A COMPARATIVE VIEW OF THE COMPREHENSIVE SICKNESS INSURANCE CONDITION FOR RESIDENCE IN ARTICLE 7 OF DIRECTIVE 2004/38

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The Citizenship Directive 2004/38 provides for a right of residence for more than three months and up to five years for EEA nationals and their family members in other EEA states, subject (amongst other things) to a requirement of 'comprehensive' sickness insurance during one's stay. Yet what does 'comprehensive' mean under EU and EEA law? How has this been interpreted by the CJEU and/or EFTA Court? And how is the requirement understood and applied at national level? These are the main issues discussed in the following article, which reveals a surprisingly high level of disparity in terms of interpretation and application of the requirement at national level in Norway, Iceland, Liechtenstein and Sweden.

1 INTRODUCTION

Article 7 of the Citizenship Directive provides for a right of residence for more than three months and up to five years for EU citizens and citizens of the EEA EFTA States in other EEA states, subject to certain conditions.[1] Whilst workers and self-employed persons (and their family members) need only be in possession of a valid passport or national identification card,[2] students and others must additionally be able to show that they have sufficient resources and comprehensive sickness insurance for their stay so as not to become a burden on the host state.[3] While both the Citizenship Directive itself and the EU and EFTA Courts have provided a great deal of clarification on what is meant by 'sufficient resources', the requirement of comprehensive sickness insurance has received somewhat less attention. What does 'comprehensive' mean? This article attempts firstly to clarify how comprehensive the sickness insurance may be required to be under EU/EEA law (Section 2), before taking a closer comparative look at how the condition has been interpreted and applied in the EEA EFTA states of Norway (Section 3), Iceland (Section 4) and Liechtenstein (Section 5), and

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[1] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L158/77 (hereafter Directive 2004/38/EC).
[2] ibid Article 7(1)(a).
[3] ibid Article 7(1)(b) and (c).

in the Nordic EU Member State of Sweden (Section 6). The article will round off with a few, short summarising remarks.

2 'COMPREHENSIVE' INSURANCE – COMPLETE OR (MERELY) EXTENSIVE COVERAGE?

The English language version of Article 7(1)(b) and (c) of the Citizenship Directive requires the sickness insurance to be 'comprehensive'. The very term 'comprehensive' is nevertheless somewhat nebulous, and capable of taking on two rather different meanings. On the one hand, it may be used to describe something which is complete or all encompassing. On the other hand, however, it might equally be used to describe something which is extensive, albeit not complete. Naturally there is a significant difference – both in terms of potential cost, and perhaps even in availability on the market – in requiring an insurance policy which covers absolutely all conceivable health related risks to one covering merely some or even a significant proportion of these. Getting to the bottom of what the term requires is therefore important from a practical perspective, for students and other non-economically active citizens looking to avail themselves of their rights of residence under EU and EEA law. Not only so as to legitimize stays for up to five years in another EEA state, but also so as to (eventually) qualify for permanent residence in the host state beyond that.[4]

So what does 'comprehensive' mean in this particular setting? Looking at the rules upon which Article 7 was historically based, one might be forgiven for automatically concluding that the term was intended to denote that the insurance coverage needs to be all encompassing in order to qualify. All of the various language versions of both the Residence and Student Directives from the 1990's, which were replaced by the Citizenship Directive, had previously conditioned residence in other EEA states on a strict requirement of sickness insurance covering 'all risks' (see Figure 1 below).[5] In its first draft, the Commission had also initially proposed that the same wording (i.e. insurance covering all risks) be kept in Article 7 of the Citizenship Directive.[6] Yet for reasons which do not seem apparent from the preparatory works at any stage of the legislative process, the Commission decided to change at least the English, German and Portuguese language versions prior to final adoption – from 'all risks', '*alle Risiken*' and '*conjunto dos riscos*', to 'comprehensive', '*umfassenden*' and '*cobertura extensa*', respectively.[7] The amendments were adopted without comment by the EU Council and EU Parliament.

Whether or not these changes in wording were simply aesthetical or had some deeper significance is nevertheless rather difficult to ascertain – at least when taken at face value. Looking at the other 21 equally authentic language versions of the provision, most of these

[4] Directive 2004/38/EC (n 1) Article 16.
[5] Article 1(1) of Council Directive 90/364/EEC of 28 June 1990 on the right of residence, OJ [1990] L180/26; Article 1 of Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students [1993] OJ L317/59.
[6] Commission, 'Proposal for a European Parliament and Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States' COM (2001) 257 final.
[7] Commission, 'Amended proposal for a Directive of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (presented by the Commission pursuant to Article 250 (2) of the EC-Treaty)' COM (2003) 0199 final.

seem to have retained terms either identical, or at the very least closely aligned, to those used in the 1990 directives.[8]

Figure 1: Various language versions of the requirement under the Citizenship, Residence and Students Directives.

	Citizenship Directive 2004/38	Residence Directive 90/364	Students Directive 93/96
Danish	samtlige risici	samtlige risici	samtlige risici
Swedish	heltäckande	heltäckande	samtliga risker
French	complète	l'ensemble des risques	l'ensemble des risques
Spanish	todos los riesgos	la totalidad de los riesgos	todos los riesgos
English	comprehensive	all risks	all risks
German	umfassenden	alle Risiken	sämtliche Risiken
Portuguese	cubertura extensa	todos os riscos	totalidade dos riscos
Norwegian	full dekning	alle risikoer	alle risikoer
Icelandic	fullnægjandi	alla áhættu	alla áhættu

The CJEU is of course no stranger to dealing with linguistic divergences in EU legislation. The different language versions of an EU legal text must naturally be given a uniform interpretation, and the Court has therefore established several different tests for resolving such matters.[9] Yet these tests need to be approached with a certain degree of caution. They are seldom applied in mechanical fashion, with the Court appearing to have adopted a pluralistic approach as to their use.[10] Furthermore, the application of these different tests may, but will not always lead to the same interpretative outcomes when applied. The CJEU therefore enjoys a great deal of flexibility when faced with such issues, making it very difficult to predict what the outcome will be in any given case. How the tests operate, and what the Court has usually focused on in applying these in the past, may nevertheless provide some insights into how the Court might reason its approach to resolving the linguistic divergence in Article 7 of the Citizenship Directive.

[8] Changes also appear to have been made to several other language versions, including the Bulgarian, Estonian, Lithuanian, Greek, Hungarian and Maltese language versions, although the present authors do not command these languages sufficiently to say with any degree of certainty what they entail.

[9] For more detail on these and the analyses mentioned below, see e.g. Christian N K Franklin, 'Consistency in EC External Relations Law' (PhD-series, University of Bergen 2010) 209-234.

[10] As opposed to a monistic approach; applying one singular, uniform test – as contended by e.g. Jurate Vaiciukaite and Tadas Klimas 'Interpretation of European Union Multilingual law' [2005] 3 International Journal of Baltic Law 1; Trevor C Hartley, *European Union Law in a Global Context* (Cambridge University Press 2004) 117; L Neville Brown and Tom Kennedy, *Brown & Jacobs: The Court of Justice of the European Communities* (5th edn, Sweet & Maxwell 2000) 326-329. Supporters of a pluralistic view include e.g. Niels Fenger, 'Forvaltning & Fællesskab. Om EU-rettens betydning for den almindelige forvaltningsret: Konfrontation og frugtbar sameksistens' (PhD thesis, University of Copenhagen 2004), in particular pp. 458-486; Anthony Arnull, *The European Union and its Court of Justice* (Oxford University Press 2006) 608-611; Mattias Derlén, 'A Castle in the Air – The Complexity of the Multilingual Interpretation of European Community Law' (PhD thesis, University of Umeå 2008); and Franklin, 'Consistency in EC External Relations Law' (n 9).

2.1 CJEU APPROACHES TO RESOLVING LINGUISTIC DIVERGENCES

The first stage of the Court's enquiry will usually be to see if the discrepancy can be resolved on the basis of a superficial, comparative literal analysis of all of the language versions of the provision or term in question. This method generally appears to be used in three different situations.

Firstly, where there is clear precedent determinative of the understanding of the term or provision in question, the Court will simply refer to this and wash its hands of the matter.[11] Whilst the CJEU has in fact provided certain indications as to how various aspects of Article 7 of the Citizenship Directive are to be understood, it has never dealt with the question as to the meaning of the term 'comprehensive' square on. We shall nevertheless return to relevant parts of the case law concerning both Article 7 and other parts of the Citizenship Directive further below.

Secondly, the CJEU may rely on a comparative literal analysis alone where the linguistic divergence is deemed to have been caused by a mere drafting error.[12] Given that changes were made not to one but at least three language versions during the drafting process, however, a superficial comparison of the terms used in the various language versions reveals that this was not an obvious drafting error or slip up in translation.

Thirdly, the CJEU has at times used comparative literal analyses in order to give precedence to the clear and unequivocal wording of an overwhelming majority of the language versions of a provision pointing to one particular understanding.[13] The Court's case law here is not uniform, however, as we also find examples of decisions where an overwhelming majority of language versions have been required to align with the understanding of one.[14] Simple 'majority' arguments have also been subject to a great deal of academic criticism over the years.[15] Although one might naturally contend that an overwhelming majority of language versions could (and should) at the very least give rise to a rebuttable presumption in favour of a particular interpretative outcome, it seems rather doubtful to our minds that the Court would choose to resolve the linguistic divergence in Article 7 of the Citizenship Directive in this way alone – at least not without conducting any further analyses.

Where divergences cannot be dealt with by a simple comparative literal analysis, the Court will usually proceed to resolve the issue in one of two ways: Either from seeking out the real intention of the specific provision in which the term is contained (what one might call the *Stauder*-approach),[16] or from a broader analysis of the purpose and general scheme of

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[11] See e.g. Case C-219/95 *Ferriere Nord SpA v Commission of the European Communities* EU:C:1997:375.
[12] See e.g. Case C-64/95 *Konservenfabrik Lubella Friedrich Büker GmbH & Co. KG v Hauptzollamt Cottbus* EU:C:1996:388.
[13] See e.g. Case C-372/88 *Milk Marketing Board of England and Wales v Cricket St. Thomas Estate* EU:C:1990:140.
[14] See e.g. Case C-76/77 *Auditeur du travail v Bernard Dufour, SA Creyf's Interim and SA Creyf's Industrial* EU:C:1977:215.
[15] See e.g. Derlén (n 10) 85-86, and Franklin, 'Consistency in EC External Relations Law' (n 9) 212, both with further references.
[16] See e.g. Case 29/69 *Erich Stauder v City of Ulm – Sozialamt* EU:C:1969:57; Case C-55/87 *Alexander Moksel Import und Export GmbH & Co. Handels-KG v Bundesanstalt für landwirtschaftliche Marktordnung* EU:C:1988:377; Case C-268/99 *Aldona Malgorzata Jany and Others v Staatssecretaris van Justitie* EU:C:2001:616; Case C-188/03 *Irmtraud Junk v Wolfgang Kühnel* EU:C:2005:59.

the entire set of rules of which the provision in question forms part (what one could call the *Bouchereau*-approach).[17]

Given that the aim of the provision and the aim of the Directive as a whole are not symmetrically aligned, however, the interpretative outcome might well vary depending on which of the two approaches the Court were to adopt: On the one hand, the Directive generally seeks to simplify and strengthen rights of free movement and residence for all EU and EEA EFTA state citizens, and to facilitate free movement to the greatest possible extent.[18] Application of the *Bouchereau*-approach would therefore seem to lean in favour of interpreting the provision in line with the English, German and Portuguese language versions. On the other hand, Article 7(1)(b) and (c) of the Directive clearly recognise the EU/EEA EFTA states' legitimate concern that persons availing themselves of their general right to free movement (which in EU law stems from Articles 20 and 21 TFEU, and in EEA law exists as a general, unwritten principle), do not become a burden on the social assistance system of the host Member State during an initial period of residence (i.e. when staying for periods in excess of three months).[19] Application of the *Stauder*-approach could therefore be said to point towards an interpretative outcome in favour of requiring sickness insurance that indeed covers absolutely all risks.

As mentioned above, which test the CJEU might apply to resolve any linguistic divergence is difficult to ascertain in advance with any degree of certainty. The point to bear in mind here is that *both interpretative outcomes remain open to the Court*, depending on which approach the Court might decide to adopt. In our opinion, however, there are several other factors which should be taken into account, which firmly point towards a more relaxed interpretation of the term 'comprehensive' as contained in Article 7(1)(b) and (c) of the Citizenship Directive.

2.2 CJEU – TOWARDS A MORE RELAXED APPROACH?

Support for the contention that the term should not be understood as meaning 'all encompassing' or 'complete' may firstly be found in the CJEU's case law related to Article 7, where the Court has appeared to take an increasingly liberal approach. A first (albeit minor) step in this direction might arguably be drawn from *Ibrahim*, a case concerning the relationship between rights of residence under the Workers Regulation and conditions of residence under the Citizenship Directive.[20] In the end, the Workers Regulation was effectively allowed to overrule application of the Citizenship Directive in the substantive

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[17] Case C-30/77 *Régina v Pierre Bouchereau* EU:C:1977:172; Case C-236/97 *Skatteministeriet v Aktieselskabet Forsikrinsselskabet Codan* EU:C:1998:617; Case C-420/98 *W.N. v Staatssecretaris van Financiën* EU:C:2000:209; Case C-257/00 *Nani Givane and Others v Secretary of State for the Home Department* EU:C:2003:8; Case C-280/04 *Jyske Finans A/S v Skatteministeriet* EU:C:2005:753.

