

Recasting the Long-term Residents Directive

Impact assessment (SWD(2022) 651, SWD(2022) 650 (summary)) accompanying a Commission proposal a Directive of the European Parliament and of the Council concerning the status of third-country nationals who are long-term residents (recast) – COM(2022) 650

This briefing provides an initial analysis of the strengths and weaknesses of the European Commission's [impact assessment](#) (IA) accompanying the above-mentioned [proposal](#), submitted on 27 April 2022 and referred to the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE).

[Directive 2003/109/EC](#) (the Long-term Residents Directive) dates from 2003 and aims to promote the integration of third-country nationals (non-EU nationals) legally residing in the EU.¹ [Directive 2011/51/EU](#) amended the Long-term Residents Directive by extending its scope to beneficiaries of international protection. Currently, over 10 million third-country nationals hold a long-term resident permit in the EU (about 3 million hold an EU long-term permit and about 7 million hold a national long-term permit), according to [Eurostat](#). The current initiative forms part of the [legal migration package](#), which the European Commission announced in its 2020 [new pact on migration and asylum](#). It builds on the Commission's 2019 [fitness check](#) of the EU's overall legislative framework on legal migration. While the fitness check found that the framework had an overall positive effect on harmonisation, rights of third-country nationals and EU competitiveness, it called for improvements to attract foreign talent and mitigate regulatory fragmentation. The [European Migration Network](#) (an EU network of migration and asylum experts) found that the implementation of the Long-term Residents Directive by Member States has not been uniform.²

The initiative is included in the [Commission work programme 2021](#) under the regulatory fitness and performance programme ([REFIT](#)). In 2021, the European Parliament adopted two resolutions: [one](#) in which it called for the Long-term Residents Directive to be improved by enhancing mobility and simplifying procedures, and a more recent [one](#) that goes further, calling for a reduction of the number of years of residence that should be taken into account when granting the status (from five to three years).³ In its 2022 [resolution](#) on citizenship and residence by investment (RBI) schemes, Parliament also called for targeted revisions that could help to dissuade Member States from establishing harmful RBI schemes, including by strengthening relevant provisions in the Long-term Residents Directive.⁴ The Commission published in parallel a recast [proposal](#) for [Directive 2011/98/EU](#) (the Single Permit Directive), as part of the legal migration package, which aims to improve the procedure for a combined work and residence permit.

Problem definition

Based on two implementation reports of the directive and the Commission's 2019 fitness check on legal migration, the IA identifies **three main problems**:

- 1) **barriers for third-country nationals to access the EU long-term resident status** and benefit from it: there is a lack of information and uneven competition with national permits, and the conditions to acquire EU long-term resident (EU LTR) status are difficult to meet (for



instance, because of strict interpretations of 'stable and regular resources'; strict integration conditions);

2) **barriers to the integration of long-term residents**, due to a lack of clarity and consistency in the rights granted by the EU LTR status. In addition, their family situation is only regulated in case of mobility to another Member State;

3) **barriers to intra-EU mobility of long-term residents**, for example, in the form of labour market tests in the second Member State or restrictions to the labour market access.

The IA identifies two additional, more specific problems. These are:

4) limited circular migration⁵ opportunities for long-term residents;

5) a risk of abusive acquisition of the EU LTR status on the basis of investor residence schemes.⁶

According to the IA, the main driver of these problems is **a mix of a regulatory failure** at both the EU and the Member State level, **and a poor implementation by the competent national authorities**. For example, Member States have in many cases not promoted the EU long-term resident status (leading to a low uptake of the latter because of a lack of awareness). A system where Member States can have national schemes (with possibly more favourable provisions) in parallel to the EU long-term resident status, has caused a competition between the two⁷ (IA, p. 6, pp. 9-18).

