



ecre

European Council
on Refugees and Exiles

THE POTENTIAL OF THE EU'S LONG-TERM RESIDENCE DIRECTIVE

**ECRE'S ANALYSIS OF THE CHALLENGES FACING
THE LTRD, THE PROPOSED RECAST AND
RECOMMENDATIONS TO IMPROVE
IMPLEMENTATION**

Policy Paper 11

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INTRODUCTION

The EU Long-Term Residence Directive (LTRD)¹ was adopted twenty years ago as one of the instruments aimed at developing a common approach towards the integration of third-country nationals (TCNs) residing in the EU. The LTRD grants TCNs residing for at least five years rights and obligations comparable to those of EU citizens, with the objective of promoting economic and social cohesion in the Union.

The 2019 LTRD implementation report² prepared by the European Commission shows that the Directive's application has progressed in the EU, including as a result of the Court of Justice of the European Union's (CJEU) judgments relating to its interpretation and the European Commission's infringement procedures against Member States (MS) that apply it incorrectly. Nevertheless, certain unresolved matters persist, preventing the complete fulfilment of its objectives.

The recast

The proposed recast of the LTRD is part of a broader package of measures included in the New Pact on Migration and Asylum, as set out in the Commission's Communication³ of September 2020. With the introduction of this element of the package, the Commission declared its intention to address shortcomings in the EU's legal migration policy and align with the goal of attracting necessary skills and talent to the EU. This included enhancing the rights of long-term residents (LTRs) and allowing mobility, including for work purposes, across the MS.

This policy paper provides an overview of the proposals and positions of the European Commission (EC),⁴ European Parliament (EP) (the report of the Rapporteur on the recast)⁵ and Council of the EU (based on the latest presidency compromise text of 24 July 2023).⁶ It provides recommendations to ensure that the final text of the recast LTRD becomes an effective tool for improving integration and access to rights for people residing on the EU's territory. The focus of the paper is the current proposals, thus consideration of other potential legislative changes, such as reinforcing political rights of holders of long-term residence status, are beyond the scope. It is also noted that the LTRD is one tool among many that can be used to bolster the rights of non-EU citizens.

ECRE believes that the LTRD recast is vital for providing lasting solutions to different groups of TCNs, such as international and temporary protection beneficiaries, as well as those under national protection systems. The reform initiative also offers an avenue for improved LTRD implementation, which ECRE argues should be based on respect for fundamental rights.

In this context, ECRE believes that the latest proposal discussed by the Council of the EU reintroduces provisions that would be detrimental to the implementation of the LTRD. It is crucial for the recast that all changes uphold the principle of effectiveness and align with the EU Charter of Fundamental Rights (CFREU).⁷ This involves creating rules that are straightforward and precise and ensuring their seamless implementation. Having diverging sets of rules, that vary according to category of people affected, directly contradicts the principle of effectiveness. As such, further revisions are essential if the LTRD is to support effective integration and enhanced protection of TCNs.

1. Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23 January 2004.
2. Report from the Commission to the European Parliament and the Council on the implementation of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, COM/2019/161, 29 March 2019.
3. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, COM/2020/609, 23 September 2020.
4. Proposal for 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, 27 April 2022.
5. Report on the proposal for a Directive of the European Parliament and of the Council concerning the status of third-country nationals who are long-term residents (recast), 2022/0134(COD), 13 April 2023.
6. Proposal for a Directive of the European Parliament and of the Council concerning the status of third-country nationals who are long-term residents (recast), Presidency compromise text, 11994/1/23 REV 1, 24 July 2023.
7. Charter of Fundamental Rights of the European Union, OJ C 326, 26 October 2012.

MAIN CHALLENGES FACING THE EU LONG-TERM RESIDENCE DIRECTIVE

ECRE strongly welcomed the comprehensive analysis embodied in the Fitness Check of the Legal Migration Package⁸ which allowed both the identification of problems and the elaboration of ways to tackle them. The challenges facing the LTRD arise both from its legal design, which grants wide discretionary powers to MS, reflecting national sensitivities towards labour market controls, and from poor implementation. These two sets of challenges are explored separately in the following section.

