Permit Directive. What is the relationship between the WA status and these TCN statuses? [paras. 1-5]

- **The ability of UKinEU to combine the WA status with that of EU citizen family member status.** Again, what is the relationship between the two statuses as in some cases, that of an EU citizen family member will provide more rights e.g. mobility rights, while in others, having the status of a rights holder under the WA will provide more rights e.g. family reunification. [paras. 6-7]

- **The documentation of permanent residence for UKinEU.**

  It is unequivocally important for UKinEU to be able to document their right of permanent residence. However, the EC Implementing Decision did not make a direction to EU countries to make a clear distinction on the face of the biometric card to be used to document the rights of UKinEU under the WA across the EU. [paras. 8-17]

- **Clarification of citizens' rights during transition.**

  The provisions of Article 127 WA are the only reference to the position as regards application of EU law to the UK during transition. They do not make it immediately obvious that Union law continues also to be applicable in the EU to UK citizens subject to the exceptions set out in that Article. This needs to be spelled out clearly. [paras. 18-22]

b. Issues that require clarification or where questions still arise

We have a large number of detailed questions and requests for clarification and will thus only highlight the key areas:

- **General provisions and personal scope**

  1) Dual citizens. The Guidance Note deals with whether dual citizens are covered by the WA but leaves open a number of questions, key of which is how dual citizens will document their rights under the WA, and the position in countries where dual citizenship is not available. [paras. 24-39]

2) The position of UK citizens who were residing in the UK in accordance with Union law needs further clarification. [para. 23]

3) The rights of EU citizens to return to their country of origin with family members. Clear confirmation of these rights is required. [para. 40]

4) Practical examples of the rights of family members residing independently at the end of transition. [para. 41]

5) Continuity of residence. It is not clear how the absences will be calculated and, in our view, the wording on absences needs to be more nuanced. [paras. 42-45]

- **Residence rights**

1) Article 13(4) Constitutive systems. Clarity is needed that rights cannot be lost simply through the failure to renew an expired residence card. [paras. 46-48]

2) Article 14 Visa free travel. It is unclear how UKinEU (or their family members) will benefit from this on production of a valid ID card/passport without proof of WA status. [paras. 49-56]

3) Article 17. Further confirmation of the position of those under 10(1)(f) and children who are no longer dependent or over 21 is needed. [para. 57-59]

4) Article 18(1). We have a large number of detailed points concerning the constitutive system set out in Article 18(1), in particular, concerning the impact of the UK choosing to apply the conditions more favourably, certificates of application, the procedure as regards extensions of the deadline, and applications beyond that date. [paras. 60-81]

5) Article 18(4). The GN position on residence cards is not clear, and how the references to Dir. 2004/38 are to be interpreted in practice. [paras. 82-85]

6) Article 19. More clarity is needed on the consequences of negative decisions about residence cards and withdrawals of status in declaratory systems during transition. [paras. 86-92]

7) Article 23. The GN must make clear how the Equal Treatment provision applies under Article 18(1) constitutive schemes. [para. 93]

- **Rights of Workers and Self-Employed Workers; Recognition of qualifications**

1) Article 24 Rights of workers. Clarification concerning certain limitations. [paras. 94-95]

2) Article 25 Rights of self-employed workers. Further clarification on how the criteria concerning establishment will be applied, especially to frontier workers, as well as their rights to set up and manage undertakings. A key question on which clarification is not provided is how far UKinEU who have this right in their host state may provide services digitally to clients in other EU countries. [paras. 96-102]

3) Recognition of qualifications. Clarifications concerning the impact of Articles 27 et seq WA to EUinUK, the validity of lawyer's qualifications recognised under Article 10 of Directive 98/5 and the position as regards ongoing procedures are needed. [paras. 103-113]

- **Social Security**

The explanations are very useful as well as the case studies but some key questions remain unanswered: the position of a UKinEU who moves from one EU country to another, the question of voluntary top-ups of pension contributions, and the status of the 'triangulation' agreements concerning citizens of Iceland, Norway, Liechtenstein and Switzerland. [paras. 114-121]

Finally, from the outset, we would be grateful for confirmation of the legal status of this guidance in relation to the implementation of the Withdrawal Agreement by both sides. Given its utility, we want to know to what extent those we represent can rely on its contents.

2. Issues that are not dealt with in the Guidance Note

a. UKinEU: The combination of the WA status with other third country national statuses

1. There is no discussion in the EC Guidance Note concerning a key issue that British in Europe has raised on many occasions both orally and in writing with the former EC Article 50 Task Force during the negotiations: the combination of the WA status with other third country national statuses such as EU Long Term Residence (under the Long Term Residence Directive 109/2003 ("LTRD")) or the EU Blue Card, or the Single Permit Directive, which provide for mobility rights. We were assured orally on many occasions that this would be possible but there is no written guidance on how this would be applied or implemented in practice by officials dealing with the status of UK citizens protected by the Withdrawal Agreement, especially in declaratory countries. This is key information for officials advising UKinEU on their future status in their host countries. Essentially the question is: what is the relationship between the special status under the Withdrawal Agreement and the rights for third country nationals under EU law, and can we have both sets of rights?

2. UK citizens, as former EU citizens, should at the least have rights no worse than those of Third Country Nationals ("TCNs") in similar circumstances, not least as the WA itself sets out a principle of no discrimination on the grounds of nationality. However, UKinEU have no mobility rights whatsoever across the EU under the Withdrawal Agreement for the purposes of living and working[1], even where permanent residence has been acquired, which is the WA equivalent of TCN long term residence status. This is extremely important, as our surveys of our members have shown that they are a very mobile population.

3. TCNs, on the other hand, have a range of mobility rights for work or other reasons: e.g. the LTRD (for TCNs resident for 5+ years), the EU Blue Card Directive (for highly qualified employment*).* For example, TCNs with the equivalent status under EU law to WA permanent residence, EU long term residence, do have mobility rights in the EU. Thus, a British citizen with permanent residence rights under the WA has ***fewer*** rights than another TCN with the equivalent status.

4. Ideally, we would have liked to see an acknowledgement that permanent residence under the WA brings with it at least equivalent mobility rights to those attached to EU long term residence. However, we would have welcomed at the very least a very clear statement that it is possible for UKinEU to combine the WA status with other statuses such as EU long term residence, an EU Blue Card or the Single Permit Directive, without abandoning their rights under the Withdrawal Agreement, which would leave them with lesser rights in other areas and how these two sets of rights might be secured.