The Commission concludes that 'the rules across the Member States are incoherent, ineffective and inefficient, with complex and diverging procedures for the acquisition of the status and the exercise of the rights attached to it. Many provisions of the Directive also give a large margin of discretion to the Member States for their implementation, allowing for diverging rules, more or less favourable to the long-term residents. There are also inconsistencies between the Directive and other legal migration Directives adopted later'. The following stakeholder groups are identified as affected: third-country nationals residing in, or considering to move to, the EU; EU employers, including SMEs; national, regional and local authorities; and, indirectly, also EU citizens because of skills shortages and demographic ageing (IA, pp. 6-7). The Commission admits that there are no data to indicate to what extent the integration objective as regards long-term residents has actually been achieved (IA, p. 13). Overall, however, the problem definition appears to be well substantiated and underpinned by evidence, data, case law and stakeholder feedback.

Subsidiarity / proportionality

The legal basis for this proposal is Article 79(2)(a) and (b) TFEU, together with Article 79(1) TFEU. The EU shares the competence in the area of legal migration with the Member States. The IA highlights that the need for a common EU framework on legal migration is linked to the abolition of internal border controls within the EU and the creation of the Schengen area (migration policies and decisions of one Member State affect other Member States) (IA, p. 20).

Concerning EU added value, the IA refers to the 2019 Commission fitness check, which showed that the legal migration directives, including the Long-term Residents Directive, have had positive effects that would not have been realised by Member States acting alone. However, it also found that there is room for further harmonisation and simplification at EU level. (IA, pp. 20-21). It appears no reasoned opinions from national parliaments have been submitted. The IA assesses the proportionality of the options (see Section on Impacts).

Objectives of the initiative

The three **general policy objectives** of the initiative are:

- to ensure the efficient management of migration flows in the EU through the approximation and harmonisation of Member States' national legislation;
- to ensure the fair treatment of third-country nationals legally residing in the EU;

- to strengthen the EU's competitiveness and economic growth.

The three **specific policy objectives** of the initiative are:

- to create a more coherent, efficient and fair system for acquiring EU long-term resident status;
- to facilitate the intra-EU mobility of long-term residents;
- to improve the rights of long term-residents and their family members.

According to the Commission, the three specific objectives are 'all complementary and inter-twined' (IA, p. 22). The objectives correspond to the problem definition (even though 'fairness' is not discussed in the problem definition). The IA identifies operational objectives in the Section on Monitoring and evaluation. Not all objectives seem to comply with all of the S.M.A.R.T criteria laid down in the [Better Regulation Guidelines](#).⁸

The IA also highlights that the integration of third-country nationals needs to be seen in the overall context of the development of a common EU migration policy, where a third-country national who is integrated in one Member State should be entitled to continue this integration process in other Member States and therefore be able to move across the EU if he/she wishes so (IA, p. 22).

Range of options considered

The Commission considers four policy options next to the baseline (do-nothing scenario). Under the baseline, the IA considers the identified problems would continue to exist and possibly worsen in a few areas. In particular, EU long-term resident status would continue to be under-used. Existing monitoring and enforcement activities would continue (IA, pp. 18-19, p. 24).

The proposed policy options are cumulative – it is questionable whether such options qualify as 'alternative options', as stipulated in the Commission's Better Regulation (BR) Guidelines. The IA states that no options were discarded. **The Commission prefers Option 3** (IA, pp. 56-57), as it would have positive impacts on most target groups, including third-country nationals, businesses/employers, national authorities and third countries (see Annex 3 of the IA).

Table 1 below provides an overview of the four policy options. It seems that non-legislative Option 1 is not so different from the baseline except for the awareness-raising and training activities. Moreover, it is not clear why measures 3.5 and 3.6 (codifying CJEU case law) were included in Options 3 and 4 but not in Option 2.

Another comment on measure 2.15. (automatically granting the EU LTR status to the children of long-term residents whenever these children were born in the EU): according to the Commission, a conditional *jus soli* approach may mean that 'citizenship may be semi-automatic for the majority of children born to EU LTR status holders and residing in the country for the stipulated minimum amount of time' (IA, Annex 5, p. 162). However, these citizenship acquisitions are not 'semi-automatic' and in most cases they do not happen from the moment of birth but many years later.⁹ In many cases, children born in a given Member State become entitled – once they reach the age of majority – to facilitated naturalisation (see Annex to the EMN study, [Pathways to citizenship for third-country nationals in the EU](#), July 2020).