CHALLENGES ARISING FROM THE LTRD'S LEGAL DESIGN

- Exclusion of certain categories of migrants from the Directive's scope

The scope of the LTRD was extended⁹ in 2011 to include beneficiaries of international protection (BIPs) as a way of achieving their full integration in the MS of residence. However, Article 3(2) of the Directive does not extend to certain categories of TCNs, such as those authorized to reside based on temporary protection or asylum seekers whose application is pending a final decision. Other categories excluded from the LTRD are those who reside in a MS for study or vocational training; individuals residing on temporary grounds such as au pairs and seasonal workers; and workers posted for cross-border provision of services. The exclusion of these categories of TCNs from the LTRD's scope is counter-productive as it restricts their access to long-term residence status and the associated rights, potentially hindering inclusion.

- Stringent eligibility criteria

The LTRD sets out strict eligibility criteria for acquiring EU long-term resident status, including continuous legal residence for at least five years, sufficient resources, and proof of integration. Furthermore, there is currently no provision that allows people to combine the residence periods spent in different MS, and residence on certain grounds, such as study, are either not considered or only partially counted towards the cumulative residence requirement.

Integration and resource requirements can pose challenges for individuals who face socio-economic disadvantages, limited educational opportunities, or language barriers. The EC impact assessment report¹⁰ indicates that women and vulnerable groups are more likely to hold temporary permits and are less likely to be able to access long-term residence status due to the high threshold to fulfil integration conditions. Similar concerns apply to BIPs. This contradicts with the principle of equal treatment and the objectives of the Directive.

As no specific level of resources is required by EU law, Member States have wide room for manoeuvre to set the resource requirement. While ECRE believes it is important to maintain flexibility and not set a limit, challenges arise when Member States set unrealistically high requirements for resources. This means exclusion of people who would potentially benefit from the LTRD. There may also be an unjustifiable difference between the resource requirements for permits under national law compared to the LTRD, which discourages its use. In this regard, it is important to maintain direct references to CJEU jurisprudence (and specifically cases C-578/08 and C-302/18) at very least in the preamble of the LTRD.

- Limited access to rights and benefits

Access to the labour market is limited by the labour market tests, the lack of possibility to work while the application is being processed, and the lack of efficient procedures for recognition of qualifications. Moving to a different MS is subject to a number of conditions and there are no clear rules and procedures on how to reacquire long-term residence status, which in turn limits circular migration opportunities.

The rights of family members of the long-term residence holders are also subject to limitations. They may be contingent on the continued status of the residence holder and can be terminated if the holder's status is withdrawn or if the relationship with the long-term resident ends, for instance, due to divorce or death.

8. Commission Staff Working Document, Fitness Check on EU Legislation on legal migration, SWD(2019), 1056 final, 29 March 2019, Part I available at: <https://bit.ly/3PrS5tU>, Part II available at: <https://bit.ly/3ricJoo>.

9. Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection, Text with EEA relevance, OJ L 132, 19 May 2011.

10. Commission Staff Working Document, Impact Assessment Report, Accompanying the Proposal for a Directive of the European Parliament and of the Council concerning the status of third-country nationals who are long-term residents (recast), SWD/2022/651 final, 27 April 2022, p. 195.

CHALLENGES ARISING FROM POOR IMPLEMENTATION:

- Complexity and fragmentation

The implementation of the Directive varies widely, leading to inconsistencies and discrepancies in the application process. Divergent interpretation of the eligibility criteria, documentation requirements, and rights granted under the Directive create confusion for both third-country residents and competent authorities. This lack of harmonization undermines the Directive's effectiveness and hampers the goal of achieving certainty and clarity, as well as a fairer, more efficient and comprehensive migration policy within the EU.

- Lack of awareness and information

Many TCNs remain unaware of the existence of this legal instrument or are unfamiliar with the procedures and benefits associated with it. The absence of explicit regulations regarding the coexistence of EU and national statuses leads to missed opportunities for individuals seeking long-term residence and hampers the integration process.

PROPOSED AMENDMENTS IN THE RECAST LTRD

PROMISING REVISIONS: AMENDMENTS TO ENHANCE IMPLEMENTATION OF THE LTRD

- Broadened scope of individuals with a legal and continuous stay

The European Commission's proposal aims to broaden the scope of people eligible for counting their stay towards the acquisition of long-term residence status; the European Parliament's report reinforces these amendments. The Commission proposal amends Article 4 to allow inclusion of the duration of residence of certain categories of persons currently excluded from the scope of the Directive, specifically people with visas and residence permits for study and for vocational training, as well as au pairs, seasonal workers, and cross-border service providers.

According to the Council compromise text, periods of residence as a temporary or a national protection holder, residence for educational or vocational training purposes, and residence as an intra-corporate transferee should contribute to meeting the legal and continuous stay requirement, provided that TCNs obtain a residence permit enabling them to qualify for long-term residence status.