[18] Preamble of Directive 2004/38/EC (n 1) recital 3; Case C-127/08 *Blaise Baheten Metock and Others v Minister for Justice, Equality and Law Reform* EU:C:2008:449 para 59; Case C-930/19 *X v État belge* EU:C:2021:657 para 81.

[19] Preamble of Directive 2004/38/EC (n 1) recital 10.

[20] Case C-310/08 *London Borough of Harrow v Nimco Hassan Ibrahim and Secretary of State for the Home Department* EU:C:2010:80; Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community [1968] OJ L257/2.

determination of the case.[21] Of note is nevertheless a statement made by the Advocate General in the case, who was clearly of the opinion that the sickness insurance condition in Article 7 of the Citizenship Directive was to be understood as a continuation of the conditions set out in the earlier Residence and Students Directives, given that 'the Community legislature has expressly imposed a requirement of having sickness insurance cover in respect of all risks in the host Member State'.[22] The CJEU chose not to follow the Advocate General's opinion on this point, however, making explicit use instead of the term 'comprehensive' sickness insurance in its judgment. It is worth noting that the official, authentic language of the case was also English.

A clearer step was taken a few years later in *Rendón Marín*, where – following the approach suggested by Advocate General Szpunar – the Court appeared to accept that public sickness insurance coverage in the host state would suffice to fulfil the requirement.[23] The Court nevertheless stopped short of assessing whether the requirement was in fact fulfilled in the case, leaving the matter to be determined by the referring national court.

The CJEU's decision in *Rendón Marín* paved the way for an even more significant development in *A*.[24] The case concerned an Italian national who had moved to Latvia to live with his Latvian wife and their two children. Having informed Italian authorities of his intention to move abroad, he was registered as such by them and consequently lost his right to receive care under the Italian health care system. Once registered as resident in Latvia, A applied to Latvian authorities to become a member of the Latvian compulsory public sickness insurance system, and to issue him with a European Health Insurance Card (EHIC). His application was refused. Latvian authorities claimed that since he was neither a worker nor self-employed person, as a mere EU citizen living in Latvia, he could only receive health care in return for payment. The national courts acting at first instance had held that although A was entitled to emergency medical treatment (thus in line with the CJEU's much earlier decision in *Baumbast*, which we shall return to in some detail further below), that he would only be entitled to receive other medical care financed by the Latvian state when a right of permanent residence had been acquired (i.e. usually after five years legal residence). As pointed out by the Latvian Supreme Court in referring the case to the CJEU, this left A caught between a rock and a hard place, as denied access to medical care in both Italy and Latvia.

As discussed above, if an EU citizen is not economically active, the right to reside according to the Citizenship Directive is conditional upon sufficient means and a comprehensive sickness insurance. By contrast, the right to be affiliated to the competent Member State and its social security system, including its healthcare system, under Regulation 883/2004, is not conditional. It suffices under Article 11(3)(e) of Regulation 883/2004 that an EU citizen is (merely) residing in that Member State. As the personal scope in Regulation 883/2004 makes no difference between economically active and economically inactive EU citizens residing in a Member State, this leads to a legal

[21] Similar reasoning was applied in C-480/08 *Maria Teixeira v London Borough of Lambeth and Secretary of State for the Home Department* EU:C:2010:83, delivered the very same day.
[22] Opinion of AG Mazák in Case C-310/08 *London Borough of Harrow v Nimco Hassan Ibrahim and Secretary of State for the Home Department* EU:C:2009:641 para 39 and footnote 36.
[23] Case C-165/14 *Alfredo Rendón Marín v Administración del Estado* EU:C:2016:675 para 49.
[24] Case C-535/19 *A v Latvijas Republikas Veselības ministrija* EU:C:2021:595.

paradox – since Regulation 883/2004 provides the state health care, which the Citizenship Directive intends to uphold by keeping economically inactive out.[25]

The CJEU held that the mandatory 'conflict rule' in Article 11(3)(e) of Regulation 883/2004 makes it clear that economically inactive EU citizens, such as A, in principle are covered by the social security legislation of the Member State in which they reside (i.e. in this case Latvia).[26] This was precisely so as to ensure that such individuals are not left without any social security cover whatsoever.[27] The Court held further that since A was covered by Latvian social security legislation under Article 11(3)(e) of Regulation 883/2004, that provision gave him a right to be affiliated to the Latvian public sickness insurance system. Secondly, that the right to be affiliated to national public health systems in such circumstances would persist, notwithstanding the right of host Member States to require comprehensive sickness insurance cover for stays of more than three months and up to five years under Article 7(1)(b) of the Citizenship Directive.[28] Conscious of the fact that its decision might otherwise render Article 7(1)(b) completely redundant, the Court was quick to add that host Member States were not thereby obliged to grant such affiliation entirely free of charge.[29] As long as such charges were proportionate, the Member States would be fully within their rights to require economically inactive EU citizens staying for up to five years to maintain either comprehensive private sickness insurance or to pay a contribution to the public health system in return for public health coverage, to prevent them becoming an unreasonable burden on public finances.

The Court's more relaxed approach to the comprehensive sickness insurance requirement in *A* was confirmed the following year in *VI.*[30] The referral came from a UK national court post-Brexit, in a case concerning an Irish national's right to reside in the UK and receive certain child benefits during stays there in 2006 and 2016. The CJEU held here in no uncertain terms that 'once a Union citizen is affiliated to […] a public sickness insurance system in the host Member State, he or she has comprehensive sickness insurance within the meaning of Article 7(1)(b)'.[31] Furthermore, the Court stressed that in situations where that public sickness insurance coverage is in fact offered free of charge, the Member State cannot rely on its own failure to take advantage of the mere possibility of charging migrant EU citizens for such affiliation to their national health systems:

> […] it would be disproportionate to deny that child and the parent who is his or her primary carer a right of residence, under Article 7(1)(b) of Directive 2004/38, on the sole ground that, during that period, they were affiliated free of charge to the public sickness insurance system of that State. It cannot be considered that that

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[25] On the interaction between Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [2004] OJ L166/1 and Directive 2004/38/EC (n 1), see Jaan Paju, 'A Bridge Too Far – On the Misunderstandings of the Nature of Social Security Benefits: A v. Latvijas Republikas Veselības Ministrija' (2022) 59(4) Common Market Law Review 1219.
[26] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [2004] OJ L166/1.
[27] *A* (n 24) paras 45-51.
[28] ibid paras 52-59.
[29] ibid para 59. Although if a Member State did in fact choose to provide such protection free of charge under national law, then this would naturally be considered a more favourable provision in accordance with Article 37 of Directive 2004/38/EC (n 1).
[30] Case C-247/20 *VI v Commissioners for Her Majesty's Revenue and Customs* EU:C:2022:177.
[31] ibid para 69.

> affiliation free of charge constitutes, in such circumstances, an unreasonable burden on the public finances of that State.[32]

The interesting question whether reciprocal arrangements, such as those in force relating to the common travel area applicable to health insurance between the UK and Ireland, were capable of satisfying the requirement to have comprehensive sickness insurance cover within the meaning of Article 7(1)(b), was nevertheless left unanswered.

2.3 THE ADVOCATES GENERAL – PRESSURE AND COMMON VIEWS

Another indication of a more liberal understanding of the extent of sickness insurance coverage required under Article 7(1)(b) and (c) of the Citizenship Directive may be drawn from the less filtered opinions of the Advocates General in both *A* and *VI*, who argued even more forcefully and directly in favour of such an interpretation.

In *A*, Advocate General Saugmandsgaard Øe declared that a more nuanced approach to the condition ought to be adopted, akin to that followed by the Court with regards to the sufficient resources requirement under Article 7.[33] Recalling the general starting point that derogations from fundamental freedoms should be interpreted strictly,[34] he noted how the earlier Residence Directive contained not the same, but a 'similar' requirement.[35] Strongly reminiscent of the Court's rulings concerning sufficient resources, he further opined that the source of the sickness insurance coverage – i.e. whether private or public (and if public, whether provided by the host or home state) – was not important.[36] What mattered was simply that you had it. He then recalled how the Court in *Baumbast* had in any event taken account of comprehensive sickness insurance coverage in one's *home state* as a factor in finding a strict requirement of all-encompassing sickness insurance in the *host state* as a disproportionate restriction on Mr. Baumbast's general right to free movement under Articles 20 and 21 TFEU.[37] Referring further to the Court's decision in *Dano*,[38] the EU legislature's intention as regards comprehensive sickness insurance was to ensure that economically inactive migrant EU citizens would not become not simply a burden, but an *unreasonable* burden for the host Member State.[39] Again, this seemed to indicate that insurance covering a substantial amount of – but not necessarily all – risks, might well suffice. In the Advocate General's opinion, in light of the Court's case-law in *García-Nieto*, *Alimanovic* and *Dano*, A could only be deemed to constitute an unreasonable burden if he had made social

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[32] *VI* (n 30) para 70.
[33] Opinion of AG Saugmandsgaard Øe in Case C-535/19 *A v Latvijas Republikas Veselibas ministrija* EU:C:2021:114, with further reference to C-181/19 *Jobcenter Krefeld v JD* [2020] EU:C:2020:794.
[34] Opinion of AG Saugmandsgaard Øe in *A* (n 33) para 83.
[35] ibid para 90, fn 48.
[36] ibid paras 89 and 91. On the (ir)relevance of the origin of resources, see e.g. Case C-93/*18 Ermira Bajratari v Secretary of State for the Home Department* EU:C:2019:809; further Elspeth Guild, Steve Peers, and Jonathan Tomkin, *The EU Citizenship Directive – A Commentary* (2nd edn, Oxford University Press 2019) 138.
[37] Opinion of AG Saugmandsgaard Øe in *A* (n 33) para 90.
[38] Case C-333/13 *Elisabeta Dano and Florin Dano v Jobcenter Leipzig* EU:C:2014:2358 paras 71 and 77.
[39] Opinion of AG Saugmandsgaard Øe in *A* (n 33) para 85. Although unclear from the Advocate General's opinion, and arguably from the Court's decision in *Dano* (n 38), the CJEU itself confirmed in Case C-709/20 *CG v The Department for Communities in Northern Ireland* EU:C:2021:602 (a decision published the very same day as the final decision in *A*), that the same applied as far as the sufficient resources requirement was concerned – i.e. that both conditions are intended inter alia to prevent people from becoming an unreasonable burden on the social assistance system of the host Member State.

security claims related to the first three months following his arrival in Latvia, if his right of residence was based solely on the fact that he was seeking work there (i.e. on the basis of Article 14(4)(b)), or if he went to Lativa as a 'social tourist' (i.e. solely in order to obtain Latvian social assistance benefits or free health care).[40] None of these were the case in his situation. And with a nod to *Bidar* and *Förster*, the Advocate General also noted that A had formed genuine links of integration with Latvia during his time there which ought to be taken into account.[41] For the Advocate General in *A*, the key to understanding what is comprehensive enough under Article 7 of the Directive seemed therefore to lie in a proportionality assessment, i.e. whether the lack of coverage was of such an extent that it would amount to an unreasonable burden, upsetting the financial balance of the host Member State, taking account of the level of integration the individual has achieved in the host state.

Advocate General Hogan went a step further in *VI*.[42] Noting with regret that the referring national court had not asked the question or provided any further information in this respect in its referral, despite the question being debated before the national court(!), and given the UK government's failure to submit written observations in the case or to attend the oral hearing(!!), the Advocate General admitted that addressing the question of what comprehensive sickness insurance is might seem 'particularly inopportune'.[43] In what could only be described as a classic *obiter dicta*, he went on to make a few 'remarks' on the issue nonetheless. Recognising the EU legislature's attentiveness to the legitimate concern of the Member States to safeguard their public finances, he pointed out that the legislature did not go so far as to require that the insurance be provided by a private operator. He also called particular attention to the EU legislature's change in terminology from insurance covering all risks under the 1990 directives to 'comprehensive' coverage under the Citizenship Directive.[44] Given the lack of any definition in the Directive itself, the term fell to be interpreted in a uniform manner as an autonomous concept of EU law. In Advocate General Hogan's view, sickness insurance must be regarded as 'comprehensive' where the cover enjoyed by the EU citizen corresponds to that provided free of charge by the host Member State to its own nationals, or to that which a Member State requires its nationals to subscribe to.[45] From here, the Advocate General mimics to a great extent the approach adopted by his colleague Saugmandsgaard Øe in *A* – calling attention to the fact that as a derogation to the right to free movement it must be interpreted restrictively; that his suggested understanding would not unreasonably burden public finances in the Member States; and finally, that such an understanding in any event corresponded *mutatis mutandis* to what is required for the condition relating to sufficient resources (i.e. that the insurance coverage need only be sufficiently comprehensive).[46]

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[40] Case C-299/14 *Vestische Arbeit Jobcenter Kreis Recklinghausen v Jovanna García-Nieto and Others* EU:C:2016:114; Case C-67/14 *Jobcenter Berlin Neukölln v Nazifa Alimanovic and Others* EU:C:2015:597; and *Dano* (n 38).
[41] Case C-209/03 *The Queen, on the application of Dany Bidar v London Borough of Ealing and Secretary of State for Education and Skills* EU:C:2005:169; Case C-158/07 *Jacqueline Förster v Hoofddirectie van de Informatie Beheer Groep* EU:C:2008:630.
[42] Opinion of AG Hogan in Case C-247/20 *VI v Commissioners for Her Majesty's Revenue and Customs* EU:C:2021:778.
[43] ibid paras 55-60.
[44] ibid para 61.
[45] ibid para 63.
[46] ibid para 64.

