



LABOUR MIGRATION

THE SINGLE PERMIT & THE LONG-TERM RESIDENT DIRECTIVES

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INTRODUCTION

The migration policies of the EU are often referred to as a 'patchwork' due to their complexity and the large number of Directives that aim at regulating different categories of people. **This Explainer aims at breaking down the ongoing legislative process of recasting the Single Permit and the Long Term Resident Directives.** These Directives are essential in the long and tumultuous process of being a labour migrant in the EU and aim at harmonizing the different national systems established by Member States (MS).

The EU framework for legal migration exists in 9 Directives adopted between 2003 and 2016, regulating various categories of third-country nationals (TCNs):

- family reunification (2003);
- long-term residents (2003);
- students and researchers (2004, 2005; recast in 2016);
- EU blue card (2009);
- single permit (2011);
- seasonal workers (2014);
- intra-corporate transferees (2014);



The EU shares competence on legal migration with MS:

- the EU can lay down conditions for TCNs' entry into and legal residence in MS;
- MS retain the right to determine volumes of admission for TCNs coming to seek work.

The Court of Justice of the European Union (CJEU) clarified that the national right to set volumes of admission only concerns those who are employed or self-employed but not others such as family members or asylum-seekers.

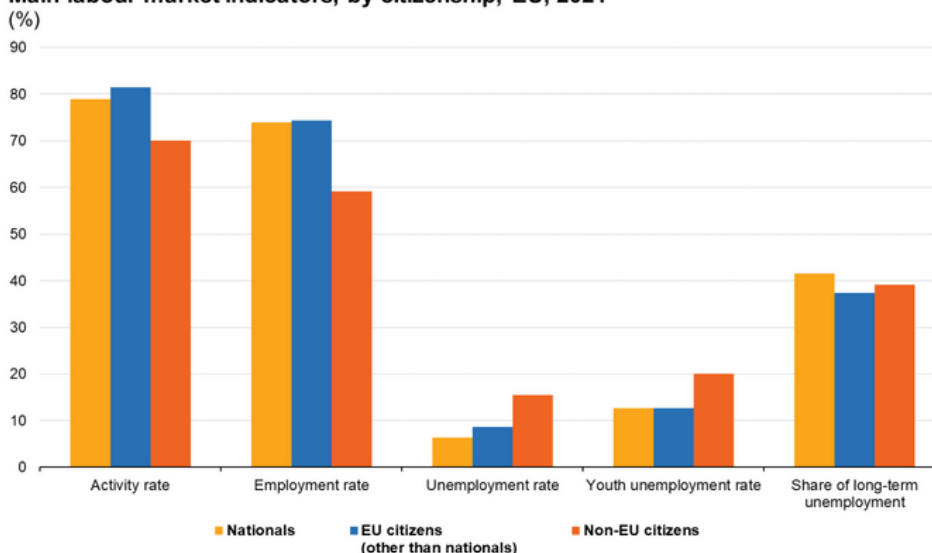
With an **ageing population** and a **shrinking workforce**, the European Union is already facing shortages of staff in many industries such as care, transport, and education. In her State of the Union address in September 2022, Commission President von der Leyen highlighted that in the frame of the European Year of Skills 2023, the EU's objectives would focus on **strengthening the European workforce** and **upskilling and reskilling workers** to better suit the needs of the labour market. President von der Leyen acknowledged that legal migration would be one pathway to achieving such goals.

In its Communication 'Attracting skills and talent to the EU' of 27 April 2022, the Commission proposed to recast the single permit and the long-term residents' (LTR) Directives. **These Directives were part of the EU's attempt to develop a harmonized legislative framework. The aim is to attract and retain skills and talents to foster the competitiveness of the EU economy and reduce illegal migration.**

The two Directives are being recast together as they both encompass the migration administrative journey of a TCN moving to the EU. Therefore, the simultaneous revisions aim to ensure cohesion in European migration policy. Additionally, both Directives have shown similar weaknesses in their implementation such as **administrative burdens, lengthy processes,** and **lack of social protection**, which would be addressed in both recasts.