ECRE welcomes these amendments because expanding the scope of the Directive is an important step towards achieving durable solutions for additional categories of people.

- Inclusion of application period in residence calculation for BIPs

The EC proposal suggested counting in residency calculations at least half of the period (or the entire period if it is longer than 18 months) between the date of the lodging of an international protection application and the date when the residence permit is granted.

ECRE welcomes the current Presidency compromise text that adopts the EP proposal to include the full period in the residence calculation of asylum applicants, rather than taking half the period as per the original proposal. Nonetheless, ECRE further recommends extending this provision to temporary and national protection holders, thus aligning with the EP's recommendation.

The compromise text also incorporates the EP proposal according to which the stay of a BIP on the territory of another MS will interrupt the duration of the legal stay unless they are able to prove that the reason for the stay was due to circumstances beyond their control.

- Third-party support in eligibility criteria

The Commission proposal includes the possibility that the stable and regular resources requires may be made

available by a third party reflecting CJEU judgment C-302/18.¹¹ The EP report supports this reform. The compromise text under discussion would allow MS to consider this possibility only “where needed”. There is no specification as to who can provide resources as a third party, however, Recital 11 of the Council compromise text indicates that MS can take into account the family relationship between the applicant and a family member prepared to bear the costs.

ECRE welcomes the reform that allows third parties to provide resources to the applicant in order to facilitate status acquisition. However, ECRE expresses concerns about the potential inconsistency in the application of this provision by MS, which would constitute a missed opportunity to support integration and – often – family unity. The Council compromise’s suggestion that MS may or may not consider these resources from third parties also generates uncertainty.

- Clarification of conditions of withdrawal, loss and re-acquisition of the EU LTR status

The recast LTRD aims to clarify the rules regarding the withdrawal and re-acquisition of LTR status. Under the current Directive, EU long-term residents may lose their status if absent for 12 consecutive months. The Commission proposes that MS can extend the allowable absence period for specific or exceptional reasons to beyond 24 consecutive months without the person losing status (i.e. they may be absent for 24 months without losing their status if there are specific or exceptional reasons). The EP report supports this measure and additionally suggests that when the duration of absence allowed under a national permanent residence permit exceeds that permitted under the Directive, the more favourable provision should apply.

The Council compromise text reduces the proposed period of allowable absence to 18 months within a five-year timeframe. It includes the possibility for MS to verify the conditions and for the applicant to demonstrate continuity of residence.

ECRE welcomes the extension of the absence period compared to the status quo, but supports the prolongation to 24 months, to be allowed during any five-year timeframe, as well as provisions that accommodate exceptions based on applicants’ individual situations.

Regarding the re-acquisition of the EU LTR status, the Commission proposes that in cases where it is lost due to absence from the territory, MS should have discretion to not require the fulfilment of the conditions set out in Article 4(1) and Article 5(1). This implies that MS can decide whether or not to impose additional conditions when an individual seeks to regain their EU LTR status.

The EP report proposes a specific timeline for re-acquisition, indicating that people who lose status due to absence from the territory should be allowed to apply for the re-acquisition of EU LTR status after one year of continuous and legal residence in the MS concerned. The Presidency’s compromise introduces a three-year time limit for the re-acquisition of EU long-term resident status albeit without the obligation to fulfil integration conditions.

ECRE supports both the Commission and Parliament proposals to include facilitated EU LTR re-acquisition without the requirement to meet integration conditions and believes that there should be a clear and uniform standard for re-acquisition, ensuring that individuals who meet the defined criteria can reapply for EU LTR status.

- Reduced time requirement before application for EU LTR in the second MS

A central element of the EC proposal is to reduce the required duration of residence in a second MS before the submission of the application for EU LTR status is allowed. The duration would be reduced from five years to three years of legal and continuous stay without the possibility of accumulating periods of residence.

The Council compromise text adopts this provision along with the EC’s suggestion that MS can decide whether to provide social or maintenance assistance for studies (including vocational training) to EU long-term residents, excluding workers, self-employed individuals, and their family members, before reaching five years of legal and continuous residence.

ECRE supports the EP proposal that TCNs shall be entitled to apply for long-term residence status upon arrival in the second MS and no later than the expiry of the status in the first MS.

ECRE also advocates that long-term residents should enjoy equal rights and obligations to mobile Union

11. CJEU, Judgment of 3 October 2019, X v Belgische Staat, Case C-302/18, ECLI:EU:C:2019:830.

citizens, particularly regarding social security, social assistance, and social protection under national law, along with all associated rights and procedural safeguards.