As we have already seen, the Court did not deem it necessary to address the points raised by the Advocates General as to the interpretation of the term 'comprehensive', sidestepping the issue altogether in its final decisions in both cases. It is nevertheless interesting to see how both of the Advocates General appeared to be on the same page – both as regards their understanding of the term, and the need to call the Court's attention to the issue. They both certainly laid down a clear marker for future potential reference in their Opinions.

2.4 LEGALITY – ABSOLUTE INSURANCE COVERAGE IN BREACH OF TREATY RIGHTS

The third, and to our mind crucial, argument against interpreting the condition in Article 7 of the Citizenship Directive as requiring sickness insurance covering absolutely all risks, nevertheless stems from the CJEU's seminal decision in *Baumbast* more than 20 years ago.[47] This is quite simply because retention by the EU legislature of a requirement of sickness insurance covering all risks after that ruling, would obviously run the risk of being declared invalid as contrary to rights flowing directly from the legal basis of the Directive itself.

Baumbast concerned a German citizen and his family who were living in the UK. One of the questions referred to the CJEU concerned the sickness insurance condition under Article 1(1) of the Residence Directive. Mr. Baumbast did not have private health insurance but was covered by German public health insurance. As mentioned previously, all of the language versions of the Residence Directive unequivocally required sickness insurance covering 'all risks' during one's stay in the host state. UK authorities therefore claimed that since Mr. Baumbast was not covered for emergency health treatment whilst in the UK, and hence not covered for 'all risks', that he did not qualify for residence under the Residence Directive. The CJEU nevertheless held that a right of residence may exist in such situations on the basis of Article 18(1) EC (now Article 21(1) TFEU) instead. It pointed out that limitations and conditions set out in secondary measures were subject to judicial review, and could not prevent the provisions of Article 18(1) EC from conferring rights on individuals.[48] Further, that any national measures seeking to safeguard the Member States' legitimate interests in preventing foreign EU migrants from becoming an unreasonable burden on public finances must comply with limits imposed by EU law and general principles thereof – including the principle of proportionality.[49] The Court then pointed out that since Mr. Baumbast had sufficient resources for his stay, had worked and lawfully resided in the UK for several years, had not become a burden on public finances during his stay and had 'comprehensive sickness insurance in another Member State', that denying him residence on the ground that his sickness insurance did not cover emergency treatment in the UK would amount to a disproportionate interference with Mr. Baumbast's right to free movement and residence as an EU citizen under Article 18(1) EC.[50]

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[47] Case C-413/99 *Baumbast and R v Secretary of State for the Home Department* EU:C:2002:493.
[48] ibid para 86.
[49] ibid para 91.
[50] ibid paras 92-93. The Court did question whether the summation of UK authorities that Mr Baumbast and his family were not covered for emergency health treatment was correct, in light of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community [1971] OJ L149/2, Article 19(1)(a). The Court's

Up until this decision, guidance from the CJEU on the various sickness insurance conditions found in the 1990 directives had been relatively sparse.[51] The Court did not go so far in *Baumbast* as to rule Article 1(1) of the Residence Directive invalid. Indeed, it did not even frame its response as one related to (what would undeniably have amounted to a highly teleological) interpretation of that provision. Instead, it delicately sidestepped the limitation by framing the issue as one of directly effective rights under Article 18 EC, coupled with a standard testing of the national rules for their proportionality.

The result is nevertheless the same – and striking – on any reading: The requirement of insurance covering 'all risks' as unequivocally stated in the Residence Directive could no longer be taken at its word. The provision was amenable to indirect judicial review by the CJEU and could be set aside in favour of directly effective provisions of the Treaty. In the event that an EU migrant citizen had comprehensive (in the sense of extensive, yet not all-encompassing) sickness insurance coverage, the fact that the insurance did not cover all risks (here, emergency treatment in the host state) as required under Directive 90/364, would be of no consequence, as he/she could then claim a right of residence on the basis of the Treaty rules. In effect, the Court in *Baumbast* established a significant, Treaty-based exception to the strict requirement of sickness insurance covering all risks under the Residence Directive.[52]

Some might claim that this is merely an example of parallel rights existing in EU primary and secondary law.[53] To our mind, however, the Court's approach seems better described as a *soft legality challenge* to rights contained in secondary EU measures, and a good example of the pragmatically attuned dialogue between the Court and the EU legislature.[54] Rather than simply overruling the EU legislature's choice, the Court through its judgment

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assumption indeed seems correct, in light of its earlier decisions in Case C-215/90 *Chief Adjudication Officer v Anne Maria Twomey* EU:C:1992:117 and Case C-451/93 *Claudine Delavant v Allgemeine Ortskrankenkasse für das Saarland* EU:C:1995:176, which made clear that the concept of 'worker' under Regulation 1408/71 was much broader than in other EU contexts, i.e. covering any person insured under the social security legislation of one or more Member States. Any outlay of benefits in kind by the UK, including for emergency treatment, could therefore presumably have been made subject to a reimbursement claim to Germany after the fact. Notwithstanding this, the Court made clear that it's decision and reasoning would have been the same regardless (see para 90, where the Court – having referred to the possibility of reimbursement – went on to state that its reasoning applied 'In any event…').

[51] See e.g. Case C-424/98 *Commission of the European Communities v Italian Republic* EU:C:2000:287, which dealt with how beneficiaries were to demonstrate that they were in fact insured, making clear that limiting the means of proof or requiring provision of specific documents issued or certified by the authority of a Member State would be in breach of Council Directive 90/364/EEC of 28 June 1990 on the right of residence [1990] OJ L180/26 and Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity [1990] OJ L180/28.

[52] As similarly put by Dougan and Spaventa, 'secondary legislation is reinterpreted (or even effectively rewritten) according to the demands of primary law', effectively 'lowering the thresholds provided for in the Residency Directives'. Michael Dougan and Eleanor Spaventa, 'Educating Rudy and the (non-)English Patient: A double-bill on residency rights under Article 18 EC' (2003) 28(5) European Law Review 699, 705-706.

[53] Mads Andenæs and Tarjei Bekkedal, 'The reach of jobseekers rights to free movement: On the complementary relationship between primary and secondary law' (2022) 9 Oslo Law Review 4.

[54] Timmermans similarly alludes to the EU legislature's limited discretion in setting out limitations and conditions, as not giving it 'a *blanc seing*, an unrestricted authority […] to lay down such limitations and conditions on the exercise by the Union citizen of his free movement right. […] the Court exercises some control, albeit with a light touch […]'. Christiaan Timmermans, 'Martínez Sala and Baumbast revisited' in Miguel Poiares Maduro and Loïc Azoulai (eds), *The Past and Future of EU Law, The Classics of EU Law Revisited on the 50th Anniversary of the Rome Treaty* (Hart 2010) 354.

sends a clear signal that secondary law is outdated in light of Treaty-based developments and needs to be brought up to speed.[55] Given that the Residence Directive predated the introduction of EU citizenship by the Maastricht Treaty, the Court understandably faced a rather prickly conundrum in *Baumbast* of fitting rules (i.e. the Residence Directive) created in a significantly different legal landscape, into one that was moving progressively into new and uncharted territory (i.e. in the light of EU citizenship). The situation facing the EU legislature by the time the Citizenship Directive was being formed had nevertheless plainly changed: Adopting a retained requirement of sickness insurance covering all risks would be at odds with the conditions that could be attached to a right of residence based directly in one of its legal bases, i.e. today's Article 21(1) TFEU. Not only would this render the requirement in the Directive redundant; it would also pave the way for a potential challenge as to the very legality of Article 7 as plainly at odds with one of its legal bases.[56] The EU legislature must naturally regulate in accordance with the legal bases of the legislation in question.[57] And the Court has made no secret of the limited discretion enjoyed by the Member States in the application of the conditions for residence set out in the Citizenship Directive.[58] The timing of the changes made to the English, German and Portuguese language versions of Article 7 of the Citizenship Directive also seem rather telling: The initial legislative proposal was issued by the Commission in 2001, with the amended proposal introduced on 15 April 2003; with the Court's decision in *Baumbast* delivered on 17 September 2002, neatly inserted right between the two.

If faced with the question directly, it therefore seems more reasonable to our minds to assume that the Court would favour an interpretation of the provision in line with the English, German and Portuguese language versions, rather than having to declare it invalid altogether. Such a solution would clearly be in line with the approach for resolving linguistic divergences set out in *Bouchereau* and would give full effect to the Treaty-based right of residence as established in *Baumbast*. In our view, the Member States may therefore require that individuals have sickness insurance coverage, but may not automatically deny residence where an insurance policy does not cover absolutely all risks. What is deemed sufficiently

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[55] The approach will no doubt be immediately familiar to anyone versed in EU/EEA social security law, where the Court on several occasions has adopted the same approach as regards certain rights found in the social security regulations – establishing Treaty based exceptions through its case-law, to the detriment of rights or obligations contained in secondary measures. Soft legality challenges are nevertheless more commonplace and readily understandable in areas such as social security policy, where the EU enjoys mere coordinated competence. Although the ordinary legislative procedure is used in this field, each Member State still retains the power to effectively veto any amendment proposals they might disagree with by having the matter referred back to the Council (Article 48 in the Treaty on the Functioning of the European Union (TFEU)). As a result, each new social security regulation takes years – sometimes decades – to agree on.

[56] As claimed more generally by Shaw, '[…] rules in the relevant secondary legislation (such as the 2004 Citizens' Rights Directive) must also be interpreted in such a way that the restrictions they impose do not impede the fundamental nature of the right of residence under Article 18 [EC]'. Jo Shaw, 'A View of the Citizenship Classics: Martínez Sala and Subsequent Cases on Citizenship of the Union' in Miguel Poiares Maduro and Loïc Azoulai (eds), *The Past and Future of EU Law, The Classics of EU Law Revisited on the 50th Anniversary of the Rome Treaty* (Hart 2010) 361.

[57] See e.g. Case C-930/19 *X v État belge* EU:C:2021:657 para 78: 'As is apparent from the very wording of Articles 20 and 21 TFEU, the right of Union citizens and their family members to move and reside freely within the territory of the Member States is not unconditional but subject to the limits and conditions laid down by the FEU Treaty and by the measures adopted to give it effect […]. Therefore, the EU legislature, *in accordance with those articles* of the FEU Treaty, has regulated those limits and conditions by means of Directive 2004/38'.

[58] See e.g. ibid paras 84-85.

comprehensive insurance coverage under the Citizenship Directive may perhaps vary from one case to another, but all-encompassing insurance may not be required as a general rule.

2.5 THE EEA DIMENSION

As to the question of whether the same understanding of the term 'comprehensive' in Article 7 of the Citizenship Directive must be said to apply as a matter of EEA law, the answer must surely be a resounding 'yes'. When the Citizenship Directive was incorporated into the Agreement by EEA Joint Committee decision 158/2007, no substantive adjustments were made to the text of the provision.[59] According therefore to the basic tenet of the principle of homogeneity, where provisions under EU and EEA law are identical in substance, a strong presumption must be said to exist that these are to be interpreted in the same way – and with deference naturally to their meaning under EU law.[60] This presumption may only seemingly be rebutted where substantial differences between the EU and EEA legal constructs exist, arguments to which the EFTA Court (and CJEU) will usually not be easily persuaded to accept.[61]

Given that the changes to certain language versions of Article 7 of the Citizenship Directive appear to have been inspired by the CJEU's decision in *Baumbast*, one might perhaps be tempted to claim that the lack of provisions in the Main Part of the EEA Agreement reflecting the EU Treaty rules on EU Citizenship (i.e. Articles 20 and 21 TFEU) present just such a weighty argument against homogenous interpretation. Added to this is a Joint Declaration by the Contracting Parties attached to the Joint Committee's decision incorporating the Citizenship Directive into the EEA Agreement, further emphasizing that neither the concept of EU citizenship nor immigration policy matters form part of EEA law.[62] In line with the apparent majority of EU language versions of the provision, the Norwegian language version of Article 7 also clearly appears to require sickness insurance covering all risks.[63]

Any suggestion that a homogenous interpretation of Article 7 of the Directive should be ruled out for these reasons would nevertheless prove futile in our view. Firstly, because the interpretation of the term 'comprehensive' in its EU setting as suggested above is drawn from the very wording and textual context of the provision itself, not directly from an interpretation of the provision conducted in light of the EU Treaty rules on citizenship.

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[59] Decision of the EEA Joint Committee No. 158/2007 of 7 December 2007 amending Annex V (Free movement of workers) and Annex VIII (Right of establishment) to the EEA Agreement [2008] OJ L124/20.
[60] See e.g. Agreement on the European Economic Area EEA [1994] OJ L1/3 (hereafter the EEA Agreement), Articles 1 and 6, and e.g. recitals 4 and 5 of the EEA Agreement's Preamble.
[61] See e.g. Case E-2/06 *EFTA Surveillance Authority v The Kingdom of Norway* [2007] EFTA Ct. Rep. 164, para 57, where arguments based on statements made by the Contracting Parties during the negotiations to the EEA Agreement, and subsequent unilateral reservations made by the Norwegian government following its adoption, were deemed irrelevant by the EFTA Court. See also e.g. Case T-115/94 *Opel Austria GmbH v Council of the European Union* EU:T:1997:3 where the Court of First Instance rejected pleas by both the Council and the Commission for diverging interpretations of Article 10 EEA and (what is now) Article 30 TFEU.
[62] Joint Declaration by the Contracting Parties to Decision No. 158/2007 incorporating Directive 2004/38/EC into the EEA Agreement, attached to Decision of the EEA Joint Committee No 158/2007 of 7 December 2007 amending Annex V (Free movement of workers) and Annex VIII (Right of establishment) to the EEA Agreement [2008] OJ L124/20.
[63] Interestingly, the Icelandic version appears to more in line with the English, German and Portuguese versions – requiring sickness insurance which is merely adequate (*'fullnægjandi'*).