It is unfortunate that the Commission did not clarify as to whether national long-term resident permits can be held simultaneously with the EU long-term resident permit.¹⁰ The IA in fact identified the lack of clear rules on the co-existence of the EU and national permits as contributing to the regulatory failure (IA, p. 10).

Finally, given that the fitness check assessed the EU's fragmented approach as a shortcoming in the EU framework, the Commission could perhaps have considered an option envisaging a codification of the EU legal migration *acquis* – or at least explained why this was not envisaged from the start. The [European Parliament](#) reiterated its call for respecting the Treaty obligation of developing a common immigration policy in 2021.

Table 1 – Overview of policy options

Proposed policy options to overcome the identified problems (IA, pp. 25-29)	
Option 1: Actions to improve the effectiveness of the directive (non-legislative option)	<p>1.1. the Commission enhances the implementation of the directive by increasing enforcement measures, including infringement procedures, and by supporting further practical cooperation between Member States;</p> <p>1.2. the EU and Member States increase the visibility of the EU LTR status through information-sharing, promotion, advertising and training activities. The Commission issues guidelines and awareness-raising tools addressed to Member States, third-country nationals and legal practitioners.</p>
Option 2: Targeted legislative revision of the directive	<p>Specific objective 1: To create a more coherent, efficient and fair system for acquiring the EU long-term resident status</p> <p>2.1. the requirements towards candidates as regards their integration and the resources they need for acquiring the EU LTR status are not stricter than the requirements for acquiring the national LTR status;</p> <p>2.2. applicants for EU LTR permits pay the same size of fees for the handling of their application as applicants for national LTR permits;</p> <p>2.3. holders of the EU LTR status do not enjoy a lower level of procedural safeguards and rights than holders of national LTR residence permits;</p> <p>2.4. the EU LTR status benefits from the same level of information, promotion and advertising activities as the national LTR residence permits, for example, by force of the fact that the national websites on legal migration ensure adequate information, and that information campaigns are carried out and training programmes are being offered to the migration authorities;</p> <p>2.5. holders of national LTR permits who apply for an EU LTR permit have a facilitated procedure;</p> <p>2.6. encouraging Member States to reinforce checks on the residence requirement for applications for EU LTR status on the basis of investor residence schemes.</p>
	<p>Specific objective 2: To facilitate the intra-EU mobility of long-term residents</p> <p>2.7. not allowing the second Member State to apply a labour market test;</p> <p>2.8. allowing EU long-term residents to start working or studying in a second Member State while their application for EU LTR status is being assessed;</p> <p>2.9. allowing EU long-term residents to submit their application for EU LTR status while still residing in the first Member State;</p> <p>2.10. shortening the deadline for processing the application (from four months to 90 days, in line with the Blue Card and Students and Researchers Directives);</p> <p>2.11. granting 'mobile' long-term residents equal treatment with EU citizens as regards the recognition of professional qualifications in the second Member State, in accordance with applicable EU and national law (in line with the Blue Card Directive);</p> <p>2.12. improving the rules on access to the labour market for the 'mobile' long-term residents and their family members;</p> <p>2.13. shortening the time needed for acquiring EU LTR status in the second Member State (three years instead of five years) for those third-country nationals who already have EU LTR status in the first Member State.</p>
	<p>Specific objective 3: To improve the rights of long term-residents and their family members</p>