- **Improved access to information and equal treatment of EU LTRs and national LTRs**

The EC recast proposal adds Article 27 aiming to enhance access to information for TCNs seeking EU long-term residence status.

The EP proposal emphasizes measures like informing applicants about employment-related rights and multilingual information accessible for individuals with disabilities.

The Presidency's compromise text aligns with the EC recommendation, focusing on equal access to information as applies for national residence permits. The proposal addresses the parallel existence of EU long-term residence status and national permits, advocating for equal treatment and similar fees for EU and national statuses. Furthermore, in Article 7(4), the compromise text incorporates the proposal from the EC and supported by the EP, stating that when an application for EU LTR status is made by a TCN holding a national residence permit issued by the same MS, that MS should not require the applicant to provide evidence of the conditions for obtaining EU LTR if they can still be confirmed based on the information in the application for the national residence permit. This is an important measure to contribute to the elimination of parallel systems.

ECRE supports these efforts to establish a level playing field, ensuring that all individuals can access information and benefits when pursuing EU long-term residence status and enabling a smoother transition for national permit holders to acquire EU LTR status. ECRE also believes that comprehensive information and training should be provided to the authorities to empower them in facilitating an accessible and streamlined long-term residence application process. This is fundamental to the success of the LTRD recast and the broader goal of harmonizing the rights of TCNs with those of EU citizens.

UNRESOLVED AND NEW CHALLENGES IN THE RECAST LTRD PROPOSAL

- **Scope of the Directive: more exclusions**

The EC proposal specified the list of persons to be excluded from applying for EU LTR status. This list is further expanded in the Council compromise text and includes people whose removal from the territory has been suspended and those who reside as intra-corporate transferees. The Council also added residence based on job search to the list of residence statuses to be considered temporary.

The Council's compromise text introduces facilitations for highly skilled individuals such as Blue Card holders and researchers, but it excludes individuals who acquire their skills and qualifications within the member state of residence such as students and persons pursuing vocational training.

ECRE believes that individuals residing for the purpose of pursuing studies or vocational training should also be encompassed within the directive's scope. ECRE is generally opposed to the expansion of exclusions from the status and supports the amendments proposed by the EP which include beneficiaries of temporary and national protection in the scope of the Directive, thus recognizing the importance of their integration into the host society.

- **No change on the duration of legal residence requirement**

The text proposed by the Commission leaves the five-year requirement for legal and continuous stay intact.

The EP report suggests reducing the term to three years, which would encompass various types of residency excluding residence based on investment. The Council compromise text keeps the five-year requirement. However, in Article 28 of the final provisions it is indicated that no later than two years after adoption the Commission should report on the Directive's application and assess the impact of the required residence period.

In its proposal of 21 June 2023,¹² the Council suggested that BIPs should be eligible to apply for the EU LTR status after three years of legal and continuous residence. This proposal was later deleted in the most recent compromise, apparently because it was not sufficiently supported; it might be re-discussed later.

12. Proposal for a Directive of the European Parliament and of the Council concerning the status of third-country nationals who are long-term residents (recast), Presidency compromise text, 10528/1/23 REV 1, 21 June 2023.

ECRE believes that the requirement of five years of continuous residence is disproportionate given the nature and duration of contemporary displacement – whereby repressive regimes and conflicts last for increasing periods of time – and the related need for durable solutions. In a number of MS,¹³ citizenship can be obtained after five years on the territory, which coincides with the requirement for attaining EU LTR status. In the case of BIPs, some states offer permanent residence permits (e.g. for refugees in Germany),¹⁴ or citizenship (e.g. in Bulgaria)¹⁵ after three years. BIPs can acquire citizenship after five years of legal stay in BE,¹⁶ ND,¹⁷ SL,¹⁸ PT,¹⁹ IR,²⁰ SE.²¹ A lack of amendment of this requirement means that parallel systems will persist in practice, given that application for permanent residence permits under national law is often possible after a shorter period of time.

- **No change on permitted absence periods for Long-Term Residents**

The Commission's proposal maintains the original text of the Directive, stipulating that periods of permissible absence should not exceed ten months in total or six months consecutively. The Presidency compromise text adopted this provision and also retains the option for MS to extend the allowed absence period for specific or exceptional temporary reasons, in accordance with national law. In such cases, the extended absence period would not interrupt the calculation of the five-year period, ensuring continuity in the residence period.