The EEA Joint Committee's decision to adopt the Directive without substantive amendments to Article 7 can be said to have had the effect of 'EEA cleansing' the provision, ridding it from any trace of its (potentially) EU citizenship-inspired past. Secondly, as explained in detail elsewhere, the declaration's practical import in the context of interpreting the Directive has been reduced in most situations to that of a politically (not legally) binding document by the EFTA Court.[64] Thirdly, because although the Norwegian and Icelandic language versions of the provision are equally authentic as a matter of *EEA law*, they naturally bear no weight in the interpretation of the provision as a matter of *EU law* to begin with.[65] And it is obviously upon the understanding of the term under EU law that the duty of homogenous interpretation rests. Finally, even if the EU citizenship rules of the TFEU *had* played directly into our suggested interpretation of the term 'comprehensive', the EFTA Court's establishment of an EEA general principle of free movement might potentially be used as an interpretative tool to 'soften the edges' of the term to the same effect.[66] All things said, in our view it appears highly unlikely therefore that an indigenous EEA interpretation of the term 'comprehensive', diverging from our suggested understanding of the term in its EU setting, would be made.

2.6 ANYTHING TO BE DRAWN FROM THE EFTA CONVENTION?

The EFTA Convention contains the provisions on free movement that have been put in place between the four EFTA states Iceland, Liechtenstein, Norway and Switzerland.[67] These are – mostly – derived from EU law and aim at creating a similar area of free movement as in the EEA. As Iceland, Liechtenstein and Norway (EEA EFTA states) are members of the EEA and have their relations thus based on EEA law, the respective provisions of the EFTA Convention are essentially needed to grant citizens of the three EEA EFTA states equal treatment vis-à-vis Switzerland as Union citizens do based on the Agreement between the EU and Switzerland on the Free Movement of Persons (AFMP).[68] With regard to the scope

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[64] See e.g. Christian N K Franklin, 'Square Pegs and Round Holes: The Free Movement of Persons Under EEA Law' (2017) 19 Cambridge Yearbook of European Legal Studies 165; and Christian N K Franklin & Halvard Haukeland Fredriksen, 'Differentiated Citizenship in the European Economic Area' in Dora Kostakopoulou and Daniel Thym (eds), *Research Handbook on European Union Citizenship Law and Policy – Navigating Challenges and Crises* (Edward Elgar 2022) 297.

[65] Had substantive adjustments to the provision been made by the EEA Joint Committee, then the situation would obviously be different – in such cases, the EFTA language versions would presumably carry substantial weight in the interpretative process.

[66] Case E-4/19 *Campbell v The Norwegian Government* [2020] EFTA Court judgement of 13 May 2025 para 48; as confirmed in e.g. Case E-2/20 *The Norwegian Government v L* [2021] EFTA Court judgement of 21 April 2021 para 24. For more on the development of this general principle of EEA law, see e.g. Christian N K Franklin, 'Free Movement Rights in Norway' in Katarina Hyltén-Cavallius and Jaan Paju (eds), *Free Movement of Persons in the Nordic States: EU Law, EEA Law, and Regional Cooperation* (Hart 2023) 175; further Christian N K Franklin, 'EU-borgerskap og EØS' [2024] <https://www.regjeringen.no/contentassets/15ef86ab491f4856b8d431f5fa32de98/no/sved/ekstern2.pdf> accessed 20 March 2025 (Special Report to Norwegian Public Enquiry 2024:7 *Norway and the EEA: Development and experiences*, only available in Norwegian).

[67] Convention Establishing the European Free Trade Association (adopted 4 January 1960, entered into force 3 May 1960). The updated EFTA Convention, the Vaduz Convention (adopted 21 June 2001, entered into force 1 June 2002, in parallel with the EU-Swiss bilateral agreements: <https://www.efta.int/sites/default/files/uploads/2024-04/Vaduz_Convention_Agreement_Updated_1_November_2021.pdf> accessed 20 March 2025.

[68] Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons [2002] OJ L114/6.

of application, however, there is an important difference: In contrast to the EEA Agreement, the Citizenship Directive was not incorporated into the AFMP.

In the EFTA Convention, free movement of persons is regulated in Articles 20-22. There is a subdivision in movement of persons (Article 20), coordination of social security systems (Article 21) and mutual recognition of professional qualifications (Article 22), following the logic of Articles 28-30 EEA. The basic provisions of the Convention are supplemented by Annex K and Appendices 1-3. Article 23(1)(b) of Appendix 1 (Rules regarding residence), states that persons not pursuing an economic activity must prove 'to the competent national authorities that he possesses for himself and the members of his family […] all-risks sickness insurance cover'. There is also a footnote regarding that provision, stating that '[i]n Switzerland, sickness insurance for persons who do not elect to make it their domicile must include accident and maternity cover'. That provision, including the footnote, is a copy of Article 24(1)(b) of the AFMP.

With regard to the wording, the EFTA Convention follows the wording of the (now repealed) Students Directive, namely 'all risks' in English and '*sämtliche Risiken*' in German.[69]

Beyond the EEA, there is thus, firstly, an extension of the same terms to Switzerland. Secondly, regarding whether this means complete or (merely) extensive coverage,[70] the footnote mentioned before might give a certain indication. This footnote requires, albeit for persons who do not elect to make Switzerland their domicile, that accident and maternity cover must be included. This is to be read as a minimum requirement, a point we shall return to in Section 5.

3 NORWEGIAN LAW AND PRACTICE

§112 of the Norwegian Immigration Act (NIA) implements Article 7 of the Citizenship Directive into Norwegian law.[71] Apparently based on a translation of the Danish language version of the Directive, it is plainly stated here that persons seeking residence for more than three months and up to five years on the basis of private means, and students, must have sickness insurance covering all risks during their stay.[72] The Norwegian Immigration Regulation (NIR), which serves to further implement the requirements of the NIA under national law on the basis of delegated authority, provides no further details or explanations as to how the condition is to be understood.[73] Which is somewhat surprising, given that a great deal is explained here as to what the related requirement of sufficient resources means.[74] The text of the NIA cannot be read in isolation, however, but must – as a matter of Norwegian legal method, common to all of the Nordic states – also be understood in light

[69] See also Figure 1.
[70] See Section 2.
[71] *Lov om utlendingers adgang til riket og deres opphold her (utledningsloven)* (LOV-2008-05-15-35). Available in English here: <https://lovdata.no/dokument/NLE/lov/2008-05-15-35?q=Immigration%20Act> accessed 20 March 2025.
[72] ibid s.112 (1)(c) and (d).
[73] Forskrift om utlendningers adgang til riket og deres opphold her (utlendningsforskriften) (FOR-2009-10-15-1286) s.19-7, which fills out *Lov om om utlendingers adgang til riket og deres opphold her* (n 71) s.110 concerning the understanding of 'family members', simply reiterates what could be read from the statute: That in order for family members of EEA nationals to have derived rights of residence, they must also be covered by a sickness insurance policy covering all risks.
[74] See *Forskrift om utlendningers adgang til riket og deres opphold her* (n 73) s.19-13.

of its preparatory legislative works.[75] These provide a slightly more nuanced picture of what the legislature had in mind when drafting §112 back in 2008.

3.1 LEGISLATION – THE PREPARATORY WORKS

As far as persons residing on the basis of personal means under §112(1)(c) are concerned, the preparatory works make clear that the general starting point is that sickness insurance must cover absolutely all risks during one's stay in Norway.[76] The idea of the legislature seemingly being to carry over the strict requirements of the former Residence and Students Directives into the amendments necessitated by EEA incorporation of the Citizenship Directive.[77] Certain statements made in other parts of the preparatory works nevertheless indicate that sickness insurance is required, yet without specifying that it must cover all risks.[78] Whether the statutory provision could therefore be taken completely at its word seems unclear. The drafters also seemed wary of this, calling attention in their specific observations to §112 to the possibility of further elaboration being provided by the Ministry of Labour and Social Inclusion at a later date in the NIR.[79] Whilst usual to delegate legislative authority on such matters, it is difficult to escape the impression on reading the preparatory works as a whole that the legislature did not seem entirely certain how comprehensive a sickness insurance could be required under the Citizenship Directive.

This impression is further strengthened when we compare the drafters' approach to the sickness insurance required for students looking to reside in Norway on the basis of §112(1)(d). Whilst the wording of the condition is exactly the same as that of §112(1)(c), in the preparatory works, the drafters expressly recognized that it would have a different meaning. Accepting a point raised by the Norwegian Directorate for Immigration (UDI) during the public consultation round, the Ministry conceded that possession of a valid European Health Insurance Card (EHIC) should suffice for students to meet the sickness insurance requirement.[80] Interestingly, UDI had pointed out that a requirement of sickness insurance covering all risks could give rise to problems in practice, since the sickness insurance policies available on the market rarely provided for as full coverage as the Ministry

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[75] Arbeids- og inkluderingsdepartementet, 'Ot.prp.nr.72 (2007–2008) Om lov om endringar i utlendingslovgivinga (reglar for EØS- og EFTA-borgarar o.a.' [2008] <https://www.regjeringen.no/contentassets/eb8794026feb4741a5c5d577b08dc299/nn-no/pdfs/otp200720080072000dddpdfs.pdf> accessed 20 March 2025 (available in Norwegian only).

[76] See e.g. the specific comments made to s.112(1)(c) in Ot.prp.nr.72 (2007–2008) (n 75) 63; further on pp. 10 and 35, concerning the continuation of derived rights of residence for TCN family members in the event of the EEA sponsor's death, divorce or termination of partnership.

[77] Ot.prp.nr.72 (2007–2008) (n 75) 32, point 7.5.6.

[78] See e.g. comments in Ot.prp.nr.72 (2007–2008) (n 75) relating to the pre-existing requirements under the *Lov om om utlendingers adgang til riket og deres opphold her* (n 71) from before 2009 on pp. 18 and 19, and on p. 20 (referring merely to 'sufficient sickness insurance'!), which nevertheless seem somewhat misleading; further on p. 32, related to the requirement contained in Article 7 of Directive 2004/38/EC (n 1) itself.

[79] Ot.prp.nr.72 (2007–2008) (n 75) 33.

[80] ibid. UDI is tasked with both facilitating and controlling lawful immigration to Norway, working in tandem with Norwegian police authorities. UDI processes asylum and family reunification applications, issues visitor's visas and all manner of residence permits and travel documents, and makes decisions on deportation and denials of entry of foreign nationals. Whilst UDI's portfolio files primarily under the Ministry of Justice and Public Security, the Ministry of Labour and Social inclusion may instruct it in matters related to Chapter 13 of the *Lov om om utlendingers adgang til riket og deres opphold her* (n 71) concerning EEA immigration issues. UDI's decisions may be appealed to the Immigration Appeals Board (UNE) – a special tribunal, whose decisions in immigration and citizenship cases are binding on UDI.

presumably intended.[81] UDI therefore suggested that it should be considered sufficient to require an EHIC, or 'another sickness insurance that provides the same coverage as the EHIC'. Whilst the Ministry agreed to UDI's suggestion of accepting EHIC as far as students were concerned, no similar concession was made regarding persons residing on the basis of personal means.

Acceptance of EHICs in the case of students is interesting, since such cards do not cover all conceivable risks. EHICs cover 'necessary treatment' (whatever that might mean), expressly excluding expenses incurred in the event that the beneficiary must travel back to his/her home state due to illness or accident. They do not cover private healthcare costs, ongoing care and many forms of dental medical treatment, either.[82] The fact that EHIC was considered more readily acceptable in the case of students is to a certain extent understandable, since the cards are only designed to cover temporary stays in a host EEA state. Students following a specific programme or on exchange will presumably (or at least initially) only be residing in Norway for a specific and limited amount of time.[83] The same may not necessarily be said of all foreign EEA nationals looking to reside in Norway for more than three months on the basis of private means. And notwithstanding the fact that a temporary stay according to the CJEU may last many years,[84] the cover provided by EHIC will presumably not be valid in situations where the EEA national is deemed to have moved his/her habitual residence to another EEA state. As we have seen in Section 2 above, according to Article 11 of Regulation 883/2004, the state of residence (i.e. Norway) becomes the competent state in such situations. Not only might this explain the possible reluctance of the Norwegian authorities in accepting EHICs for persons residing on the basis of personal means, but such cards may simply not be valid in all situations either.

To complicate matters slightly further, even if an EHIC may in certain situations suffice to meet the sickness insurance requirements of §112, not all persons holding such cards may be able rely on them in Norway. Whilst Regulation 1231/2010 extends EU social security coordination rules to third country nationals (TCN) legally resident in the EU and in a cross-border situation within the EU, this Regulation is not part of EEA law.[85] Meaning that TCN family members of EU citizens who have a valid EHIC cannot rely on this as coverage in Norway (or any other EEA EFTA state).[86] Consequently, this also means that TCN family members of Norwegian citizens are not entitled to EHICs to cover temporary stays in other EEA states, either.