5. As regards the combination of rights, the scope of the LTRD is in our view clear. Article 3(1) states: "This Directive applies to third-country nationals residing legally in the territory of a Member State". It should thus be possible therefore to combine EU long term residence with the WA status. Nevertheless, clear assurances on the option of combining the WA status with the LTRD, Single Permit Directive and the EU Blue Card would be a very helpful addition to the EC Guidance Note.

b. UKinEU: The combination of the WA status with EU national family member status

6. A similar issue concerns the combination of the WA status with that of EU national family member status. Many UKinEU are married to or in a partnership (civil or durable) with an EU citizen. The EU citizen may be either a national of their host country or of another EU country. After end of transition, the UKinEU will thus have rights under the WA as a rights holder but will also have rights as a family member of an EU citizen. If their spouse or partner is a national of the country where they live, they will have rights as a family member of a national of that country under the relevant national law. They would also have rights as TCN family members of an EU citizen under Directive

[1] However we will have the limited right of movement for purposes other than work for up to 90 days in any 180 under the Schengen rules.

2004/38, in the event that the family were to move to another EU country together, including the right to move with their family member from the host to another EU country. If, on the other hand, they are living with their EU citizen family member in a country of which the EU citizen is not a national, they will already benefit from rights conferred as a TCN family member under Directive 2004/38.

7. They may therefore wish to both register as the family member of their EU spouse or partner but also secure their rights as a rights holder under the WA because this will provide them with e.g. family reunification rights or the rights of grandfathering of recognition decisions and recognition of their professional qualifications conferred by Chapter 3 of Title II. Thus again, the question is what is the relationship between these two statuses and can they be combined? Will it be possible to be registered in an EU country and hold residence documents evidencing these two statuses in parallel, or will it be necessary for the UKinEU to choose? If it is necessary to choose, how is that achieved in a declaratory country? Our understanding of the guidance note is that, by analogy with EU law, it confirms that they will not have to choose between the WA status and the relevant family member status in these cases, and the different rights they confer, but this is a point on which we seek clear confirmation.

c. UKinEU: The documentation of permanent residence

8. Permanent residence ("PR") is a fundamental right. This is because (i) those with PR are no longer at risk of losing their residence rights if they do not continue to satisfy the conditions required in the first 5 years; (ii) in Italy, for example, economically inactive persons cannot access the health service on the same terms as Italian nationals unless they have permanent residence; (iii) under the WA those with PR can be absent from their country of residence for up to 5 years without loss of rights, whereas those without it can lose *all right of residence* after as little as 6 months absence.

9. It is thus unequivocally important for UKinEU and their family members to be able to prove that they have that right. And yet not only does the EC Implementing Decision not state that EU countries should include this status in their versions of the EU-wide card provided for under the Implementing Decision, but the EC Guidance Note does not spell this out either and nor does it make any recommendation to that effect.

10. In our view, the best way in which to remedy this problem would be to amend the Implementing Decision so that it not only directs EU countries to make reference to "Article 50 TEU" but also directs Member States to state the following on the card where the person has acquired permanent residence: "Permanent residence – Article 50 TEU". At the very least, the EC Guidance should spell out the importance of permanent residence and recommend that course.

11. The obvious risk is that, in the absence of even a suggestion in the Decision that permanent residence should be recorded on the card, Member States may not do so, and we are aware already of at least two countries that do not intend to do so: Germany and Portugal. Italy has not yet decided about the form of card under the Implementing Decision, but the paper certificate which it is issuing pursuant to Art. 18(4) WA does not draw the distinction between permanent and temporary residence.

12. The real practical problem which arises if there is no card or certificate recognising that the holder has permanent residence is that there will be no official record that someone has achieved that status. This is because if there is no card/certificate to apply for, there will be no process through which such recognition can be achieved. Although such certificates are not mandatory under Dir. 2004/38, Art. 19 thereof creates a clear right to ask for one to be issued so that anybody who wants unequivocal evidence of their status can get it once and for all.

13. Moreover, even as regards TCNs, Directive 2003/109 concerning EU long-term residence also creates a right to a residence permit that clearly states that the third country national has acquired long term residence, the equivalent of permanent residence under the Withdrawal Agreement.

Article 8(1) of the Directive states that the status as long-term resident shall be permanent, subject to Article 9. Article 8(2) first sentence then goes on to state that

"Member States *shall* issue a long-term resident's EC permit to long-term residents."

Article 8(3) further states:

"A long-term resident's EC residence permit may be issued in the form of a sticker or of a separate document. It *shall* be issued in accordance with the rules and standard model as set out in Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (1). Under the heading 'type of permit', the Member States *shall* enter '**long-term resident — EC**'.

14. We have emphasised the "*shall*" to show that the drafters of Directive 2003/109 showed no reluctance to issue mandatory requirements when it comes to citizens from countries with no history of membership of the EU.

15. There can be no justification for a different approach when dealing with British nationals within the scope of the Withdrawal Agreement. Article 12 of the Withdrawal Agreement prohibits any discrimination on the grounds of nationality in the host State or the State of Work. Similarly, Article 21 of the Charter of Fundamental Rights prohibits discrimination. However, the failure to provide British citizens covered by the WA with a residence permit confirming their permanent residence is a clear discrimination on the grounds of nationality, given that the position discriminatory vis-à-vis EU citizens acquiring permanent residence, although British ex-EU citizens covered by the WA are protected by provisions mirroring those set out in Directive 2004/38.

16. Moreover, there is even a discrimination as regards third country nationals as TCNs with the equivalent status will have proof of their permanent residence while British ex-EU citizens covered by the WA will not.

17. See also our comment below on §2.6.17 in which the point is made that applicants whether under Art. 18(4) or 18(1) WA have a legal right to a document evidencing permanent residence.

d. Clarification of citizens' rights in the Transition Period

18. The wording of the WA on the rights of UKinEU during the transition period is unclear.

19. The only provision governing the situation is Art. 127(1) which states, "Unless otherwise provided in this Agreement, Union law shall be applicable to and in the United Kingdom during the transition period." The Article goes on to provide for certain exceptions which, so far as citizens' rights are concerned, are the exclusion of the rights to take part EP and municipal elections and in citizens' initiatives.