In contrast, the EP report suggests slightly improving the current requirement by specifying that absences should be shorter than six consecutive months and not exceed a total of twelve months.

ECRE endorses the proposal to incorporate the time spent as a temporary protection holder into the residence requirement but acknowledges the unique challenges faced by such individuals. Given the circumstances, which may often involve pendular movements to and from the country of origin or residence in order to maintain connections with family, livestock, land and property, ECRE recommends extending the permissible absence period beyond twelve months and implementing a more adaptable approach that takes into account the specific situations of LTRD applicants.

- **Accumulation of stay: only certain categories are eligible**

The EC proposal introduced the possibility of accumulating periods of residence in different MS (i.e. adding up the time spent in more than one MS) provided that the TCN accumulated 2 years of legal and continuous stay in the final MS immediately prior to the submission of the application.

The EP report's amendments reduce the required stay in the MS to one year prior to the application, allowing accumulation of the remaining two years in other MS.

The Council's compromise text allows cumulation of up to two years of legal and continuous stay, conditional on three years of stay in the MS immediately before the application. However, the scope of persons eligible to cumulate two years in other MS remains under discussion. The compromise text expanded the scope of persons beyond the previous proposal that covered only highly qualified profiles (i.a. Blue card holders, highly qualified employees, authorised researchers under Directive 2016/801 and intra-corporate transferees). The latest proposal also includes beneficiaries of temporary protection, students under Directive 2016/801, and UK nationals who are covered by the Withdrawal Agreement,²² as well as family members of people in these categories or family members of EU LTRs. It is also suggested to include persons whose single permit is valid longer than one year.

ECRE believes that divergent rules for different categories of people would hinder the implementation of the Directive. Therefore, the scope of persons who can count the cumulation of their periods of residence should be

13. See: European Union Agency for Fundamental Rights, Promoting migrant integration. Strengthening EU law on long-term residence, Report, 2023, available at: <https://bit.ly/3EJE7ia>.

14. AIDA Country Report, Germany, available at: <https://bit.ly/3LpRmlv>.

15. AIDA Country Report, Bulgaria, available at: <https://bit.ly/3Rqdjes>.

16. AIDA Country Report, Belgium, available at: <https://bit.ly/44YeYuQ>.

17. AIDA Country Report, Netherlands, available at: <https://bit.ly/3sXoNvL>.

18. AIDA Country Report, Slovenia, available at: <https://bit.ly/3t2Q3Ju>.

19. AIDA Country Report, Portugal, available at: <https://bit.ly/3Zm0m7u>.

20. AIDA Country Report, Republic of Ireland, available at: <https://bit.ly/3PHGMzl>.

21. AIDA Country Report, Sweden, available at: <https://bit.ly/3PLIyil>.

22. Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ C 384I, 12 November 2019.

broadened. While the Explanatory Memorandum²³ recognizes the need for EU-level rules to facilitate intra-EU mobility, the current limited scope risks undermining the potential benefits of such mobility. By expanding the eligibility criteria for the cumulation of periods of residence, the recast LTRD will better fulfil its intended purpose.

- Measures verifying legal and continuous stay remain unclear

The Council added a new amendment to the recast proposal suggesting that the competent authorities of the MS may exchange information by sending a request to verify the legal and continuous residence of a TCN. It is not specified which documents would prove legal and continuous stay.

There is an ongoing discussion regarding the appropriate verification measures to ensure compliance with the legal and continuous stay requirement. Originally, the compromise text proposed that it is for the MS to establish mechanisms to verify the stay. This was later revised to state that MS shall ensure that TCNs comply with the requirement, and the EC shall provide MS with tools to identify permit types and their validity.

ECRE recommends the avoidance of unnecessary administrative burdens in ensuring compliance with the legal and continuous residence requirement. Clear guidelines should be established regarding the exchange of information between competent authorities of MS and the Directive should provide explicit guidance on the types of documents that can serve as evidence of legal and continuous stay, thus promoting transparency and consistency across MS.

- Evidence of appropriate accommodation in addition to strict eligibility criteria

The EC's proposal allows MS to establish a reference amount for evaluating stable and regular resources. While the proposal suggests that the minimum income level may not be imposed, MS may evaluate stable and regular resources based on the level of minimum wages and pensions prior to the application for EU LTR. The Council compromise text retains this provision.

On the other hand, the EP report proposes a more rights-based approach to assessing stable and regular resources, proposing that MS should consider the individual circumstances of the applicant and assess their resources in line with non-discrimination principles as discussed below. According to the EP proposal, the stable and regular resources required should not exceed the threshold for nationals eligible for social assistance, nor the minimum social security pension if applicable.