Main labour market indicators, by citizenship, EU, 2021

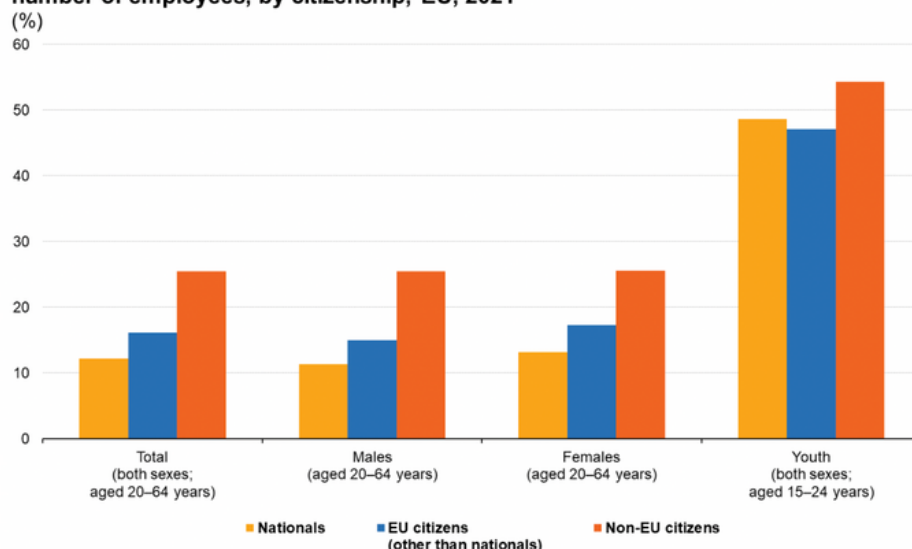


Note: the age coverage is 20–64 years except for the youth unemployment rate for which the coverage is 15–29 years.

Source: Eurostat (online data codes: ifsa_argan, ifsa_ergan, ifsa_urgan and ifsa_upgan)

eurostat

Share of employees with a contract of limited duration in total number of employees, by citizenship, EU, 2021



Source: Eurostat (online data code: ifsa_etogan)

eurostat

As shown in figure 1, the employment of TNCs in the EU remained almost 15% lower than those with EU citizenship, leading to higher TNC's unemployment and youth unemployment rates. Moreover, figure 2 shows that there is a larger share of TCNs with work contracts of limited durations, across all categories. Limited-duration contracts can be an obstacle to obtaining or retaining single permits or LTR statuses. The recasts of the single permit and the LTR Directives were initiated with the goal to harmonize those numbers by shortening the application procedures, giving TCNs better social protection, and encouraging international recruitment to employers, in the long term.

Key MEPs

For both of these files, LIBE Committee was appointed as the responsible committee and the EMPL Committee was asked for an opinion. In order to remain coherent in the recast of procedures, the below MEPs were appointed as Rapporteur or Shadow Rapporteur on both files in both Committees.



Abir Al-Sahlani (RE, Sweden)

Single Permit: EP EMPL Shadow

LTR: EP LIBE Shadow & EP EMPL Rapporteur



Konstantinos Arvanitis (The Left, Greece)

Single Permit: EP LIBE Shadow & EP EMPL Shadow

LTR: EP LIBE Shadow & EP EMPL Shadow



Lena Düpont (EPP, Germany)

Single Permit: EP LIBE Shadow

LTR: EP LIBE Shadow



Tomáš Zdechovský (EPP, Czechia)

Single Permit: EP EMPL Shadow

LTR: EP EMPL Shadow



Romeo Franz (Greens/EFA, Germany)

Single Permit: EP EMPL Shadow

LTR: EP EMPL Shadow

The Single Permit Directive

Existing Situation

Through Directive 2011/98/EU, the EU laid down a single application procedure for a combined work and residence permit, including the right to move, work and reside freely in the issuing EU country. The Directive also granted the same rights to TCNs as nationals of the issuing MS in terms of working conditions, education, and training, recognition of qualifications, certain aspects of social security, tax benefits, access to goods and services, and employment advice services.

However, Article 12(2) of the Directive stipulates that MS may restrict equal treatment by limiting social security and access to goods and services (e.g. unemployment benefits, grants, and loans).

An impact assessment report from the European Commission published on 27 April 2022, highlighted the shortcomings in the implementation of the Directive:

- 1 Complex and inefficient application procedures and unclear rights which decrease EU attractiveness for TCNs;
- 2 Certain categories of migrants are not covered by the scope of the Directive or any other EU legal instrument;
- 3 There are different rules on admission conditions for low- and medium-skilled workers;
- 4 Third-country workers are not sufficiently protected from exploitation.