20. These words do not make it immediately obvious that Union law continues also to be applicable in the EU to UK citizens subject to those exceptions. This needs to be spelled out clearly.

21. Those who followed the negotiations closely know what was intended but for anyone else, including officials charged with implementing the WA, what should have been stated clearly has to be inferred from surrounding circumstances. Given the number of officials involved in the implementation of transition rights, a clear and urgent explanation on the part of the Commission is essential. BiE already has an example of a high-ranking official in a key ministry not understanding the position.

22. Alternative formulations such as "EU law on free movement continues to apply to UK citizens" should be avoided, because a busy official in a small authority is more likely to understand this as referring to the right to cross borders than to the full range of rights conferred on EU citizens by the Treaties and relevant Directives.

3. General Provisions and Personal Scope: issues where further clarification would be helpful

a. Article 9(a)(ii) and 9(c) WA: UK nationals not covered by the WA

23. We do not understand the reference in 1.1.3 to "UK nationals who have resided in the UK ... in accordance with rights under Union law" in the context of cases C-34/09, *Ruiz Zambrano* and C-370/90, *Singh*. UK nationals reside in the UK with rights under UK law. In those cases Union law permitted Third Country Nationals to reside in the UK on the basis of rights derived from the EU citizenship rights of the UK nationals concerned. Our understanding is that those Third Country Nationals resident in the UK at the end of transition on this basis will continue to have a right of residence as family members (see WA Art. 9(a)), but that no new *Zambrano* or *Singh* rights will be created in the UK after the end of transition, though of course such rights will still be created for EU citizens in the EU. Clarification on this would be welcome however.

b. Dual citizens: Scope: Citizens who have taken citizenship of the host country but were obliged to give up their citizenship of origin, and citizens of other EU countries

24. We welcome the clarification in the Guidance Note that the position of dual citizens is covered by the provisions of the WA in line with the judgment in Case 165/16 Lounes. The Lounes judgement applies to these dual nationals under the WA because they originally moved to another EU country and exercised their free movement rights, but then acquired citizenship of another EU country.

25. However, Lounes does not deal specifically with the situation where a citizen took citizenship of another EU country and was obliged to give up their original citizenship.

26. The Guidance Note (§1.2.1) helpfully confirms that those who acquire citizenship post end of transition are covered by analogy with the Lounes judgment.

27. In our view, even those who have been obliged to give up their citizenship of origin should be covered for the purposes of the WA by analogy with the Lounes judgment. This is because the key condition of the Lounes judgment is that the citizen moved to another EU country and exercised their free movement rights, prior to acquiring citizenship in another EU country. The Guidance Note's helpful comparison with the case of dual EU-UK nationals who have never exercised their free movement rights and reference to Case 439/09 McCarthy appears to support that view. However, we would welcome further clarification and confirmation in the Guidance Note on that point.

28. Lounes also does not deal specifically with the situation where a citizen took citizenship of an EU country other than the host country. Since, again, the key condition is that the dual EU/UK citizen has exercised free movement rights in a Member State, we presume that e.g. a UK national who moved to France and naturalised to become a dual UK/French national, and who is living in Belgium at end of transition would be covered by the WA and could rely on the rights under the WA e.g. in relation to recognition of her/his professional qualifications. It would be useful for this position to be clarified in the Guidance Note.

c. Dual citizens: position in constitutive countries

29. One issue which the Guidance Note does not deal with is whether dual citizens resident in constitutive countries need to, or can, make an application under Art. 18(1) WA. Our view, which is confirmed by our knowledge of the law in certain constitutive countries, is that they cannot do so. The reason is that a country cannot issue an immigration document to a citizen who is outside the scope of domestic immigration law for obvious reasons.

30. That raises a further issue, namely what rights do dual citizens have under Title II if they are unable to make an application under Art. 18(1)? Our view is that they have all the rights for which they are eligible under Title II without the necessity of making an application. This is because the rights which are conferred by Title II which they may not already have as citizens, namely certain family reunification rights and recognition of professional qualifications, are conferred by declaratory language in the WA. Insofar as s/he is a person covered by the WA, family reunification rights are

conferred on the dual national by a combination of Arts. 9 and 10 even if the procedure under Art. 18 has to be followed by the family member seeking to join them. Similarly Art. 27 confers rights to recognition of professional qualifications by reference to the State in which a recognition decision is made – again an objective criterion which requires no application for a residence document.

31. An application is clearly unnecessary for Title III, since once again declaratory language is adopted and the questions which arise are whether, objectively speaking, a person meets the criteria laid down.

32. However, if our view is wrong then dual citizens who do not make an application stand to lose rights, and it is important that guidance be issued on the subject before the opportunity to apply is lost.

d. Dual citizens: documentation of their coverage by the Withdrawal Agreement

33. The above considerations lead to a further important issue, arising in both constitutive and declaratory States. The Guidance Note does not shed any light on how dual citizens will be able to prove their rights under the WA. The rights covered are likely to include recognition of their British qualifications, family reunification and social security rights.

34. The reason why the Lounes judgement applies to these dual nationals is because, as in Lounes, they originally moved to another EU country and exercised their free movement rights, but then acquired citizenship of another EU country. In the case of UKinEU, this was as British citizens while the UK was still a member of the EU.

35. The Lounes judgment of course provides that an EU citizen who exercised free movement rights and then took citizenship of the country to which she moved cannot have lesser rights that an EU citizen who did not. The first citizen cannot be penalised for integrating more than the first.

36. Equally, according to settled case law of the CJEU, the purpose of Directive 2004/38, on which the residence and family reunification rights of the WA are based, "is to facilitate the exercise of the primary and individual right to move and reside freely within the Member States which is conferred directly on citizens of the Union by Article 21(1) TFEU" (Lounes para. 31). The exercise and proof of those rights under the WA by dual EU-UK citizens should thus also be facilitated.

37. The practical issues which arise if there is no proof that a dual national is covered by the WA are very great indeed. For example, how is a UK-EU dual national in the UK (who is covered by the WA by virtue of being a Lounes dual national) able to apply for or renew a UK EHIC card if they cannot readily prove that they are covered by the WA? Furthermore, how is that dual national holder of a UK EHIC card to be able to prove that their EHIC card is valid when, as stated in §3.5 of the Guidance Note, such cards issued to people "in a purely internal situation" will produce no legal effects even if not withdrawn? The holder of a residence document under Art. 18 will have no such difficulty because that document will be evidence that their EHIC card is still valid, but a dual national without such a document will be in great difficulty. There is an additional issue that arises if the residence document is in digital form, as the UK has chosen. Even if the dual national were able to have an Art. 18 residence document, would the Member State examining the EHIC card be able to access the proof of the digital status?