The EC proposal deleted the requirement of providing evidence that applicants have appropriate accommodation for themselves and their dependent family members. However, this requirement was then re-introduced into Recital 11a and Article 7(1) of the Council compromise text.

ECRE believes that setting a realistic and proportionate threshold is essential to ensure access to and wider use of the LTRD, especially in Member States where the tradition has been to set very high resource requirements. The definition of adequate resources should align with the interpretation established by the CJEU, especially as exemplified in cases C-578/08²⁴ and C-302/18.²⁵ Additionally, ECRE believes that the recast Directive should strive for consistency by applying the same evaluation standards to EU LTR permit holders when national residence permits issued by MS offer more favourable provisions for resource evaluation.

ECRE also recommends the removal of the re-introduced evidential requirements, which lack clarity. The criterion duplicates the requirement for proving stable and regular income, which implies the capacity to secure suitable housing within the MS.

- No consideration of the situation of vulnerable groups

The EP report introduced references to the needs of vulnerable groups and references the CFREU to ensure equal treatment and prevent discrimination.

The compromise text does not include the EP's proposal to include social assistance as part of the assessment of stable and regular resources when an applicant is unable to work for reasons such as pregnancy, injury, accident, or illness, as outlined in national laws. Instead, it keeps the original wording of Article 5(1a) prohibiting

23. Explanatory Memorandum to the Proposal for 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 final, 27 April 2022.

24. CJEU, Judgment of 4 March 2010, *Rhimou Chakroun v Minister van Buitenlandse Zaken*, C-578/08, ECLI:EU:C:2010:117.

25. CJEU, Judgment of 3 October 2019, *X v Belgische Staat*, C-302/18, ECLI:EU:C:2019:830.

recourse to the social assistance system of the MS. The compromise text also does not take into consideration the EP proposal to waive the requirement of stable and regular income for persons who legally and continuously resided in the MS for ten years immediately prior to applying for EU LTR. This could be relevant for vulnerable groups including people with disabilities.

The compromise text also omits the EP's proposed amendments that would have required states to consider factors like age, gender, illiteracy, carer responsibilities, health, and education level when evaluating language and integration requirements. Furthermore, it does not support the EP's amendment aimed at reducing the integration requirement to A2 language proficiency and providing free language courses.

ECRE believes that by neglecting the situation of vulnerable individuals, the Council's approach jeopardizes respect for fundamental rights including non-discrimination (Article 21), family and professional life (Article 33), and social security and assistance (Article 34), even though one of the objectives of the recast was to strengthen this element, as outlined in the Explanatory Memorandum.

- Lack of clarity regarding the timeframe of evaluation of applicants' resources

The existing Directive lacks clarity on the duration of the period for which evidence of stable and regular resources must be presented, giving MS significant discretion in determining the assessment timeframe. The EC's proposal maintains the status quo by leaving the text unchanged.

In contrast, the EP proposal recommends a maximum period of one year when evaluating stable and regular resources and deems gaps in employment contracts of less than two months as irrelevant.

ECRE supports the EP proposal and recommends limiting the timeframe for demonstration of a stable and regular income. Prolonged assessment periods and inconsistencies among MS may discourage eligible TCNs from applying. Furthermore, this requirement should harmonize with the EC's proposed recast of the Single Permit Directive,²⁶ which stipulates that MS should permit TCNs to stay on the territory for at least 3 months in the event of unemployment. This provision would allow applicants to have periods of unemployment without losing their eligibility to apply for EU LTR status.

- Unclear residency status of dependent children

Article 15(1) as proposed by the EC establishes rules whereby children of long-term residents who are born or adopted in the issuing MS can acquire EU LTR status automatically, without prior residence requirements.

The EP report goes further, endorsing automatic status acquisition, specifying that all dependent children, regardless of whether they were born or adopted within the Member State's territory, should acquire EU LTR status without any conditions.

The Council compromise text initially suggested²⁷ that minor children of EU LTRs who are born or adopted and reside in the territory of MS shall be issued renewable residence permits valid for the same period as the permit issued to the long-term resident. As the discussion progressed, in the proposal of 24 July 2023, the Council adopted the EP's stance and proposed that children in the same family – regardless of their place of birth – should not have different types of residence permits and should be granted the same status and treatment as if they had been born in the MS in question. There is an ongoing discussion in the Council on whether children of the EU LTR status holders should be provided the same status in all Member States.