	<p>2.14. introducing derogations from the rules on family reunification laid down in Directive 2003/86/EC to facilitate the family reunification of long-term residents;</p> <p>2.15. automatically granting the EU LTR status to children of long-term residents whenever these children were born in the EU;</p> <p>2.16. clarifying that access to housing would include individuals' right to buy immovable property;</p> <p>2.17. aligning the definition of social security (and the export of pensions and family benefits) with the other legal migration directives and ensuring full equal treatment of EU LTR and their family members with nationals with regard to access to social assistance and social protection (beyond the concept of 'core benefits');</p> <p>2.18. prolonging the allowed period of absence outside the EU from 12 to 24 months;</p> <p>2.19. regulating in more detail the procedure for reacquiring the EU LTR status following absence.</p>
Option 3: A more in-depth legislative revision of the directive (Option 2 + facilitation of conditions for acquiring the EU LTR status)	<p><u>In addition to the measures of Option 2 (see above), Option 3 envisages:</u></p> <p>3.1. always allowing periods of residence as students to be counted fully;</p> <p>3.2 opening the possibility for Member States to lower the required residence period for applying for the EU LTR status from five to three years, but with intra-EU mobility rights only granted after five years;</p> <p>3.3. opening the possibility for Member States to allow cumulative residence periods in different Member States (subject to a residence in the Member State of application of at least two years);¹¹</p> <p>3.4. opening the possibility for Member States to include permits issued on temporary grounds in the scope of the directive;¹²</p> <p>3.5. clarifying and limiting the discretion of Member States to apply the requirement of stable and regular resources, by codifying CJEU case law;</p> <p>3.6. clarifying and limiting the discretion of Member States to apply integration conditions, by codifying CJEU case law.</p>
Option 4: A major legislative revision of the directive, creating a single EU permanent residence status	<p><u>In addition to the rules on improved rights and more relaxed requirements for acquiring the EU LTR status, contained in Options 2 and 3 (see above), Option 4 envisages:</u></p> <p>4.1. a fully harmonised EU permanent residence status, as Member States would not be allowed to keep their national permanent residence schemes;</p> <p>4.2. the required residence period for acquiring the status would be lowered from five to three years;</p> <p>4.3. holders of the EU permanent residence status in one Member State would be automatically entitled to moving and residing in a second Member State, with conditions similar to the ones applicable to EU citizens exercising their right to free movement.</p>

Source: Author's compilation based on the IA (IA, pp. 26-29).

Assessment of impacts

The IA assesses the impacts of the policy options for their effectiveness, efficiency and coherence. For each option, the IA first evaluates the effectiveness before assessing the impacts. This seems odd, as one would expect a comparison on the basis of these criteria only *after* the impacts of each option have been assessed (as per the BR Guidelines). The IA considers the impacts on different affected groups from a qualitative and a quantitative perspective (see Annex 5). No significant environmental impacts are expected (IA, p. 30).

In terms of **social impacts**, the IA emphasises that Option 1 would raise third-country nationals' awareness of the requirements for and steps involved in obtaining EU LTR status. It would also

provide more clarity for businesses. No impact is expected for national authorities and EU citizens. Option 2 is expected to have a positive social impact on most target groups. Option 3 could have an additional positive social impact on all stakeholder groups except for EU workers (possibly creating competition through facilitated intra-EU mobility of long-term residents). Under Option 4, more third-country nationals would have access to EU LTR status and intra-EU mobility rights. However, Option 4 would potentially add more competition between long-term residents and workers who are EU citizens (IA, pp. 31-45).

The IA points out that all options would have a positive **impact on fundamental rights**. In keeping with the Charter of Fundamental Rights of the EU, this concerns especially the right to family and professional life (Article 33), non-discrimination (Article 21), and the right of access to social security and social assistance (Article 34). It is not clear why the IA does not mention the right to respect for private and family life under Article 7 of the charter. Options 2 and 3 would be most favourable (as they limit most discretionary margins and potential discriminations) (IA, pp. 31-45, p. 54).

According to the IA, all options would have a positive **economic impact**, yet to a differing degree: Option 1 would mainly affect those Member States that currently do not provide sufficient and/or adequate information. Under Option 2, intra-EU mobility is expected to increase by 1.5% points, which would translate into a total collective net economic benefit of €66 million over a 10-year period. It is assumed that the increased intra-EU mobility of long-term residents would also contribute to a rise in GDP. Under Option 3, the main additional measurable economic impacts would ensue from the expected (limited) higher number of intra-EU mobile long-term residents compared to Option 2. Under Option 4, intra-EU mobility would increase to 4 % (IA, pp. 31-46, p. 54).

The IA highlights that most options would entail minor **administrative and compliance costs**. Options 1-3 would primarily introduce minor changes to administrative processes, guidelines and training of staff (as well as a national legislative revision for Options 2 and 3). Option 4 would entail the highest administrative and compliance costs (IA, pp. 31-47, p. 54, Annex 4).