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[81] Ot.prp.nr.72 (2007–2008) (n 75) 33.

[82] Which may also explain why Norwegian authorities advise those aiming to stay in Norway on the basis of an EHIC to also take out private sickness insurance, see e.g. <https://www.helsenorge.no/en/health-rights-tourist-abroad/the-european-health-insurance-card/> accessed 20 March 2025.

[83] Matters may naturally be more problematic in situations where students initially travel to Norway study but then decide to stay on for a longer period without studying. In such cases, the EHIC may no longer be considered valid.

[84] See e.g. Case C-255/13 *I v Health Service Executive* EU:C:2014:1291 paras 50-53.

[85] For more on the status of TCNs under Regulation (EC) No 883/2004 (n 26) and the Nordic Convention on Social Security (adopted on 12 June 2012, entered into force 1 May 2014), see Ómar Berg Rúnarsson's contribution to this special edition of the NJEL ('The Status of Third-Country Nationals, Refugees and Stateless Persons Under the EU Social Security Regulations and the Nordic Convention on Social Security').

[86] For TCN family members of Nordic citizens, this is not a problem, as they will be covered by the rules of the Nordic Social Security Convention of 2012 – see Rúnarsson (n 85).

3.2 INSTRUCTIONS AND CIRCULARS

The lack of clarity in the Norwegian legislation implementing Article 7 of the Directive seems to have carried over to a certain extent into subsequent instructions issued by the Ministry to UDI on how the requirement is to be understood and applied, and further into the many circulars published by UDI for use by their own case handlers. On the one hand, initial efforts appear to have been made by UDI to rectify certain inconsistencies through administrative practice. According to a former circular (now repealed) on how case handlers were to approach the requirements of §112, EHICs were clearly to be accepted not only for students but also for persons residing in Norway on the basis of private means.[87] Another UDI circular, still currently in force, similarly states that for the purposes of family reunification with EEA nationals in Norway, 'other family members' (i.e. persons not falling under the definition in Article 2(2) of the Citizenship Directive – such as foster children, siblings, and persons moving to Norway to marry an EEA sponsor) may also rely on EHIC in lieu of private sickness insurance.[88] On the other hand, however, another UDI circular currently in force, specifically implementing recent instructions from the Ministry concerning non-derived rights of residence for EEA nationals, clearly states that only pensioners and students may rely on EHICs in lieu of private sickness insurance.[89] All other EEA nationals looking to reside in Norway on the basis of personal means, and their family members (as understood under Article 2(2) of the Citizenship Directive), are required to have private sickness insurance covering all risks. The fact that a different understanding still persists as far as 'other family members' are concerned is rather surprising, yet still the inconsistency appears to remain in place.

The latest Ministry instruction and UDI circular deserve closer scrutiny here, as attempting to bring the interpretation and application of §112 up to speed with some of the decisions of the CJEU mentioned in Section 2 above. According to the instruction and circular, the sickness insurance requirement under § 112(1)(c) and (d) will now be considered fulfilled upon acquisition of membership in the Norwegian national insurance scheme, which under the NIA is considered to be attained after staying for 12 months in the country.[90] All EEA nationals (excluding pensioners and students) and their family members residing in Norway on the basis of personal means, must therefore have a private sickness insurance covering all risks for the first 12 months from when they arrive in the country. What will be deemed to constitute sickness insurance covering all risks is also said here to be a specific assessment, presumably in each case. The general rule is nevertheless stated as being that the

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[87] *Rundskriv fra Utlendingsdirektoratet* (UDIRS-2011-37) points 3.4.1 and 3.5.1 (last updated 3 June 2020) <https://lovdata.no/pro/#document/RUDIO/rundskriv/udirs-2011-37?searchResultContext=1804&rowNumber=1&totalHits=12> accessed 20 March 2025.

[88] *Retningslinje fra Utlendingsdirektoratet I Familieinnvandring med EØS*-borger (RUDI-2010-25) points 2.2 and 3.2.5 C (last updated 7 October 2022) <https://lovdata.no/pro/#document/RUDI/rundskriv/rudi-2010-25/KAPITTEL_1 X 2025> accessed 20 March 2025.

[89] See *Rundskriv fra Arbeids- og inkluderingsdepartementet* (AI-2023-1); and *Retningslinje fra Utlendningsdirektoratet I Opphold på selvstendig grunnlag for EØS-borgere* (RUDI-2011-37) points 3.4.1 and 3.5.1 (last updated 10 October 2024) <https://lovdata.no/pro/#document/RDEP/avgjorelse/ai-2023-1?searchResultContext=1795&rowNumber=1&totalHits=2> and <https://lovdata.no/pro/#document/RUDI/rundskriv/rudi-2011-37?searchResultContext=1876&rowNumber=1&totalHits=16> accessed 20 March 2025.

[90] *Lov om folketrygd (folketrygdloven)* (LOV-1997-02-28-19) s.2.

insurance must cover absolutely all risks, but that a proportionality assessment must be carried out in each case.

The latest instruction and circular give rise to several issues, firstly concerning the specific period of time one is required to have sickness insurance, and from what point in time the condition kicks in. According to both, EEA nationals and their family members must be in possession of such insurance *from when they arrive in Norway*. Taken literally (which most immigration case handlers understandably are most likely to do), this would be directly at odds with Article 6 of the Citizenship Directive, according to which no conditions may be placed on the right to reside for up to three months in another EEA state except possession of a valid passport or national identification card. In order not to transgress this right, sickness insurance could only be required after the initial three-month period of residence.[91] Persons who have moved their habitual residence to Norway from the first day of arrival could still naturally be required to maintain sickness insurance for 12 months under national law – or potentially even longer – but not until the initial three-month period has passed. It would seem contrary to the spirit of the Directive if a host state could simply conclude that up to three initial months of a person's stay should be discounted (or worse, deemed illegal) for not having taken out private sickness insurance from the day they arrived in Norway. This could also naturally have consequences with a view to fulfilling the requirements of permanent residence under Articles 16 or 18 of the Directive in the longer term. In the event that the Ministry intended otherwise through its instruction, this is not made sufficiently clear.

The second issue concerns what kind of insurance will be deemed as covering all risks. Earlier circulars provided little by way of clarity. UDIRS-2011-37 (now repealed) for example stated that 'all risks' had to be understood as meaning those that are 'covered by Norwegian law'; and further that 'the sickness insurance must cover all expenses related to illness, including treatment by a doctor and any hospitalization'.[92] Yet without further reference or explanation, exactly what risks are or ever have in fact been 'covered by Norwegian law' is seemingly impossible to understand, and there does not (at least to this writer's knowledge) appear to be any such definition in existence. Compared to this earlier circular, and as mentioned above, the latest instruction from the Ministry certainly indicates a slightly moderated stance, by opening up for individual assessments. Yet whether it has made anything clearer is difficult to judge in the abstract. On paper, the idea that each situation be judged separately and with proportionality in mind certainly opens for a discretionary approach, and one in which exceptions can be made to fit individual circumstances. This could potentially open up for an understanding more in tune with what we believe to be the correct interpretation of the comprehensive sickness insurance requirement. Yet individual assessments seem rather clearly to be the exception, and not the general rule. Without further explanations or examples as to what will be deemed (dis-)proportionate, it seems likely to

[91] Analogously to registration requirements for mobile EEA nationals and their family members under Article 8(2) and 9(2) of Directive 2004/38/EC (n 1), which may not kick in until after the initial three month period of residence has lapsed, precisely so as to ensure that staying in a country for the first three months is free of additional administrative formalities beyond those expressly stated in Article 6. See further Guild, Peers and Tomkin (n 36) 152.

[92] RUDI-2010-25 (n 88) points 2.2.1, 2.2.2, 2.2.3, 2.2.4 and 3.2.5 (still in force), provides a slightly different understanding, according to which '[a]ll risks in this regard means coverage for expenses related to repatriation for medical reasons, necessary medical treatment and hospital treatment'.

assume that case handlers will continue to revert to the requirement of insurance covering all risks as the general rule and starting point in all cases. In practical terms, and without clearer instruction, if one does not have private sickness insurance covering absolutely all risks, then it will be left to the individual to make a case for being exempted from it. It is not difficult to imagine how this might prove challenging to do in practice.

Sickness insurance policies covering absolutely all risks are in any event expensive, and cost more depending on age, pre-existing health conditions and many other factors.[93] Ironically, whilst one can obtain world health insurance from many international companies, no Norwegian companies appear to offer readily available policies (and most not even specifically tailored options) to cover such risks for EEA citizens and/or their family members moving to Norway.[94] One might therefore question whether a requirement of private insurance covering all risks could be considered proportionate in any situation, as unreasonably expensive,[95] and excessively difficult to get hold of in the first place. UDI's initial suggestion in response to the public hearing in 2008, that private insurance might be considered sufficient where it covers the same as risks as EHIC, would seem even more sensible, practicable and attractive in this light. Alternatively, the Norwegian state might consider making a legislative change allowing it to charge for membership of the health part of the national insurance scheme after the initial three-month stay has come to an end. Not only would this presumably cost significantly less whilst also providing the exact same coverage as Norwegians enjoy, but the various registration requirements for EEA nationals (and their family members) moving to Norway might also facilitate practical implementation of such an arrangement.[96]

Thirdly and finally, requiring sickness insurance for 12 months from arrival as the basis for membership in the Norwegian national insurance scheme would also appear to be incompatible with the requirements of Regulation 883/2004. At least if the intention is to bar access to such membership from being attained within a shorter period of time, which it clearly appears to do. The instruction starts off in this regard by stating that the sickness insurance requirement will be met in Norway for an EEA citizen and his/her family

[93] A basic online search for worldwide health insurance from different international companies reveals prices in the range from NOK 35.000-110.000 per annum.

[94] In December 2024 and through January 2025, Research Assistant Hans Olav Mangschau Hammervold from the University of Bergen conducted an informal survey with 22 Norwegian insurance companies, to find out if they offered a sickness insurance policy to EEA citizens, and/or their family members (regardless of nationality), which covered all conceivable health risks for a 12 month stay in Norway, and how much this might cost. 18 of the companies responded, with several of these also willing to answer follow up questions specifying different scenarios (particularly concerning the age of the potential policy holder). None of the 18 Norwegian insurance companies had an insurance policy to offer such individuals or were willing to put a price on what such a policy might cost. The results of this informal survey are not published but may be obtained for verification purposes upon request from the author of this section of the article (christian.franklin@uib.no).

[95] Had EEA citizens and their family members residing in Norway on the basis of personal means been required to make contributions directly to the Norwegian national insurance scheme instead, this would presumably have been much cheaper than taking out private insurance. Taking as a base the amount required to qualify as having 'sufficient resources' under s.112 in Directive 2004/38/EC (n 1) (which is in fact variable, depending on your age, but amounts to roughly NOK 240.000 on average), and assuming that the contribution of this would not be higher than 9,1% (which is what voluntary membership costs for persons not in work and not paying tax to Norway), the amount would come to just under NOK 22.000 per annum.

[96] §117 NIA, which transposes Article 8(1) of the Citizenship Directive, requires foreign EEA nationals and their family members resident for more than three months (presumably excluding job seekers, who have a right to stay for at least six months) to register with Norwegian authorities.

members if they can be considered members of the Norwegian national insurance scheme. Further, that until such individuals have become members of the national insurance scheme, an individual sickness insurance policy will meet the requirement in §112(1)(c) NIA. So far, so good – entirely correct and in line with the CJEU decisions in *A* and *VI*.[97] Yet the instruction then goes on to state that:

> It follows from Section 2-1, first paragraph of the National Insurance Act that 'persons who are resident in Norway are compulsory members of the national insurance'. Furthermore, it follows from Section 2-1, second paragraph of the National Insurance Act that 'a person residing in Norway is considered to be resident in Norway when the stay is intended to last or has lasted at least 12 months.' It is also a condition for membership that the stay in Norway is legal, cf. Section 2-1, third paragraph of the National Insurance Act.
> In order to meet the requirement that the stay is 'intended to last […] at least 12 months', the person concerned must have permission to reside in Norway for at least 12 consecutive months upon arrival. In order for an EEA citizen and any family members to be granted such a stay, the conditions in Section 112 of the Immigration Act must be met. In order to meet the requirement in Section 112 […] the EEA citizen and any family members must therefore be covered by their own health insurance for the first 12 months from arrival.

Making access to membership contingent upon 12 months private sickness insurance coverage for all risks from the day one arrives in Norway may nevertheless serve to undermine one of the cardinal rules of EEA social security coordination, namely that no one be left without coverage by a competent state. The CJEU's decision in *A* described in Section 2 above makes this clear. According to Article 11 of Regulation 883/2004, the country of residence is the competent state as far as sickness benefits are concerned. And residence is not dependent on proving an intention to stay in the country one moves to, but rather on the so-called 'centre of interests' test developed by the CJEU and now codified in Article 11 of Regulation 987/2009.[98] This requires consideration of a much broader range of factors, including but not limited to the intended length of the stay itself.[99] For the purposes of Regulation 883/2004, residence – and the automatic right to membership in national insurance schemes this gives rise to, which may be required at a cost – may therefore be achieved earlier than the 12 month period mandated by the Ministry, i.e. as soon as habitual residence is deemed to have been moved. Potentially even from the very first day one moves to Norway. The Norwegian Labour and Welfare Administration (NAV) for its part operates with a very clear understanding that 'residence' in §2-1 NIA must be understood in the same

[97] Section 2.2 above.
[98] Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation No 883/2004 on the coordination of social security systems [2009] OJ L284/1.
[99] According to Article 11(1), the factors to be considered are the duration and continuity of presence on the territory of the Member States concerned, and the person's situation – including family status and family ties, the exercise of any non-remunerated activity, the person's housing situation, and the Member State in which he/she is deemed to reside for taxation purposes. Indeed, Article 11(2) also indicates that where the individual intends to reside only comes into play as a secondary or supplementary factor in the assessment in the event of disagreement between the institutions concerned.

sense as under Regulation 883/2004, and has instructed its case handlers accordingly.[100] Leading to a rather bizarre situation whereby UDI are instructed to follow a completely different understanding of the requirements for membership in the Norwegian national insurance scheme than the body directly responsible for granting such admittance in the first place.