ECRE supports the EP's stance that children of EU LTRs, regardless of birthplace, should automatically attain EU LTR status without additional conditions. Furthermore, ECRE supports the EP proposal to include an amendment to Article 13(3) emphasizing the importance of considering the best interests and well-being of children in situations involving the termination of legal stay for EU LTRs.

- Streamlining family reunification for EU long-term residents

The EC proposal introduced a new Article 15 that establishes provisions to simplify family reunification for EU long-term residents. The EC proposes applying integration conditions and measures outlined in the Family

26. Proposal for a Directive of the European Parliament and of the Council on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (recast), COM/2022/655 final, 27 April 2022.

27. Proposal for a Directive of the European Parliament and of the Council concerning the status of third-country nationals who are long-term residents (recast), Presidency compromise text, 10528/1/23 REV 1, 21 June 2023.

Reunification Directive (FRD)²⁸ only after family reunification has been granted, along with implementing a 90-day limit for processing family reunification applications.

The EP report removes the obligation to apply integration conditions and measures for family members reunited with the long-term resident, and proposes that the processing time be limited to 30 days. The EP further suggests that when case applications are processed together, reunification should be immediate. Moreover, the EP proposes an amendment to the EC's Article 15, such that that MS would issue an EU LTR permit to family members after they have lived legally and continuously in the MS for two years, as an exception to Article 15(1) and (3) of the FRD.

The EC also proposed that MS should not examine the labour market situation for family members of long-term residents, and that these family members should enjoy the same rights as holders of national permits if those rights are more favourable.

The EP proposal amended this provision by stating that family members of EU LTRs should have access to employment and self-employed activities following national law.

The Council text introduces several changes: it removes the requirement for applying integration conditions only after family reunification; it extends the processing time to a maximum of six months after the submission of the application; it deletes the provision concerning the removal of labour market examination while recommending that MS should not impose a time limit on family members' labour market access; and it removes the provision on the equating the rights with those of family members of national residence permit holders.

ECRE believes that family reunification procedures within the LTRD should be streamlined and that rapid reunification of family members should be a priority, given longstanding challenges in implementation of family reunification and the positive benefits to individuals and societies alike of smooth family unity processes. Family members should have unrestricted access to the labour market in line with applicable national laws.

- No accumulation of residence in different MS for autonomous residence permits for family members

The FRD allows for the application for an autonomous residence permit for the spouse or unmarried partner or for a child who has reached majority not later than after five years of residence. The EC proposals supports a derogation from Article 15(1) of FRD and introduces the possibility for family members of EU long-term residents to be able to accumulate period of residence in different MS to make up the five years required. The EP report supports this proposal.

As per the EC proposal, MS may require two years of continuous residence in the MS prior to the submission of application for the autonomous residence permit. The EP proposes that one year of legal and continuous residence in the MS is sufficient.

The Council compromise text does not include the possibility of applying for an autonomous residence permit. This means that this possibility will remain limited to family members who have resided for five years on the territory of the MS in question without the possibility to add residence in other MS.

ECRE believes that introducing the possibility to accumulate residence in different MS in order to make up the time requirement to apply for an autonomous residence permit is crucial for safeguarding the rights of family members of EU long-term residents. Providing certainty and clarity to the family members of EU LTRs could serve as a motivating factor for the use of the EU LTR status.

- Risk of termination of legal stay for EU long-term residents in the second MS

The EU Council text supports and expands on the EC proposal on termination of legal stay, adding to Article 26(4) the provision that the second MS may decide to end the legal stay prior to five years of legal and continuous residence where the EU LTR is no longer employed and lacks health insurance and sufficient resources for themselves and their family. It is meant to prevent EU LTRs from becoming an unreasonable burden on the social assistance system. This provision was removed in the EP report.

ECRE believes that this amendment jeopardizes the protection of vulnerable persons, including those who have experienced a job loss or economic hardship due to circumstances beyond their control. Terminating legal stay without considering individual circumstances may lead to unintended consequences such as

28. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 3 October 2003.

homelessness or precarious living situations.

- **Continued application of labour market tests in the second MS**

The EC proposal supports the removal of labour market tests in the second MS; in contrast, the current Council compromise text has reinserted this provision.

The EC and EP proposals recommend that EU long-term residents should be permitted to begin working or studying in the second MS as soon as possible (EP) or no later than 30 days (EC) after submitting a complete application. The Council's text aligns with this proposal by allowing immediate commencement of work or study upon the submission of a complete residence permit application.