38. Further, the WA sets out clear protections for the family members of those covered by the WA including Lounes dual citizens, which take account of the fact that those dual citizens originally arrived in the host country by exercising free movement rights. These cover residence, working rights, rights to equal treatment, etc. and the conditions attaching to these rights are in general more favourable than those under national immigration rules It would be unfair if the rights of the family members of those who are covered by the WA but have not taken citizenship were better than those who had and thus integrated more fully in the host country. A dual national, unless able to document her rights under the WA, will be treated as a national of the host state and her non-EU family would then fall under national immigration rules. The holder of a residence

document under Art. 18 will have no such difficulty because that document will be evidence that their family members fall under the WA as well.

39. Both the Commission and the UK need to give urgent attention to devising a procedure whereby dual nationals can obtain proof of their WA status for practical purposes like these. In our view it would be appropriate for the specialist citizens' rights committee to have this issue on the agenda for its next meeting.

e. Article 10 WA: Out of Scope Returning EU citizens' and UK nationals' right to family reunification: Case C-370/90 Singh (GN §1.2.2.3)

40. We agree that the EU citizens and UK nationals covered by this line of case law fall outside the scope of the Withdrawal Agreement. However, we were informed by the Commission at a meeting in January 2019 that returning EU citizens to their EU Member State of origin will still be in scope of *Singh* under EU law, and their rights to family reunification will therefore be unchanged from their current rights. It would be helpful if the Guidance Note were to make this explicit, both as a reassurance to EU citizens from *all* Member States in the UK, and to highlight that the fact this is out of scope affects UK nationals asymmetrically.

f. Article 10(1)(f) WA: Former family members residing in the host state independently at the end of transition

41. It would be extremely useful to have practical examples of those who reside in the host state independently at the end of transition under Article 10(1)(f) at point 1.2.3.4 as this is a very important point and in particular for a cohort of citizens often overlooked, young people who moved with their families to another EU country under EU free movement law and who have grown up in that country and made it their home.

g. Article 11 WA: Continuity of residence (GN §1.3)

42. This is a useful clarification of the application of Article 11 in the case of both those with permanent residence and those with less than five years. However, we would suggest that further clarifications would be useful.

43. The practical example refers to applications in a constitutive system under Article 18(1) but gives no practical example of the equivalent situation in a declaratory system under Article 18(4). It would be useful to have concrete clarification of how citizens will be able to secure their rights in a declaratory system if temporarily absent at end of transition.

44. The note does not clearly state how total absences up to 6 months in a year are calculated. This is significant as those who break their continuity of residence may be unable to restart it. Are absences from a country calculated on a rolling basis, rather than in separate consecutive 12-month periods? Some practical examples would be useful.

45. Further, the text as regards those with less than five years' residence should be more nuanced as there are certain circumstances e.g. illness or a posting, in which a longer period of absence than six months may be allowed. Given the danger that officials and citizens may take the guidance set out in the Guidance Note literally, it would be preferable to clarify this in the text of the Guidance Note.

4. Residence Rights: issues where further clarification would be helpful

a. Article 13(4) WA and constitutive systems

46. Article 13(4) WA makes clear that the host State may not impose any limitations or conditions for losing residence rights other than those provided for in this Title. The UK has chosen to implement a constitutive system under Article 18(1), by means of the EU Settlement Scheme. A citizen with Article 13 rights can apply to this scheme and obtain an Article 18 document in the form of 'pre-settled status'. This status comes with an automatic expiry after five years, resulting in a loss of residence rights unless a subsequent application is made for another Article 18(1) document.

47. Could the Guidance Note make clear by reference to constitutive systems that residence rights cannot be lost in this way and the routes by which a national authority can remove an Article 18(1) grant of status?

48. As well as the situation described above of someone losing their rights through not making a subsequent renewed application, the expiry date of 'pre-settled status' in the UK has a wholly disproportionate effect on someone with 'pre-settled status' who receives even a single day's prison sentence after the end of transition. The combination of their continuity of residence being broken by the prison sentence and the expiry of their 'pre-settled status' mean that such a person is guaranteed to lose their rights after that expiry. This is because the UK's current implementation of Article 18(1) does not allow that person to apply for another Article 18(1) document after the end of transition unless they build up five years continuous residence within the expiry period.

b. Article 14 WA: visa-free travel

49. Article 14(1) and the explanation in the Guidance Note is welcome as it makes clear that all citizens covered by the WA will need is a valid ID card or passport to leave and return to their host state. Nevertheless, Article 14(2) of course also states that no exit or entry visa or equivalent formality will be required of those who hold a valid document under Article 18 or 26 WA. This suggests that a valid ID card or passport will in fact not be sufficient to enter and exit the country as it will also be necessary for a citizen to show that they have a valid document under Article 18 or 26 WA. While UK citizens post end transition will not be subject to visa requirements, they will be subject to Schengen formalities and will only be able to travel for leisure and business purposes in the EU for 90 out of every 180 days. These formalities, according to Article 14, do not apply to UKinEU travelling back and forth to their host state but they will need to be able to prove this to avoid stamps in their passport and doubts about the length of their stay in the EU. The Guidance Note does not address this contradiction.

50. Further, it does not address the position of those who have the relevant rights but do not yet have a valid document under Article 18 or 26 WA to show that they do. For example, in Article 18(1) systems, there may be a lapse of time between the application and the decision. In this case, the citizen will have a certificate of application but, in order to make use of this when entering and exiting the host state, border control officials will need to be aware that it creates a presumption that the person has rights under the WA and can enter and exit without visas or other equivalent formalities. This may be in particular a problem where the citizen leaves the host state from one place in the country and returns via another (e.g. a UKinEU based in Berlin who returns to Germany via Frankfurt).

51. In declaratory systems, where there is no certificate of application provided for, clarification is needed as to how citizens will easily be able to exit and enter the host country without cumbersome formalities until they have received their residence document.

52. Another issue is that some citizens will not be able to apply for their status or for their residence document until 2021 and it is also not clear how they will evidence their rights to exit and enter under Article 14 WA if they are not able to apply until e.g. March 2021 or even later.