With regard to **impacts on third countries**, the IA underscores that Options 2-4 would have a positive impact, arguably because facilitating circular migration would help counter the 'brain drain' phenomenon (IA, pp. 34, 41, 44). The IA could have substantiated its claims in a more thorough way.

The IA considers the **preferred Option 3 as overall very effective** (IA, pp. 49-55). In terms of **coherence**, Options 2 and 3 would bring a 'substantial contribution' to the Migration Pact's objective of attracting and retaining talent. The choice of the preferred option seems sufficiently supported by the analysis. The IA could have better explained why Option 4 would provide the 'most critical challenge' to coherence with other legal migration directives (IA, pp. 32-47, 54). Concerning **proportionality**, 'Option 4 is the only option that would raise some concerns' (IA, p. 55).

SMEs/ Competitiveness

The simplified procedures for intra-EU labour mobility under the preferred option (Option 3) are expected to benefit SMEs (IA, p. 57). The initiative aims to strengthen the EU's competitiveness, and the IA takes this objective into account when considering the options.

Simplification and other regulatory implications

This is a [REFIT initiative](#) and therefore an IA should always examine the simplification and burden reduction potential of the measure considered. The IA assesses each option in terms of simplification (IA, pp. 31-47). According to the IA, the initiative is coherent with the Migration Pact and complementary to the revision of the Single Permit Directive (IA, p. 5, p. 57).

Monitoring and evaluation

Statistics, surveys, research, and consultation will mainly be used for monitoring and evaluation. The IA identifies seven operational objectives, but then only lists indicators for three of them. Next to the number of EU LTR permits granted across the Member States, it could be helpful to also take into

account the number of applications. This would help to assess candidates' awareness of the EU LTR status. The implementation of the directive would be evaluated in due course (IA, pp. 58-59).

Stakeholder consultation

The Commission carried out a public consultation in the context of the 2019 fitness check on legal migration (Annex 2). It also conducted an online open [public consultation](#) on the future of legal migration between 23 September and 30 December 2020 (226 responses to the questionnaire as well as 38 written contributions were received).¹³ Concerning improving intra-EU mobility, a large majority of respondents agreed or strongly agreed on the importance of improving intra-EU mobility of third-country workers (162 respondents) (IA, pp. 65-66). The Commission published an [inception impact assessment](#) in 2020, on which it subsequently also consulted. It organised several targeted consultation meetings with different stakeholders, including Member States' authorities, expert groups, economic and social partners, and civil society. In addition, the Commission sent ad-hoc queries to the members of the European Migration Network. Overall, the IA reports on the consultations in a transparent manner and makes efforts to present the different stakeholder views in a balanced way. The preferred option is supported by stakeholders.

Supporting data and analytical methods used

The IA is based on several studies, reports, stakeholder and experts' consultations. The written input includes the 2019 [fitness check](#) on legal migration (conducted by the consultancy ICF), two implementation reports (from [2011](#) and [2019](#)), publications of the European Migration Network, and academic articles. However, it is to be noted that the 2021 supporting study for this IA (by ICF) was not publicly available at the time of writing of the present document. The IA takes account of the extensive CJEU case law (Annex 6).¹⁴ The IA highlights that selected impacts are assessed qualitatively and, where possible, quantitatively, based on key assumptions, which are set out in a clear manner (IA, p. 30, Annex 4). The main assumption is that the number of EU LTR status holders will evolve in a linear way, based on extrapolation. The IA used a standard cost model (Annex 4).

Follow-up to the opinion of the Commission Regulatory Scrutiny Board

The Regulatory Scrutiny Board (RSB) issued an [opinion](#) marked '**positive with reservations**' on 25 October 2021 highlighting 'significant shortcomings.' The RSB asked the authors of the IA: 1) to clarify the scope of the initiative and the link with the initiative on the Single Permit Directive; 2) to better explain the core differences in policy choices between the options; 3) to clarify how the optional nature of measures for Member States will impact the effectiveness of the directive; 4) to better analyse the potential impacts of abolishing the labour market test when a holder of EU LTR status moves to a second Member State. It seems that most of the RSB comments were addressed (see Annex 1 on how the Commission services have responded to the RSB opinion).