The fact that the Ministry has generously chosen to only require 12 months insurance coverage (they would have been well within their rights to demand coverage for up to five years) cannot in any event offset or mitigate potential breaches of the Regulation. As we have seen in Section 2 above, the conditions and limitations of the Directive are clearly tempered by the requirements of Regulation 883/2004; not the other way around. The Citizenship Directive also clearly allows EEA states to maintain national rules which are more favourable to the individual.[101] Why Norwegian authorities have chosen a more favourable approach may seem puzzling but is perhaps best understood as a somewhat misplaced attempt to fit the requirements of the Directive to the Norwegian national insurance system's universal rules on membership.

In sum, there appear to be relatively significant shortcomings in the legislation implementing the sickness insurance requirement into Norwegian law, that have not been adequately remedied by subsequent administrative practice. The most recent Ministry instruction and UDI circular appear to be at odds not only with different requirements of the Citizenship Directive, but also Regulation 883/2004. Viewed as a whole, the lack of clarity in Norwegian law and practice seems fundamentally out of tune with general EEA implementation requirements.[102] Little wonder therefore that the EFTA Surveillance Authority (ESA) has started sending letters to the Norwegian authorities to push for changes to be made.[103]

4 ICELANDIC LAW AND PRACTICE

Economically inactive EEA citizens must register their legal residence at Registers Iceland if their stay in Iceland exceeds three months.[104] In recent years, the number of applications

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[100] See *Rundskriv til ftrl kap 2: Medlemskap* (R02-00) point 2.1 (last updated 20 December 2024) <https://lovdata.no/pro/#document/NAV/rundskriv/r02-00?searchResultContext=2375&rowNumber=1&totalHits=37> accessed 20 March 2025.

[101] Directive 2004/38/EC (n 1) Article 37 and recital 29 of its preamble.

[102] The point naturally being to enable individuals to know their rights and obligations. See e.g. Case C-214/98 *Commission of the European Communities v Hellenic Republic* EU:C:2000:624 para. 27; Case E-15/12 *Jan Anfinn Wahl v the Icelandic State* [2013] EFTA Ct. Rep. 534; and Case E-15/20 *Criminal Proceedings Against P* [2021] EFTA Court judgement of 30 June 2021.

[103] EFTA Surveillance Authority Case No. 85597, where both a request (dated 20 April 2021) and a supplementary request (dated 14 February 2023) for information concerning Norway's application of the requirement of having comprehensive sickness insurance cover under Directive 2004/38/EC (n 1) have been made. Available at: <https://www.eftasurv.int/cms/sites/default/files/documents/gopro/EC_Redacted.pdf> and <https://www.eftasurv.int/cms/sites/default/files/documents/gopro/Supplementary%20request%20for%20information%20-%20Norway%27s%20application%20of%20the%20requirement%20of%20comprehensive%20sickness%20insurance.pdf> accessed 20 March 2025.

[104] Cf. the Foreign Nationals Act No. 80/2016, s.89(1). See also Article 8 of Directive 2004/38/EC (n 1), and further reading in: Eftir Bjarnveigu Eiríksdóttir, 'Execution of registration of EEA workers in Iceland on the basis of Article 89 of the Foreigners Act No. 80/2016 in light of the obligations of the EEA Agreement' (*Úlfljótur*, 28 November 2017) <https://ulfljotur.com/2017/11/28/framkvaemd-skraningar-ees-launthega-

from economically inactive EEA nationals (others than students) seeking residence registration in Iceland has increased. In 2018, there were only 51 applications. In 2019, the number increased to a total of 342. And in the following year, the applications doubled to 674. They have remained at a high level ever since, with for example 660 in 2023.[105] As seen above in Section 2, Member States are allowed to require economically inactive EEA citizens to have sufficient resources not to become a burden on the social assistance system of the host Member State and to have 'comprehensive' sickness insurance. This Section attempts to clarify how the latter condition has been interpreted and applied in Iceland.

4.1 'COMPREHENSIVE' – ADEQUATE, OR COVERING ALL RISKS?

In the Icelandic translated version, Article 7 of the Citizenship Directive requires students and other economically inactive EEA citizens to have '*fullnægjandi sjúkratryggingu*', which means 'adequate sickness insurance'. This translation might seem to be even more lenient than the English, German and Portuguese language versions of the Article. What matters here, however, is how this provision was implemented into Icelandic law. Before discussing the current implementation provision, its predecessor will be examined.

According to Section 36 of the Foreigners Act No. 96/2002, students and other economically inactive EEA-citizens had the right of residence in Iceland for a period of longer than three months if they had 'secure subsistence' (students) or 'received sufficient regular fixed payments or had adequate own funds' (other economically inactive EEA-citizen). Both groups had to be covered by sickness insurance that covered 'all risks during their stay in Iceland'.[106] These provisions were initially established to implement the Residence and Student Directives, and as previously mentioned, these Directives required sickness insurances that 'covered all risks'. This provision was not amended following the incorporation of the Citizenship Directive into the EEA Agreement.

It was not until the ESA sent a letter to the Ministry of the Interior, in spring 2011, regarding Iceland's implementation of the Citizenship Directive, that changes were made. One of the comments highlighted the incomplete implementation of Article 7(1)(b) of the Citizenship Directive, as the criterion to 'not become a burden on the social assistance system' was missing from Icelandic law. Consequently, the law was amended to address this issue. At the same time, the national provision was amended to change the requirement for economically inactive EEA citizens (other than students), from having sickness insurance that covered 'all risks' to requiring 'adequate sickness insurance', thereby aligning it with the wording of the Icelandic version of Article 7(1)(b) of the Citizenship Directive.

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her-a-landi-a-grundvelli-89-gr-utlendingalaga-nr-80-2016-i-ljosi-skuldbindinga-samningsins-um-evropska-efnahagssvaedid/> accessed 20 March 2025. See also the Act on Legal Domicile and Residence No. 80/2018, s.14(4). Legal residence is defined as where an individual lives on a regular basis in Iceland, cf. Article 2(1) of the Act on Legal Domicile and Residence No. 80/2018. See further reading in Ciarán Burke and Ólafur Ísberg Hannesson, 'Free Movements Rights in Iceland' in Katarina Hyltén-Cavallius and Jaan Paju (eds), *Free Movement of Persons in the Nordic States: EU Law, EEA Law, and Regional Cooperation* (Hart 2023) 202-205.

[105] The Registers Iceland (Þjóðskrá) sent the author of this Section of the article this statistical information via email on 15 February 2024. For verification purposes, more information on this, or other aspects of the field research conducted under this section, may be obtained upon request from the author of the present section (margreteinars@ru.is).

[106] In Icelandic, the requirement read: 'ábyrgist alla áhættu'. Available at: <https://www.althingi.is/lagas/145b/2002096.html> accessed 20 March 2025.

However, it was not long until national law was changed again. The new, comprehensive Foreign Nationals Act No. 80/2016 came into effect on January 1, 2017,[107] repealing the Foreigners Act No. 96/2002. According to Section 84(1)(c) of the Act, an economically inactive EEA or EFTA citizen has the right of residence in Iceland for a period longer than three months if he meets the following requirement:

> has sufficient resources for him and his family members not to become a burden on the social assistance system of the host Member State during their period of residence and falls under sickness insurance which covers all risks while his stay in the country lasts.[108]

According to Section 84(1)(d) of the Act, students are also required to have sickness insurance covering 'all risks'. Section 84(1)(c) and (d) are the current implementation provisions of Article 7(1)(b) and (c) of the Citizenship Directive, and they appear to be stricter in this regard, since the Directive only requires 'adequate sickness insurance' in the Icelandic version. No explanation is to be found in the legislative bill as to why the criteria of sickness insurance was changed, or why it is stricter than the Directive it is set to implement. This strict implementation raises questions about whether the legal requirement for sickness insurance covering 'all risks' creates a barrier for economically inactive individuals seeking to move to Iceland, which might be incompatible with the Citizenship Directive. To answer this, a comprehensive assessment of how this requirement is applied in practice is essential.

4.2 TO 'COVER ALL RISKS' DOES NOT, IN PRACTICE, MEAN TO COVER ALL RISKS

As previously stated, to be registered by Registers Iceland, an economically inactive person must have sufficient resources for him and his family members not to become a burden on the social assistance system of the host Member State and have sickness insurance which 'covers all risks'.[109] It is clear what requirements Registers Iceland follows when deciding whether applicants meet the condition of 'sufficient means'. Individuals with private means of support must be able to prove that they can support themselves in Iceland for at least three months, and to do so they must demonstrate that they have at least 719.685 ISK (approx. 5000 EUR) to support them financially while staying in Iceland.[110] This rigid approach has faced criticism and is unlikely to be compatible with the Citizenship Directive.[111]

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[107] The Foreign Nationals Act No. 80/2016 (n 104), hereafter the Foreigners Act.
[108] Section 84(1)(c) of the Foreigners Act.
[109] Section 84(1)(c) and (d) of the Foreigners Act, cf. s.89(1).
[110] This figure is to be found on the webpage of Registers Iceland, see <https://www.skra.is/english/people/change-of-address/moving-to-iceland/i-am-an-eea-efta-citizen/staying-more-than-6-months/minimum-subsistence/> accessed 20 March 2025. This figure also applies to students.
[111] According to Article 8(4) of Directive 2004/38/EC (n 1) 'Member States may not lay down a fixed amount which they regard as "sufficient resources" but they must take into account the personal situation of the person concerned […]'. See further reading in Burke and Ísberg Hannesson (n 104) 206-209 and Eiríksdóttir, 'Execution of registration of EEA workers in Iceland' (n 104).

However, it is not clear what criteria Registers Iceland follows when deciding whether sickness insurance submitted by applicants for residence registration is to be considered to meet the requirements of Article 84(1)(c) and (d) of the Foreigners Act, i.e. covering 'all risks'. To clarify this, it was necessary to review Registers Iceland's decisions on this matter.[112]

The decisions of Registers Iceland from 2023 regarding residence registration based on Article 84(1)(c) reveal that EHIC is considered sufficient to meet the requirement of the Article. The same applies for residence registration for students, cf. Section 84(1)(d).[113] Thus, in the majority of cases, applicants for residence registration had no other sickness insurance than the EHIC.[114] This means that EHIC is considered by Icelandic authorities to cover 'all risks'. This is surprising, as EHIC is only intended for EEA citizens while traveling for short stays or holidays, and not when they relocate their domicile to other countries within the EEA.[115] Furthermore, EHIC can only be used in Iceland if the person is insured in another EEA state.[116] It is doubtful that economically inactive persons applying for residence registration will, in all cases, remain insured in their home countries after transferring their legal residence to Iceland. This implies that EHIC cards issued by their previous home state might become invalid.

The decisions further reveal that in nearly 1/4 of the cases, the applicants had purchased health insurance from Icelandic insurance companies. According to the terms of all of them, the insurances were meant to provide protection comparable to the Icelandic national sickness insurance, as outlined in the Social Security Act No. 100/2007.[117] This includes medical and pharmaceutical expenses. However, upon a thorough examination of the insurance policy terms, it becomes evident that various factors covered for insured individuals in Iceland are excluded from the insurance, such as costs related to pregnancy and childbirth, and diseases stemming from alcohol consumption, addiction, or substance abuse.[118] Despite the above, Registers Iceland considers the insurances to meet the requirements of Article 84(1)(c) and (d) of the Foreigners Act.

In only 13% of cases, applicants had obtained special sickness insurance from an insurance company in their home state before departing. In all these instances, Registers Iceland accepted that the insurance satisfied the requirements of Article 84(1)(c) without reviewing the terms of each individual policy. Finally, in only two cases out of 118 was

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[112] On 14 February 2024, Registers Iceland welcomed the author of the present section to its office to examine its decisions from year 2023, based on s.84(1)(c) of the Foreigners Act. 118 out of 660 decisions, selected randomly, were examined.

[113] In an e-mail dated 16 December 2024, the registration unit of Register Iceland confirmed that the criteria to 'cover all risks' is applied in the same way for both students and other economically inactive persons, cf. s.84(1)(c) and (d) of the Foreigners Act and Article 7(1)(c) and (d) of Directive 2004/38/EC (n 1).

[114] In this sample (118 decisions out of 660 from 2023), applicants had an EHIC in 60% of the cases.

[115] See: <https://employment-social-affairs.ec.europa.eu/policies-and-activities/moving-working-europe/eu-social-security-coordination/european-health-insurance-card_en> accessed 20 March 2025.

[116] Burke and Ísberg Hannesson (n 104) 217.