53. Clarification on all of these practical issues of proof in the Guidance Note would be greatly appreciated.

54. As mentioned above, the Guidance Note explains that no exit visa, entry visa or equivalent formality shall be required of holders of a valid document issued in accordance with Article 18 or 26.

55. Without further clarifications or examples, this will be understood by many to mean that for example, a non-EU family member (from a visa-required country) of an EU citizen residing in the UK can accompany their EU family member when travelling to EU Member States using only a valid passport and Article 18 document (Settled Status in their case), and will therefore not require a visa. This would continue the current arrangements as such a non-EU citizen would currently travel with a valid passport and an EEA Family Card.

56. If this is not the case (as stated in a letter from the European Commission to the3million[2]), the Guidance Note should make this clear with some practical examples.

c. Article 17(1) WA: Specific situation of family members

57. Our understanding is that the final paragraph of point 2.5.1.1 means that the rule that family members do not become rights holders does not apply to family members under Art 10(1)(f) (see Guidance Note 1.2.3.4) as their residence rights are not exclusively derived from being family members of rights holders. However we would welcome explicit clarification on this point.

d. Article 17(2) WA: re child that is no longer dependent or turns 21

58. The guidance document at 2.5.2 refers to 17(2) and specifically to children. However, 17(2) refers to all family members. Are the observations within this part of the guidance extended to all family members?

59. Our understanding is that a child who is covered as a family member at the end of transition under Directive 2004/38 because then dependent or under 21 remains covered under the WA even when neither of those two situations applies any more, and this without their having to bring themselves within another Art. 7 Dir 2004/38 category. This is also the case even if they do not have permanent residence. We would welcome clearer confirmation of this in the Guidance.

e. General observation of Article 18: overview at 2.6

60. The guidance confirms that the 'rights', in the context of a constitutive system, flow from the decision concerning the grant of status. The UK has chosen to adopt a constitutive system but also extend the personal scope of those who are eligible for the status. Some EU citizens will acquire rights under the Withdrawal Agreement who otherwise would not have had them.

61. Would there be an issue if a country were to subsequently change the constitutive criteria for family members of those who have already acquired the right?

62. For example, an Italian national is successfully granted article 18(1) status via the UK's EUSS system relying on the more generous personal scope where being a qualified person within the strict meaning of article 13 is not applied. Several years later, the Italian national's mother wishes to join him in the UK. They apply for a family permit but the criteria are changed to require the Italian national to show that he has previously exercised rights where he was initially not required to do so.

63. Equally, what is the situation of someone who was granted status under the constitutive criteria, but subsequently does not fulfil the criteria?

64. For example, a Peruvian national is married to a Dutch national and they moved to the UK in September 2020. They are both successfully granted article 18(1) status via the UK's EUSS system

[2] http://t3m.org.uk/non_EU_familymembers_travelrights

- in the Peruvian national's case as a family member of an EU citizen. The Dutch national dies in August 2021, so the Peruvian is no longer a family member, and under UK EU Settlement Scheme rules does not qualify for retained residence rights, as they had not lived in the UK for a year before the EU citizen's death. Can the Peruvian national's status be taken away from them, and if so how does the removal of rights align with Article 13(4) WA?

65. Finally, it would be useful to have clarity as regards the applications of minor children for their status under the WA. Our understanding is that parents or legal guardians would apply on their behalf but would welcome confirmation on this point in the Guidance Note.

f. Article 18(1)(b) WA: Certificate of application: acquisition

66. The guidance note states that national authorities are obliged to 'help the applicant' complete the application in order to receive the certificate. What sort of help did the Commission have in mind?

67. The guidance sets out that once the application is filed '4' steps should be undertaken. Can the Commission confirm if these are in chronological order and whether a certificate should be issued before the competent authority checks the application is complete with regards to identity and payment of fee (where applicable)?

68. Should an application be refused at the stage where identity/fees have not been paid, would the applicant be able to challenge that decision via the procedures set out in Article 21?

69. When certificates are issued after the end of the period within 18(1), will the applicant still be deemed to have all rights under the Agreement until a final decision on the application is made?

g. Article 18(1)(b) WA: Certificate of application: format and validity

70. This builds on the points made above in relation to Article 14. A key question is whether the certificate of application would allow a citizen with rights under the WA to travel out of the host country and come back without a visa or other formalities. As the Guidance Note states, Article 18(1) does not harmonise the format for the certificate of application and therefore presumably, the document would need to be registered for Schengen purposes in order to be accepted at the border when travelling to and from the host state. It would be useful if the position could be clarified in the Guidance Note.

h. Article 18(1)(b) WA: Out of country applications

71. It is useful to have the clarification that out of country applications are possible, which is not, as far as we understand, set out expressly in the WA.

i. **Article 18(1)(c) WA: Technical problems and the notification thereof**

72. The guidance sets out that technical problems would trigger a notice but it does not give examples of what those technical problems would be. It would be helpful to have some examples of this.

73. The latter paragraph of 2.6.4 refers to scenarios that are not 'sufficiently serious' to trigger the notification procedure, this suggests that there is a spectrum of 'technical problems' (low serious to very serious). It would be helpful to understand how national authorities should draw these distinctions.

74. Whilst the UK is able to make a notification to initiate the article 18(1)(c) procedure, the responsibility for the notification rests with the Union for member states. What will the procedure be for assessing when the notification should be triggered and what will be the procedure by which a member state will notify the Union so that the Union may then notify the UK?

75. If a country decides to extend the deadline of the article 18(1) scheme without notifying the UK/Union as per Article 18(1)(c), what implications does this have for citizens applying to the scheme and their rights under the Withdrawal Agreement? The Guidance Note as §2.6.4 says "The effects of Article 18(1)(c) are not deployed if no notification is made, even if technical problems exist" - it would be helpful if the Guidance Note explains what is meant by the 'effects' in this

context. For example, if the UK were to extend its scheme by nine months without making a notification to the Union, does this mean that EU citizens applying to the scheme during those nine months will not fall within the scope of the Withdrawal Agreement?

j. Article 18(1)(d) WA: Applications beyond deadline

76. The Guidance Note does not clarify the definition of "reasonable grounds" as used in Article 18(1)(d) WA. Since this is the source of great anxiety especially in the UK, where a domestic UK Immigration law definition of "reasonable grounds" is very restrictive, it would be helpful to set out examples in the Guidance Note. Specifically, is it a "reasonable ground" not to have known of the need to apply because no information of the requirement was received or seen by the citizen?