ECRE believes that no labour market tests should be applied in the second MS. The decision to allow MS to conduct labour market tests and impose restrictions like the requirement to report changes in employer or economic activity and maintaining limits on job changes for twelve months fails to address the complexities surrounding intra-EU mobility and undermines the aim of enhancing mobility, simplifying the procedures, and providing equal treatment with the nationals of the second MS.

- **Procedural safeguards: right to initiate legal challenge or effective legal remedy**

Article 10 of the Council compromise text aligns with the EC proposal which retains the original text of the Directive. It thus does not incorporate the EP's proposal for an effective legal remedy rather than merely the right to mount a legal challenge. The EP proposal included more comprehensive procedural safeguards, such as the suspension of appeals until a final decision is made and ensuring that judicial review is part of the effective legal remedy.

ECRE believes that the text of the provision should be in line with Article 47 of CFREU and provide for the right to an effective legal remedy.

RECOMMENDATIONS

ECRE believes that the LTRD recast is a major opportunity to improve the accessibility and relevance of the EU's long-term residence status, thus increasing its use. ECRE notes a number of positive changes introduced in the recast proposal. These include:

- » expanding the scope of people eligible for counting their residence towards the legal and continuous stay requirement;
- » counting international protection application time towards the qualifying time period;
- » enabling third party provision of the resources required to meet the conditions; and
- » improving access to information for EU LTR applicants.

However, significant challenges in the design and implementation of the LTRD remain unaddressed and certain negative changes are introduced by the recast proposal. For example:

- » the scope of the Directive is extended but only in a limited way;
- » strict eligibility criteria with undefined timeframes for establishing resource sufficiency and proof of integration persist; and
- » various requirements like proof of appropriate accommodation and labour market tests are maintained.

ECRE firmly believes that the recast process should not result in cosmetic changes but instead serve as a comprehensive reform of the Directive. This reform should strive for clarity and accessibility, in order to make the LTRD a practical and widely used tool for third-country nationals residing in the EU for an extended period, a need identified in the Fitness Check and outlined in the Memorandum accompanying the recast.

A rights-based approach should serve as the foundation of the recast, strengthening the rights of the EU LTRs and their family members, ensuring these rights are on a par with those of national permit holders and closely aligned with the rights of the EU citizens. The EU LTR status should be easily attainable and straightforward, providing clarity to both TCNs and national authorities.

Therefore, based on its analysis of the instrument, the implementation assessments and the state of play of the reform, ECRE makes the following recommendations to the co-legislators:

Eligibility requirements:

- » Expand the scope of the Directive to encompass beneficiaries of temporary and national protection statuses (as proposed by the EP) and people pursuing studies or vocational training.
- » Expand the eligibility criteria to allow all eligible individuals to accumulate periods of residence in different MS, which will support intra-EU mobility.
- » Reduce and clarify the period during which stable and regular income is assessed and take into account breaks due to individual circumstances. Eligibility requirements should align with the Single Permit Directive, permitting a three-month break for a job search.
- » Include social assistance for those unable to work and consider individual circumstances when evaluating integration requirements.

Legal residence requirements:

- » Reduce the duration of the legal residence requirement for acquiring the EU LTR as the five-year requirement is disproportionate.
- » Extend the permissible absence period to at least twelve months and adopt a flexible approach that considers the specific circumstances of LTRD applicants, especially individuals holding temporary protection statuses.
- » Clarify the process for verifying legal and continuous residence, specifying acceptable documentation and ensuring efficiency for both authorities and applicants.

Termination of legal stay and procedural rights:

- » Remove Article 26(4) allowing the second MS to terminate legal stay before completing five years of residence for EU LTRs based on employment status.
- » Amend Article 10 by providing for the right to an effective legal remedy to enhance procedural rights and align them with the CFREU.

Access to the labour market:

- » Review access to the labour market of EU LTRs and their family members in the second MS and provide that the second MS should no longer be entitled to apply labour market tests to EU LTRs.
- » Improve the recognition of qualifications by extending its scope beyond regulated professions and requiring that qualifications recognized in one MS are equally recognized in another MS.

Rights of family members:

- » Enhance the rights of family members of EU LTRs, offering clearer and more certain guidelines regarding their labour market status, along with permitting them to accumulate residences in other MS when seeking an autonomous residence permit.
- » Grant automatic EU LTR status for dependent children of EU LTRs, irrespective of birthplace, and include the requirement to take into account the best interests of the child whenever children are affected.



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