Coherence between the Commission's legislative proposal and IA

It appears that the proposal largely corresponds to the preferred option in the IA. However, measure 3.2 (allowing Member States to lower the required residence period for applying for the EU LTR status from five to three years) was not taken up in the proposal, 'to avoid fragmentation' (see explanatory memorandum, p. 8). Nor were the monitoring indicators.

Overall, the Commission makes a good case for the revision of the 2003 Long-term Residents Directive. The IA builds on two implementation reports focused on the directive and on the 2019 fitness check on legal migration. However, the supporting study for this IA was not publicly available at the time of writing, which goes against the better regulation transparency requirements. The Commission consulted widely, and stakeholders' views are reflected in the IA. The Commission considered four policy options alongside the baseline. The choice of the Commission's preferred option appears well justified. The Commission made an effort to consider coherence with other initiatives and the migration pact.

ENDNOTES

- ¹ Ahamad Madatali H., [Rights of third-country nationals who are long-term residents in the EU - Directive 2003/109/EC Implementation Appraisal](#), EPRS, European Parliament, February 2022.
- ² European Commission, [EMN Inform: Long-Term Resident Status in the EU](#), 2020.
- ³ European Parliament resolution of 20 May 2021 on new avenues for legal labour migration, as well as European Parliament resolution of 25 November 2021 with recommendations to the Commission on legal migration policy and law. See also in this regard Fernandes M. and Navarra C., [Legal migration policy and law – European added value assessment](#), study, EPRS, European Parliament, September 2021.
- ⁴ European Parliament resolution of 9 March 2022 with proposals to the Commission on citizenship and residence by investment schemes.
- ⁵ The Commission first defined circular migration in 2007 as 'a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries', see European Commission, On circular migration and mobility partnerships between the European Union and third countries, COM(2007) 248, 16 May 2007, pp. 8-9.
- ⁶ Citizenship and residence by investment schemes allow third-country nationals to obtain residence or citizenship in a host country in exchange for a financial contribution, see Fernandes M., Navarra C. and de Groot D. with García Muñoz M., [Avenues for EU action on citizenship residence by investment schemes – European added value assessment](#), study, EPRS, European Parliament, October 2021.
- ⁷ Twenty-one Member States have parallel national schemes, which can have more favourable provisions (Article 13 of the Directive).
- ⁸ The S.M.A.R.T. criteria refer to objectives being specific, measurable, achievable, relevant and time-bound.
- ⁹ See R. de Groot, O. Vonk, Acquisition of Nationality by Birth on a Particular Territory or Establishment of Parentage: Global Trends Regarding *Ius Sanguinis* and *Ius Soli*, *Netherlands International Law Review* Vol. 65, 2018, pp. 319-335.
- ¹⁰ It has been pointed out that, 'the objective of improving the integration of long-term residents would surely be enhanced if they could be', S. Peers, [Long-term resident non-EU citizens: the EU Commission's new proposal \(part 1\)](#), EU analysis law blog, 13 May 2022.
- ¹¹ The question arises as to why a different rule applies for the cumulative period for asylum seekers and beneficiaries of international protection; this approach has been considered 'capricious', 'particularly as this might cross over with, or follow on from, holding the status of temporary protection for millions of those fleeing the invasion of Ukraine', see S. Peers, [Long-term resident non-EU citizens: the EU Commission's new proposal](#), EU analysis law blog, 13 May 2022.
- ¹² See CJEU judgment in [case C-624/20, 7 September 2022](#).
- ¹³ Contributions were received from EU citizens, organisations and third-country nationals (residing within or beyond the EU), business associations and organisations, non-governmental organisations, academic/research institutions, trade unions, ministries, public service entities, religious organisations, a law firm and a foundation (IA, Annex 2, p. 66).
- ¹⁴ However, the [judgment](#) in case C-432/20 of 22 January 2022 and the [Advocate General opinion](#) in case C-624/20 of 17 March 2022 appear not to have been included.

This briefing, prepared for the European Parliament's Civil Liberties, Justice and Home Affairs (LIBE) committee, analyses whether the principal criteria laid down in the Commission's own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal.

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