77. The Guidance Note at §2.6.5 states that the intention is that 'out-of-time applications are treated in a proportionate manner'. This suggests a further test/obligation in addition to the reasonable grounds one. Firstly, whether the applicant has 'reasonable grounds' and secondly that such applications will be treated 'proportionately'. It would be helpful if the guidance were to explain how these considerations work with an example.

78. It would also be helpful to clarify that such out-of-time applications, if ultimately successful, result in the applicant's residence being deemed to have had all the rights under the Agreement in the period between the deadline and decision.

k. Article 18(1)(i) WA: period of validity of identity document

79. The clarification that the national authorities in the host state cannot require an identity document or passport to have a specific period of validity is useful. It would also be useful to specify at what point it needs to be valid, which is presumably at the date of application.

l. Article 18(1)(o): Help to applicants

80. The Guidance Note at §2.6.11 appears to imply that the safeguard (of the competent authorities helping the applicants) is intended to ensure, in constitutive schemes, that applicants can apply again after the end of the transition period. However, Art 19(4) WA appears to suggest that applicants can only re-apply after refusals if their application was refused before the end of the transition period.

81. It is important that this apparent contradiction be resolved and clarified in the Guidance Note.

m. Art 18(4) WA: residence document in declaratory systems

82. The Guidance Note at §2.6.17 says, "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."

83. The reference to "supporting documents" suggests that it is open to a State operating a declaratory system to require the applicant to prove all over again their right to a residence document, i.e. that they comply with the requirements of Arts. 7, 8 and 10 of the Directive if they have temporary residence and even that those with permanent residence should be required to prove their right to that status (something that Art. 18(1)(h) rules out in constitutive systems). That is not our understanding of the intention of Art. 18(4), which we understood only to require someone to prove their identity and that they had registered under the Directive. If this were not the case the distinction between constitutive and declaratory systems would be no more than philosophical. It would help if the Guidance Note were to spell out what can be required in this respect.

84. The reference to "residence documents to be issued" as being governed by the rules set out in the Directive is also helpful. Two such rules are Arts. 19 and 20 of the Directive which require a certificate/card of permanent residence to be issued on application. It would be helpful if the Guidance Note were to make it clear that Member States adopting the declaratory system were bound to issue such certificates/cards just as they are under the Directive.

85. It would follow, as the contrary would be absurd, that constitutive States were also bound to make clear in the document issued under Art. 18(1) WA which of the residence status' created by the WA was being granted – temporary or permanent. Again it would be helpful for this to be clarified.

n. Article 19(2) WA: Effect of granting or refusing the application in constitutive systems

86. The Guidance Note at §2.7.2 states that the decisions taken under procedures set out in Article 18(1) will have no effect until after the end of the transition period, "given that the applicants will enjoy parallel free movement rights".

87. However, if the UK or a Member State decides to be more generous in its eligibility criteria than defined in Article 10 WA, an applicant benefiting from such generosity would not have parallel free movement rights.

88. Is it the intention that such a person, once granted status under the Article 18(1) procedure, has no WA rights that they can rely on until the end of the transition period?

o. Articles 19(2) (3) and (4) WA: differences in relation to application and withdrawal in declaratory and constitutive systems

89. The Guidance note explains that negative and positive decisions concerning applications under Article 18(1) do not take effect immediately, but that such decisions, whether negative or positive, concerning residence documents under 18(4) do take effect immediately.

90. We would welcome clarification of the impact of this in declaratory systems, since this means that a negative decision regarding a residence document is immediately valid in a declaratory system and the Guidance Note sheds no light on whether a second application can be made at a later stage after end of transition, as under Article 18(1).

91. Likewise, the Guidance Note appears to state that in a declaratory scheme under Article 18(4), it remains open to the authorities to withdraw the issued residence document or status during transition but that this, on its own, does not affect the residence status of the person concerned. However, this leaves the question of that person's status or ability to apply again for a residence document unclear. We would welcome clarification on this point.

92. Likewise, there is no specific right of re-application under Article 19(4) under declaratory systems.

p. Article 23 Equal Treatment

93. Can the Guidance Note clarify how the Equal Treatment provision applies under Article 18(1) constitutive schemes? The provision and exemptions mirror Article 24 of Directive 2004/38/EC, which are clearly rooted in EU declaratory legislation, and it is not clear how these work in combination with constitutive schemes. Taking the example of the UK which has elected to operate a constitutive scheme under Article 18(1), and has also chosen to apply more generous eligibility criteria for that scheme, can the Guidance Note confirm that the grant of a constitutive status entitles the grant holder to Equal Treatment, and that the exemptions of Article 23(2) (other than the distinction between Article 13 and Article 15 residence) cannot be applied or tested for? (Taking into account the Trojani case which concludes "However, once it is ascertained that a person in a situation such as that of the claimant in the main proceedings is in possession of a residence permit, he may rely on Article 12 EC in order to be granted a social assistance benefit such as the minimex.")

5. Rights of Workers and Self-Employed Workers: issues where further clarification would be helpful

a. Article 24(1) WA: Rights of workers: limitations

94. 2.12.1.1 is a useful summary of the limitations, referring to Article 45(3). However, given the case law and that the definition of public service has an autonomous meaning and the approach may also differ from country to country, we would suggest that the first sentence of the second paragraph that the WA does not cover employment in public service is perhaps stated too categorically and could lead to errors. See for example the analysis in case C-270/13 Haralambidis.

95. 2.12.1.2 clarifies that in the case of the UK, "their judicial and administrative authorities would have "due regard" to the relevant case law of the CJEU handed down after the end of the transition period". It would be useful to add here how long this is applicable, we assume this will be eight years after the end of the transition period as per Article 158(3)?

b. Article 25 WA: rights of self-employed persons: establishment

96. Paragraph 2.13.1 makes an important point and reference to Case C-55/94 Gebhard as regards the distinction between establishment and provision of services. While UKinEU were EU citizens, the distinction (while important) would not have meant the potential loss of livelihood. Post end of transition and given the limitations on the rights granted under the WA, it may. Given that many UKinEU are self-employed and work cross-border, we would welcome further clarification of the position.