[117] See for example Sjóvá, which is one of the largest insurance companies in Iceland, and most of the applicants for registration in Iceland that had sickness insurance (other than the European Health Insurance Card) purchased their health insurance from Sjóvá. See: <https://www.sjova.is/en/insurance/individuals/life-and-health/medical-cost-insurance> accessed 20 March 2025. The same applies for sickness insurance at TM, which is another big insurance company in Iceland, see: <https://www.tm.is/fjolskyldan/sjukrakostnadartrygging> accessed 20 March 2025.

[118] Sjóvá Medical Cost Insurance No 378, see: <https://www.sjova.is/sharepoint-files/Skilmalar/SKI-0131/ski-0131_skilmali_en.pdf> accessed 20 March 2025, and TM Medical Cost Insurance No 370, see: <https://papi.tm.is/skilmalar/370?lang=ens> accessed 20 March 2025.

registration rejected due to insufficient sickness insurance, as no information regarding sickness insurance was provided in the applications.

This study reveals that Registers Iceland is quite lenient regarding the type of sickness insurance that meets the requirement of covering 'all risks'. It certainly does not require applicants to have insurance that covers all risks, nor can its requirements be considered equivalent to the 'comprehensive' health sickness insurance outlined in Article 7(1)(b) and (c) of the Citizenship Directive. This execution of the law does not appear to create a barrier for economically inactive individuals seeking to move to Iceland and is most certainly compatible with Article 7(1)(b) and (c) of the Citizenship Directive.

4.3 A LENIENT APPROACH – BUT WHO BEARS THE COST?

This approach by Registers Iceland aligns with one of the fundamental objectives of the EEA Agreement, which is to facilitate the free movement of persons. However, this lenient approach could also have negative consequences for individuals who fall ill during the first six months of residence in Iceland.

Section 10(1) of the Health Insurance Act No. 112/2008 requires legal residence in Iceland for at least six months before being insured under the Icelandic sickness insurance system. This applies to both Icelandic and foreign nationals, regardless of their economic status. If a person living in Iceland needs healthcare before completing six months of legal residence and is not covered by sickness insurance, the medical costs will generally fall upon the individual.

However, according to Section 1 of Regulation No. 3/2024 on exemptions from the waiting period for sickness insurance, the Health Insurance Institution is authorized to grant individuals, regardless of their nationality, exemptions from this six-month requirement in certain specified cases. This applies for example if a person needs 'necessary services due to sudden illness' or is 'a kidney patient requiring regular dialysis treatment or a patient requiring oxygen', during the waiting period for sickness insurance. In all other cases, i.e. when the exemptions listed out in Regulation No. 3/2024 do not apply, individuals who have been legally resident in Iceland for less than six months must bear the costs themselves.

The previously mentioned case *A* indicates that requiring non-economically active citizens to pay for their health service is in accordance with EEA law.[119] As thoroughly argued in the judgement, medical care financed by the State, which is granted without any individual and discretionary assessment of personal needs to persons falling within the categories of recipients defined by national legislation, constitutes 'sickness benefits' within the meaning of Article 3(1) of Regulation 883/2004. It follows that a Member State cannot, under its national legislation, refuse to affiliate to its public sickness insurance scheme an EU citizen who, under Article 11(3) of Regulation 883/2004, comes under the legislation of that Member State.[120]

However, the CJEU also confirmed that access to that system does not have to be free of charge, preventing economically inactive Union citizens from becoming an unreasonable burden on the public finances of the host Member State.[121] It is therefore safe to conclude

[119] *A* (n 24).
[120] ibid paras 38 and 50.
[121] ibid para 58.

that the Icelandic state is entitled to demand reimbursement from economically inactive EEA citizens for healthcare costs if their own sickness insurance does not cover the expenses.

4.4 THE ICELANDIC STATE PROVIDES BROADER RIGHTS THAN REQUIRED BY EEA LAW

It follows from Article 7(1)(b) and (c) of the Citizenship Directive, that host Member States may require students and economically inactive Union citizens, throughout the period of residence of more than three months and less than five years in the host Member State, to have comprehensive sickness insurance cover for themselves and their family members so as not to become an unreasonable burden on the public finances of that Member State.[122] It is only after having resided legally for a continuous period of five years in the host Member State and received permanent residence in accordance with Article 16(1) of the Citizenship Directive, that economically inactive EEA citizens have the right of access to the health care system, with the same conditions as citizens from the host state.[123]

However, as already mentioned, it is after only six months of legal residence in Iceland that all individuals, including students and other economically inactive EEA citizens, are entitled to health insurance under the Icelandic Health Insurance System. This means that the Icelandic state provides broader rights in this regard than it is required to do under EEA law.[124] Given the increased number of economically inactive EEA citizens moving to Iceland in recent years, this is an issue that the Icelandic state may want to reconsider.

5 LICHTENSTEIN LAW AND PRACTICE

The equivalent of the provisions on compulsory health insurance according to Article 7(1)(b) and (c) of the Citizenship Directive in Liechtenstein law can be found in Sections 17(1)(c) (students), 18(2)(b) (tourists and service recipients staying between three and six months), and 22(1)(c) (persons without economic activity) of the Free Movement of Persons Act (*Personenfreizügigkeitsgesetz*; FMPA). The wording in all these provisions is '*umfassend*' (comprehensive) and '*sämtliche Risiken*' (all risks), thus combining the terms of the Citizenship Directive and the Students Directive.

In Liechtenstein, there is no jurisprudence about the interpretation of these terms. As in other countries, decisions by administrative bodies, tribunals or courts did focus on the question whether persons falling under the scope of the FMPA 'have sufficient resources for themselves and their family members not to become a burden on the social assistance system'.[125] Except for persons with or without economic activity (excluding e.g. students), it is the Foreigners- and Passport Office that oversees respective authorisations. The former two categories are, however, in the government's competence.[126]

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[122] *A* (n 24) para 55.
[123] See Directive 2004/38/EC (n 1) Article 24 and recitals 17-18 of the preamble, and *A* (n 24).
[124] See further reading in Paju, 'A Bridge Too Far' (n 25).
[125] See Directive 2004/38/EC (n 1) Article 7(1)(a) and Act of 20 November 2009 on the right of EEA and Swiss citizens to free movement and residence (hereafter FMPA), Articles 17(1)(b), 18(2)(a) and 22(1)(b).
[126] FMPA Article 58.

5.1 SOCIAL SECURITY SYSTEM

Getting to the bottom of what could be meant by those terms, it is obvious to check whether there is anything to be found in the health insurance legislation. In Liechtenstein, health insurance is one of five elements of the social security system, which covers:

a) old-age (state pension),[127] survivors' and disability insurance;
b) protection against the consequences of illness and accidents;
c) compensation for loss of earnings for those in service and in the event of maternity;
d) unemployment insurance;
e) family allowances.

The benefits of the individual branches of social security are essentially financed by contributions from earned income. These contributions, known as non-wage labour costs, are made up of the employee's share, which is deducted from the gross salary, and the employer's share, which is added to the gross salary. Different calculation rates apply depending on age and the risk categorisation of the company. The insured person pays their health insurance premium in full. However, the government contributes to the financing of social insurance, or it either finances it in full (supplementary benefits) or helps economically weak people to pay their premiums, mostly by premium reductions in health insurance.

The Liechtenstein social insurance system is closely based on the Swiss system. There are only a few differences, such as the various contribution rates and the maximum insured salary limits. An important difference, however, is the daily allowance insurance ('*Taggeldversicherung*').[128] Except for these differences, this allows for using Swiss jurisprudence and other interpretative documents to respond to the essential question of this contribution.

5.2 HEALTH INSURANCE IN PARTICULAR

Any person who is resident in Liechtenstein is required to obtain health insurance – or to be insured by their legal representative or employer in certain areas – within three months after taking up residence or being born in Liechtenstein. Health insurance is offered by private companies, which, however, need a specific license and are closely supervised by the state. Compulsory health insurance is essentially the same for all and covers the same services whatever insurance company is chosen. Insurance cover is provided in the event of:

- Illness: This is understood to mean an impairment of physical or mental health that is not the result of an accident and that requires examination or medical treatment or results in an inability to work.
- Maternity: This includes pregnancy care and delivery, as well as the subsequent recovery period for the mother.

[127] In Liechtenstein, the pension system is based on two pillars: First, there is a state pension which guarantees a minimum pension up to a certain maximum amount; second there is an employment-related pension depending on the wages and contributions made during employment.
[128] See Section 5.3 below.

– Accidents: Persons who are not covered by compulsory insurance against the consequences of accidents – normally provided by an employer or e.g. an educational institution – are entitled to benefits from their health insurance in the event of an accident.[129]

The insurance essentially covers outpatient treatment by a doctor or chiropractor, including prescribed medication and aids, psychotherapy, physiotherapy, nutritional counselling, midwives, patient transport, laboratory services and diagnostics. Furthermore, contributions are paid towards a stay in a nursing home and medical rehabilitation.

Basic insurance covers the costs of treatment and a stay in the general ward of a hospital. In Liechtenstein there is a daily benefits insurance for sickness and for accidents. The two situations are regulated separately in Liechtenstein and Switzerland, differently from e.g. Austria. Contrary to Switzerland, however, the daily benefits insurance is compulsory in Liechtenstein.

In case of a disability to work of at least 50%, as certified by a doctor, the insured person is entitled to a daily benefit of 80% of his/her previous (state) pension-liable salary, including regular additional payments, from the second day after the insured person falls ill. In the event of partial incapacity to work of at least 50%, the daily allowance is reduced accordingly. The daily allowance will be paid out for a minimum of 720 days within a period of 900 consecutive days in the event of one or more illnesses. For insured persons who have reached the standard retirement age, the maximum period for which the allowance can be claimed is 180 days, but only up to the insured person's 70th birthday.

Just for the sake of completeness, it needs to be mentioned that there is, of course, also complementary insurance. Beyond the mandatory benefits provided by basic health insurance, there is the option to obtain supplementary health insurance that also covers specific benefits, such as glasses, medicines not covered by basic health insurance, alternative medical treatments, certain dental treatment but also treatment in single bedrooms, a choice of surgeons, privileged treatment etc.

5.3 ANALYSIS

From a Liechtenstein point of view, it seems fairly clear that the terms 'comprehensive'/'all risks' do not mean 'complete' but rather (merely) extensive coverage. Since the Liechtenstein health insurance law provides for compulsory basic insurance for all, this must also be taken as a basis for the health insurance obligation of EU/EFTA foreigners. The benefits to be covered by the basic insurance are the same for everyone: They include illnesses, maternity and (if not covered by the employer or otherwise) accidents. Further possible treatments, more luxurious and preferential treatments, as well as everything not necessarily covered by the basic insurance, can be covered by supplementary insurance. However, the latter cannot fall under the insurance obligation under Article 7(1)(b) and (c) of the Citizenship Directive. This is supported by the fact that it would contradict the prohibition of discrimination on grounds of nationality if EU/EFTA foreigners were subject to a more comprehensive

[129] According to Liechtenstein and Swiss practice, an accident is a sudden and unintentional physical harm caused by an extraordinary external event that impairs physical or mental health.

insurance obligation in Liechtenstein than nationals.[130] An interpretation based in part on Swiss sources leads to the same conclusion. The ominous footnote in Article 23(1)(b) of Appendix 1 to Annex K of the EFTA Convention, set out in Section 2.6 above, also supports this view. Since this describes the minimum health insurance cover, which more or less corresponds to the Liechtenstein basic insurance, it can be assumed that no further cover can be required. Consequently, the basic insurance under Liechtenstein health insurance law probably corresponds quite closely to the current CJEU case law under *Baumbast*.

6 SWEDISH LAW AND PRACTICE

For economically inactive EU/EEA citizens in Sweden, the right to reside and the interlinked right to equal treatment as regards social benefits is a rather complex affair. We see partly the influence of EU law and the restrictive Citizenship Directive, partly a Swedish welfare state in full swing with an all-encompassing access to social benefits based on unconditional national criteria for residence. Mostly, we see a situation where the requirement of a comprehensive sickness insurance plays a peripheral role, if any.

6.1 THE VARIOUS UNDERSTANDINGS OF 'COMPREHENSIVE SICKNESS INSURANCE'

The assessment of the right to reside according to the Swedish Aliens Act (*Utlänningslagen* (2005:716)) is first and foremost handled by two state agencies: the Migration Board (*Migrationsverket*), and the Tax Agency (*Skatteverket*). The assessment by the Tax Agency guides the regional councils as regards the right to health care and is dependent upon a right to stay. However, in addition, the guidance provided by the National Board of Health and Welfare (*Socialstyrelsen*) has a significant impact on the local councils in their respective assessments on the right of residence.[131] More importantly, the Swedish Social Security Agency (*Försäkringskassan*) assesses residence according to the rules in the Social Security Code as well as applying the rules on determining the competent state under Regulation 883/2004.

In two guidance notes on the chapter in the Aliens Act that implements the Citizenship Directive, *the Migration Agency* defines comprehensive sickness insurance as an insurance that covers the costs of necessary medical care and emergency treatment in Sweden.[132] According to the guidance notes, this can be provided either by the former Member State's public healthcare system,[133] or by private health insurance. For EU/EEA citizens who are not

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[130] The EEA Agreement (n 60) Article 4.

[131] See Robert Påhlsson, *Riksskatteverkets rekommendationer. Allmänna råd och andra uttalanden på skatteområdet* (Iustus 1995).

[132] Migrationsverket, 'Rättslig kommentar angående konsekvenserna av EU-domstolens dom C-165/16, Lounes - RK/003/2021' (2021) <https://lifos.migrationsverket.se/dokument?documentSummaryId=45294> accessed 20 March 2025, and Migrationsverket, 'Kommentar angående Migrationsöverdomstolens dom den 18 september 2015 i mål UM 3604-14' (2015) <https://lifos.migrationsverket.se/dokument?documentAttachmentId=42872> accessed 20 March 2025.

[133] A situation that is unlikely to occur according to the rules determining the applicable legislation under Regulation (EC) No 883/2004 (n 25). Article 11(3)(e) states that the Member State of residence is the competent state. Hence, the former EEA state's social insurance cover will in most cases cease to exist when

employed or studying (for example pensioners or self-sufficient individuals with their own financial means), they must demonstrate that they have insurance that covers both long-term and short-term healthcare needs.

If the EU/EEA citizen cannot prove that he or she and the family members are covered by the social security system in their Member State of origin, the Swedish Migration Board will require proof of a comprehensive private health insurance.[134]

According to the guidance notes, the requirements as to what private health insurance must cover in order to be considered comprehensive follow the CJEU's findings in *Baumbast*:[135] The sickness insurance requirement must be proportionate to the individual's right to free movement. In addition, the Migration Board takes into consideration that private insurance can have different levels of coverage. For private health insurance to be considered comprehensive, it must be broadly equivalent to Swedish public health insurance, which is to be decided on a case-by-case basis. Thereby not placing an unreasonable burden on Swedish public finances in the event of illness.[136]

The Swedish Tax Agency plays an important role as regards access to the welfare state systems through registry in the population registration system. When EU citizens move to Sweden, according to the Law on Public Registry, they must register with the Tax Agency.[137] The Law on Public Registry refers to the Aliens Act: The EU/EEA citizen needs to meet the criteria for residence rights under the Aliens Act. However, the Tax Authority makes its own assessment and is not bound by the Migration Board's understanding.[138] When conducting such an assessment, it is worth noting that the Tax Authority does not consider the situation where a person has sufficient means but no private health insurance. The focus is merely on sufficient resources. Hence, a comprehensive sickness insurance is not required to gain entry in the population registry. This understanding of the law has direct consequences for the regions that rely on the population registry when providing health care.

The Regions make no independent assessment, as they rely on the population registry: According to Section 3 of the Health and Medical Services Act, when a person is registered in the population register, they become entitled to healthcare.[139] The fact that the Tax

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an economically inactive EU/EEA citizen moves to another EEA state. This means that any EHIC issued by the former EEA state is void.

[134] The Migration Supreme Court has held that a sickness insurance must not be indefinite in time; a one-year coverage period is sufficient, cf. MIG 2015:15 *SI v. Migrationsverket* [2015] UM3604-1. Available at: <https://lagen.nu/dom/mig/2015:15> accessed 20 March 2025.

[135] *Baumbast* (n 47).

[136] The Migration Supreme Court held in *SI* (n 134) that while the insurance policy contained certain limitations (such as excluding coverage for specific types of mental health conditions), it was sufficiently comprehensive to make it disproportionate to demand a more inclusive policy. In a decision by the Migration Court of Appeal in Sundsvall, the fact that the private insurance did not cover health care for giving birth for a 60-year old woman, was not decisive when finding that a private insurance was comprehensive, cf. *Kammarrätten i Sundsvalls dom* 2015-07-15, målnr. 3214-14.

[137] *Folkbokföringslag* (1991:481) (hereafter The Law on Public Registry), s.4 <https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/folkbokforingslag-1991481_sfs-1991-481/> accessed 20 March 2025.

[138] See position statement from Skatteverket, 'Folkbokföring av EES-medborgare och deras familjemedlemmar' (Datum: 2013-05-06, Dnr: 131 297826-13/111) (2013) <https://www4.skatteverket.se/rattsligvagledning/edition/2025.1/323636.html> accessed 20 March 2025.

[139] *Hälso- och sjukvårdslagen* (1982:763) (hereafter the Health and Medical Services Act) <https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/halso-och-sjukvardslag-1982763_sfs-1982-763/> accessed 20 March 2025.

Authority makes no independent assessment whether an economically inactive EU/EEA citizen has a comprehensive sickness insurance leads to the access to the health care provided by the regions.

The National Board of Health and Welfare issues national guidelines that are not binding. However, these can be considered as soft law, as most local councils follow the guidelines. According to the Guideline on the Right to Social Assistance for Union Citizens,[140] the Board holds that the requirement of comprehensive sickness insurance implies the requirement of access to health care for the person and his/her family members. EU/EEA citizens can normally fulfil the requirement of comprehensive sickness insurance, i.e. access to health care, by presenting a valid EHIC or any other form that proves that the person is covered by another EEA country's social security system.[141] Alternatively, an EU/EEA citizen who does not have access to publicly funded health insurance can prove that he/she has equivalent private comprehensive health insurance.

The Local Councils are independent agencies but mostly follow the guidance note issued by *the National Board of Health and Welfare*. However, depending on political decisions in the councils, the understanding of sufficient means and comprehensive healthcare insurance could potentially differ and deviate from what is required under EU-law.

The Swedish Social Insurance Agency makes an assessment on residency solely on the basis of Sections 2 and 3, Chapter 5, of the Social Security Code, not the Aliens Act.[142] The Social Security Code states that EU/EEA citizens who come to Sweden and can be expected to stay here for longer than one year shall be considered to be resident in this country. Hence, there is no requirement of sufficient means or a comprehensive sickness insurance.[143] In addition, when applying Regulation 883/2004, Sweden can be designated the competent state according to Article 11(3)(e) that points out the state of residence if a person is not economically active.

6.2 ANALYSIS

Summing up, at first glance, the right to residence for economically inactive union citizens might be understood as solely an issue for the Migration Board. However, a right to residence for an EU/EEA citizen gets the Swedish welfare state going: The right to social security benefits, health care and social aid. Issues for the state agencies, but also for regional as well as local agencies. In some cases, those agencies do take into account the Migration Board's

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[140] Socialstyrelsen, 'Vägledning för socialtjänsten i arbetet med EU/EES-medborgare' (2020) <https://www.socialstyrelsen.se/globalassets/sharepoint-dokument/artikelkatalog/vagledning/2020-6-6815.pdf> accessed 20 March 2025.

[141] Cf. the Migration Board´s assessment: A situation that is unlikely to occur according to the rules determining the applicable legislation under Regulation (EC) No 883/2004 (n 25). Pursuant to Article 11(3)(e) the former Member State's coverage will cease to exist when an economically inactive EU/EEA citizen moves to another EEA state. This means that any EHIC issued by the former Member State is void.

[142] *Socialförsäkringsbalken* (2010:110) (hereafter the Social Security Code) <https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/socialforsakringsbalk-2010110_sfs-2010-110/> accessed 20 March 2025.

[143] Cf. Försäkringskassan, 'Övergripande bestämmelser i SFB, unionsrätten och internationella avtal (Vägledning 2017:1) Version 17' (2017) <https://www.forsakringskassan.se/download/18.7fc616c01814e179a9f6e3/1734699186858/overgripande-bestammelser-i-sfb-unionsratten-och-internationella-avtal-vagledning-2017-1.pdf> accessed 20 March 2025.

assessment, in other cases the agencies themselves assess the right to reside applying national laws independent of a residence test under the Aliens Act. Hence, an economically inactive EU/EEA citizen may very well end up not having the right to reside according to the Migration Board, whilst, in parallel, according to the Social Security Agency the person has a right to social security benefits, including health care, based on residency as defined by the Social Security Code as well as by Regulation 883/2004. Furthermore, regardless of the fact that the Social Security Agency has held an economically inactive EU/EEA citizen eligible for social security benefits, the Tax Authority, being responsible for the population registry, might nevertheless deny registration in the Population registry, according to the Law on the Population Registry (that takes into account the Aliens Act when assessing a right to reside). Such a conclusion will affect the right to health care as the regions to a large extent rely on the population registry when providing health care.

The understanding of what is to be considered as comprehensive health insurance (as well as what is to be understood as sufficient means) is central in assessing the right of residence for EU/EEA citizens and their family members. The preparatory works of the Aliens Act shed no light as to what this term means.[144] They simply refer to a requirement of having a comprehensive sickness insurance. Hence, what is to be understood as a comprehensive sickness insurance is left for the agencies to assess. As seen above, this poses a challenge, as the right of residence according to the Aliens Act is independently assessed by numerous agencies on state, regional as well as local level. Furthermore, as in the case of the Social Security Agency, additional relevant national law as well as Regulation 883/2004 might define residence more generously.

In addition, while the understanding of what comprehensive health insurance entails plays a significant role for the Migration Board, the Tax Authority takes no notice of a sickness insurance in its assessment of whether an economically inactive EU/EEA citizen has a right to reside or not when deciding on an entry in the population registry, an entry which is the requirement for inclusion in the national health care system run by the regions. Similarly, the National Board of Health and Welfare opens up for social aid provided by the local councils as an (in fact void) EHIC is considered sufficient when assessing the right to reside in a social aid context. Finally, the Social Security Agency takes no account of the Aliens Act in its assessment of the right to reside in a social security setting.

The Swedish legal landscape is contradictory and complex. The reason behind the complexity is twofold. Firstly, migrating EU/EEA citizens are moving targets with potentially ever-changing rights to reside. Secondly, given the fact that a right to reside is a snapshot and there is no hierarchy between the independent agencies on either a vertical or horizontal level, the assessments of the various agencies will differ – to the detriment of both the rights of EU/EEA citizens who might face incorrect decisions, as well as of Sweden – as the overall approach is fragmented.[145]

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[144] Regeringen, 'Proposition 2005/06:77 Genomförande av EG-direktiven om unionsmedborgares rörlighet inom EU och om varaktigt bosatta tredjelandsmedborgares ställning' (2006) <https://data.riksdagen.se/fil/D6ABF701-CDAA-44D4-8913-3AD6B0CADBBD> accessed 20 March 2025.

[145] The Tax Authority spells out the independency very clearly in a former guidance note on the Aliens Act, see position statement from Skatteverket, 'Folkbokföring av EES-medborgare och deras familjemedlemmar' (n 138): 'The Migration Agency's assessment of right of residence cannot form the basis for the Tax Agency's assessment of the same issue'.

There have been proposals to improve 'horizontal coordination' between agencies. However, the legal framework for agency independence is enshrined in the Swedish Constitution, the Instrument of Government, particularly Chapter 12, which outlines the division of responsibilities between government and agencies.[146] Whilst the legislature sets the overall policy directions, agencies are responsible for implementing these policies, and they continue to do so with considerable independence.[147]

Nevertheless, given the ruling by the CJEU in *VI*, we see an end to this Swedish scattered picture as regards the understanding of comprehensive sickness insurance. The ruling points in the direction that welfare systems that have an all-encompassing health care must take active legal action in order to claim additional fees in safeguarding its health care system, as Regulation 883/2004 calls for equal treatment for those being covered by a Member State's social security system. Swedish law does not open for reimbursement of such fees. Thus, there is no room to manoeuvre for independent assessments by the various agencies as there cannot be a claim for a comprehensive sickness insurance where Sweden has been determined as the competent state for an economically inactive Union Citizen.

7 CONCLUSION

Summing up the findings of this article, the sickness insurance conditions for residence in other EEA states would appear less strict today than when they were introduced into the Residence and Student Directives more than 30 years ago. Both legislative and judicial EU and EEA developments would appear to have played their part in fuelling this change. Under Article 7 of the Citizenship Directive, whilst EEA states may naturally require that individuals have some sickness insurance coverage, they may not automatically deny residence where an insurance policy does not cover absolutely all risks, or where provided under public insurance schemes. What is deemed sufficiently comprehensive sickness insurance coverage may perhaps vary to a certain extent from one case to another, but all-encompassing insurance may not be required as a general rule under EU or EEA law.

Looking at how the requirement has been understood and implemented in Norway, Iceland, Liechtenstein and Sweden, it is interesting to note how widely different approaches have been adopted. Whilst Norwegian rules and practice (still) seem too strict, Iceland appears to have adopted a more lenient approach than strictly necessary. Somewhere in the middle we find Liechtenstein, which given its rather unique system of private health insurance allows it to cater fairly unproblematically to the demands of EU/EEA law. Whilst Sweden, notwithstanding the public administrative coordination challenges (which also appear to be an issue in Norway), seems to have hit the right balance on the whole as to how the condition should be interpreted and applied. In order to avoid unnecessary disparity in

[146] The Swedish administrative system has its origins in the early 17th century under the reforms of Chancellor Axel Oxenstierna. Over the centuries, the Swedish system of independent agencies has evolved, but the core principle of autonomy remains intact, see Erik Thomson, 'Axel Oxenstierna and Swedish Diplomacy in the Seventeenth Century' in Paul M Dover (ed), *Secretaries and Statecraft in the Early Modern World* (Edinburg University Press 2017), p. 115. See also Thomas Bull, 'Oxenstierna och omvärlden' in Thomas Bull et al (eds), 'Arvet från Oxenstierna –reflektioner kring den svenska förvaltningsmodellen och EU' (2012:2op, SIEPS 2012) 7-19.

[147] Cf. Joakim Nergelius, 'Om Oxenstiernas ständiga aktualitet' in Thomas Bull et al (eds), 'Arvet från Oxenstierna –reflektioner kring den svenska förvaltningsmodellen och EU' (2012:2op, SIEPS 2012) 77-92.

terms of interpretation and application of the sickness insurance requirement at national level throughout the EEA, further and definitive clarification by the CJEU and/or EFTA Court would nevertheless seem timely.

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