97. Paragraph 2.13.1 deals with the position of a frontier worker in the context of this distinction. The Gebhard jurisprudence sets out a number of criteria on which the authorities in the State of Work will need to base their decision whether or not to grant a citizen frontier worker status: simply equipping oneself with an office to provide services in another EU country is not sufficient to show establishment, and this will depend not only on the duration of the service, but also its regularity, periodicity and continuity. These are all matters in regard to which there may be a great deal of discretion exercised by the relevant authorities and one EU country may be more generous in applying the conditions than others. For example, one country may decide that a break of more than two weeks in activities in the country undermines the continuity of the activity while another may be more generous. We would thus welcome more clarification and guidance from the Commission on this to ensure that the application of these conditions remains the same as their application to UKinEU as EU citizens and to ensure a generous as opposed to a restrictive interpretation of the conditions, given the potential repercussions for citizens as regards their livelihoods.

c. Article 25(1)(a) WA: the rights of a self-employed person to take up and pursue activities as a self-employed person and to set up and manage undertakings: provision of services

98. The Guidance Note states that, while the WA protects the rights of a self-employed person to take up and pursue activities as a self-employed person and to set up and manage undertakings in accordance with Article 49 TFEU, that should not be read as granting UK nationals the possibility to rely on EU law to provide services in other Member States or establish themselves in other Member States. This is however a bland statement of the position without any clarification to help either officials or UKinEU covered by the WA apply these principles in practice.

99. Like the social security provisions under Title III, these principles will have a fundamental impact on the lives of many UKinEU who are self-employed and work in one Member States but have clients in more than one Member State. They will thus have a fundamental impact on the livelihoods of many UKinEU. While the Guidance Note provides numerous and helpful practical case studies to illustrate the application of the social security provisions to real life cases, Chapter 2 on rights of workers and self-employed persons does not and this is an omission. We would be happy to provide a list of questions that we are regularly asked to facilitate the inclusion of case studies.

100. One key question that arises over and over again among our members is the question as to whether those who provide services digitally (by email or other digital means) to clients in Member States other than the host state or State of Work can continue to do so. Presumably if the UKinEU citizen is established in the host state and providing services there in accordance with the law of the host state, and the law of the host state (and the state where the service is received) allows the provision of services digitally, that UKinEU citizen can continue to provide services digitally to clients in other Member States.

101. Clearly the answer to the question may also depend upon whether the self-employed UKinEU is registered with the local chamber of commerce and set up an undertaking in the relevant host state. That undertaking, as an undertaking established in an EU country, would be able to operate throughout the EU as well as set up branches/establishments in other EU countries. However, would this also be the case if the person were established with the chamber of commerce as a simple independent? And presumably, there would of course still be an issue should the UKinEU manager wish to travel to other EU countries to provide services physically?

102. Both clarification and practical case studies in the Guidance Note on these issues and other issues relating to the rights of self-employed workers would be welcomed.

6. Professional qualifications: issues where further clarification would be helpful

a. Chapter 3 introduction

103. The Guidance Note confirms the grandfathering of specific national decisions recognising UK or EU qualifications, and importantly, the corresponding right to practise and continue practising the relevant profession or activities in the host state or State of Work.

104. The authors of the Guidance Note are again at pains to emphasise that this does not grant UKinEU any internal market right re provision of services to EU Member States other than their host state or State of Work – on this point, we refer to the comments we have made above as regards Chapter 2 on workers and self-employed workers' rights at point (c) and the lack of clarity that exists on this point, especially as regards the provision of services digitally.

105. Again, as we already commented in relation to Chapter 2, practical examples of the application of what is a very complex area of EU law, mutual recognition of qualifications, would be welcomed to understand how the provisions of Chapter 3 will apply to real cases. We note that no such practical examples have been provided.

106. We would also like to highlight an omission in the introduction. Paragraph 4 states that the WA does not guarantee UKinEU covered by the WA the right under EU law to obtain additional recognitions of their professional qualifications after the end of transition, whether in the host state, State of Work or in any other EU Member State. In fact, this statement should be clarified since it applies equally to EUinUK holding UK qualifications in the State of Work (if not the UK) and in any other EU Member State. For example, a German citizen who holds a UK qualification and who returns to Germany post transition, will not fall under the WA for the purposes of recognition of that qualification and will have to seek recognition under German national rules relating to third country qualifications as opposed to EU rules on mutual recognition of qualifications.

107. Moreover, an EUinUK, or EU citizen whose State of Work is the UK, and who holds EU qualifications will of course have no rights under the WA to obtain recognition of their professional qualifications in the UK if they have not done so or started the process before the end of transition.

b. Article 27 WA: Recognitions under Lawyers Establishment Directive – Article 10: validity

108. This section makes a useful clarification that the grandfathering effect waives, in respect of EUinUK and UKinEU, any local nationality requirement which might limit access to the profession of lawyer in the host State or State of Work.

109. The Guidance Note confirms that grandfathering is limited to host state. However, it is difficult to see how this can be the case in all situations. Article 10 allows a lawyer to become an integrated lawyer in the country where the person is established. Thus, for example, if a lawyer were to apply to the Belgian Bar under this provision, she would become a full Belgian avocat. Similarly, in Germany, she would become an integrated German Rechtsanwältin. However, it appears that this 'integration' would not be valid throughout the EU.

110. This raises a number of questions. What is the position if the relevant person is not only covered by the WA but is also the family member of an EU citizen and moves with their family member to another EU country? Is that person able to establish themselves in another EU country under their title as an integrated Belgian avocat? And what is the position if the person who integrated as a Belgian lawyer is a dual EU-UK citizen? If this person uses their free movement rights to move to another country, does this mean that they cannot establish themselves under Article 3 of the Establishment Directive as an integrated Belgian avocat?

c. Article 28: ongoing procedures

111. The Guidance Note confirms that applications that are ongoing before end of transition will continue to be processed in accordance with the rules and procedures provided for by the relevant EU legislation and that this also applies to any judicial procedures and appeal launched before the

end of the transition, i.e., until the conclusion of any such challenge in judicial proceedings pending at the end of transition.

112. Since Article 28 WA stipulates that only those applications made before the end of transition will be given due consideration, there is a critical timing problem regarding EU-qualified citizens who have a regulated job in the UK, or UK-qualified citizens who have a regulated job in the EU, to fulfil the minimum period exercising their profession (typically 3 years) in order to convert into the equivalent host state professional title e.g. nurses. A teleological interpretation of this article would imply that the terms 'ongoing procedure' and 'application' should be understood to include those in the process of building up the period necessary or any 'adaptation' period to submit the application, since the minimum period has been commenced if not completed before the end of the transition. This issue has been specifically addressed in Article 32 of the UK-Switzerland Agreement on Citizens' Rights3 and we would welcome clarification on it in the Guidance Note.

d. Article 29 -obligation of cooperation

113. We note that there is no provision for cooperation and exchange of information across Channel after 9 months after transition. The Guidance Note however does not clarify whether matters such as discipline and continuing education would thus be shifted exclusively to the country where the qualification has been recognised and where the holder would now be working. The ultimate conclusion to be drawn would be that there is then no need for the UKinEU citizen with a UK qualification to keep registered with their relevant UK regulator. Some additional clarification on this in the Guidance Note would be much appreciated.

[3] https://www.gov.uk/government/publications/swiss-citizens-rights-agreement-and-explainer

7. Title III Social Security

114. The drafters of this part of the Guidance Note are to be congratulated on the clear explanation of some extremely complex legislation. The explanation is greatly helped by the extensive use of examples.

a. Article 30 WA: paragraph 3.1.3.

115. A situation which is not specifically considered is that of the UK national who, rather than moving between categories within WA Art. 30(1), remains within the same category but moves either habitual residence or work from one Member State to another. We note the words "or the persons continue to be in a situation involving both the UK and an EU Member State without interruption." We also note the example of the Austrian citizen in the 2nd example numbered 1, who changes both residence and the Member State with which he is involved without breaking the necessary continuity4. Accordingly we understand that a change of Member State would be treated in the same way as a change of category within WA Art. 30(1) or indeed a change of category within Title II of Reg. 883/2004 ("Reg") because the person concerned would, without interruption, be a UK national "subject to the legislation of a Member State". We would however appreciate confirmation of this and consideration of the following examples:

- UK pensioner habitually residing in France at the end of the transition period (WA Art. 30(1)(b) as subject to the legislation of France (Reg. Art. 11(3)(e)) but who moves to Spain in 2022 (still Reg. Art. 11(3)(e) but different Member State). Of course *how* he gets to live in Spain is irrelevant for these purposes. He could do it legally by complying with Spanish national immigration law for Third Country Nationals or by having a right to do so as a family member of a Union citizen. So, for example:
  - His right to a UK S1 would continue in Spain;
  - His right to UK pension increases would continue to be protected by Reg. Art. 7.
- Highly qualified UK worker living and working in Belgium at the end of transition (WA Art. 30(1)(b) as subject to the legislation of Belgium - Reg. Art. 11(3)(a)) but who in 2025 gets a job in Germany through the TCN Blue Card Directive and moves there (still Reg. Art. 11(3)(a) but a different Member State).
  - Social Security Coordination rights would continue to be covered by Reg. 883/2004 even after the move to Germany.
- British student who has lived in Poland with her British parents since age 5 and is living there at end of transition but in 2022 goes to study in the Netherlands where she has a scholarship from the Netherlands and a part-time job, she lives in a rented flat and rarely returns to Poland. She remains in the Netherlands for 3 years before returning to Poland.
  - At end of transition WA 30(1)(b) as Reg. 11(3)(e) subject to the legislation of Poland.
  - In Netherlands, although her residence there is not covered by WA Title II, she has permanent residence in Poland and remains covered by WA Art. 10. Therefore WA Art. 30(3) applies, which brings in Reg. Art. 11(3)(a) (and/or Art 11(1) of Reg. 987/2009) and make her subject to the legislation of the Netherlands.
  - On her return to Poland she continues subject to WA 30(1)(b) as before.

b. Article 31(3) WA: Third country nationals: paragraph 3.2.3

116. This complex area could greatly benefit from some examples.

[4] See also the Danish citizen in the first example in 3.3.1.

c. Art. 32(1)(a) WA

117. Case study: a UK national working in Italy and covered by WA Art. 30(1) at the end of transition ceases to be so, for example by going to work for a substantial period in the USA, but then returns to France where she works for a further period.

118. Will her contributions in France be aggregated with her earlier Italian ones under a combination of Reg. 883/2004 (preserved by WA Art. 32(1)(a)) and Reg. 1231/2010 or will she be treated as not being in a situation involving more than one Member State while working in France for the purpose of the latter Regulation? If the latter interpretation is correct it would be very unfair as it would result solely from the change in her status from EU citizen (while in Italy) to Third Country National (while in France), whereas if she had always been a Third Country National her rights would have been protected by Reg. 1231/2010.

d. Art. 14 of Reg 883/2004

119. We have been asked a further question about the application of Reg. 883 after the end of transition. This is whether it is open to a UK citizen who has in the past worked in the UK but now lives or works in a Member State to "top up" their UK pension by making voluntary contributions after the end of transition. Our understanding is that, as long as this person remains within the coverage of Art. 30(1) WA and provided they meet the conditions of the UK legislation, they are entitled to do so by virtue of Art. 14(3) of Reg. 883 in respect of invalidity, old age and survivors' benefits and that such periods of further insurance would count for the purposes of aggregation under Art. 6 of that Regulation provided that they do not overlap with periods of compulsory insurance in a Member State. However, we would appreciate confirmation of this.

e. Article 33 WA: Nationals of Iceland, Liechtenstein, Norway and Switzerland: paragraph 3.4

120. We note that Iceland, Liechtenstein and Norway have concluded agreements with the UK which apply to their citizens in the UK and British citizens in their countries, which was published5 on the UK Government's website on 20th December 2018. We also note that Switzerland has concluded an agreement with the UK which applies to its citizens in the UK and British citizens in Switzerland, which was published6 on the UK Government's website, also on 20th December 2018.

121. In order to solve triangular situations, the Guidance Note at §3.4 states that corresponding agreements between Iceland, Liechtenstein, Norway and Switzerland and the European Union need to be concluded which apply to British citizens. Can you give us an indication of when these agreements are to be concluded, and specifically whether they are guaranteed to be concluded before the end of the transition period?

British in Europe/the3million

26 June 2020

[5] https://www.gov.uk/government/publications/eea-efta-separation-agreement-and-explainer

[6] https://www.gov.uk/government/publications/swiss-citizens-rights-agreement-and-explainer