The report assessed that the shortcomings of the directive could have an impact on businesses and citizens. The complexity of the procedure could deter the former from international hires, while the latter could be hindered by the resulting situation on the job market.



The Recast - What does the EP want?

On 21 November 2022, Rapporteur Javier Moreno Sanchez (S&D, Spain) for the LIBE Committee, published the Draft Report on the recast of the Directive.

The length of the process - The Draft Report proposes to shorten the processing time of applications to 90 days instead of 4 months as well as a new accelerated procedure of 45 days for applicants who participated in the EU Talent Partnership or where the applicant is already a single permit holder in another MS.

Validity period - The Draft Report introduced a minimum period of validity for the permit, which shall be a period of two years or a period equivalent to the employment contract, whichever is shorter.

Flexibility - The single permit holder should also have the right to seek employment with another employer and change employers through a transitional permit. The TCN would also become eligible to apply for a single permit in another MS.

Protection from exploitation - Rapporteur in LIBE, the lead Committee, Javier Moreno Sanchez stated that these new provisions would help protect migrants who felt obliged to stay with potentially abusive employers out of fear of losing their permits. The legislation would also make the EU a more attractive labour market owing to its simplified rules.

The scope - The scope of the application would also be widened to protect workers excluded from the Directive through the equal treatment provisions of Article 12(2). The recast would therefore cover posted third-country workers in another MS, intra-corporate transferees, and seasonal workers.

Equal treatment - The provisions of Article 12(2) were only slightly modified, leaving MS the decision-making power on sanctions. The modified provisions, however, clarify that MS sanctions on housing should only regard public social housing and that TCNs authorized to work under a visa should be entitled to family social benefits after completing at least 6 months of work in a MS.

Timeline

- **27 October 2007:** An initial version of the text was proposed by the Commission.
- **13 December 2011:** Adopted by the Council and the EP.
- **29 March 2019:** The Commission conducted a fitness check on EU legislation on legal migration and adopted an implementation report following MS complaints.
- **23 September 2020:** The Commission adopted a New Pact on Migration and Asylum to provide a new comprehensive policy framework at EU level. The Pact announced the “Skills and Talent package” to attract talent to the EU and facilitate the intra-mobility of TCNs already residing in the EU.
- **21 May 2021:** The EP voted on a Resolution acknowledging the contributions that migrants make to society and calling for the EU to set more ambitious goals for enhanced legal migration, using and improving the existing legislative framework. The Parliament welcomed the Commission's planned review of the Single Permit Directive and considered that the scope of the directive should be extended to reach a broader category of workers.
- **25 November 2021:** The EP voted on a Resolution demanding the proper implementation of the Single Permit Directive and further harmonization and simplification of its rules, including the promotion of its equal treatment provisions.
- **27 April 2022:** In its Communication 'Attracting skills and talent to the EU', the Commission proposed a recast of the Single Permit Directive with the objective of simplifying the application process for living and working in the EU and improving the rights for residents and their family members. It presented the main downfalls of the Directive in an impact assessment report.
- **21 November 2022:** Publication of the EP LIBE Committee Draft Report.

Stakeholder Reactions

ETUC (European Trade Union Confederation) highlighted that the Recast would include beneficiaries of national protection but still excluded seasonal workers and temporary work agencies, which should be reconsidered. Additionally, according to the Commission's definition of 'employer', temporary work agencies would fall under the scope. ETUC points out that temporary work agencies were work environments conducive to the exploitation of migrant workers. ETUC is in favour of permit holders' ability to change employers and retain their permits but the text should specify whether there can be more than one change in employment.



The Long-Term Residents (LTR) Directive

Existing Situation

Through Directive 2003/109/EC, the EU aimed at granting TCNs legally residing in the EU for 5 years (with absences shorter than 6 consecutive months or shorter than 10 months in total) with LTR status. This status would, however, not be granted to those pursuing studies or vocational training (education or vocational training should represent less than half of the stay), beneficiaries of temporary protection, refugees, or seasonal workers. This was eventually amended by Directive 2011/51/EU, which extended the scope by including beneficiaries of international protection.

To be eligible for EU LTR status, TCNs should have sufficient resources to maintain themselves and their dependents without recourse to social assistance in addition to individual integration conditions in MS. The LTR status may be withdrawn in case of an absence exceeding 12 consecutive months, or when the status is given by another MS. It should be noted that MS remain allowed to issue national residence permits in parallel with the EU LTR permit. Such residence permits shall not confer the right of residence in the other MS.

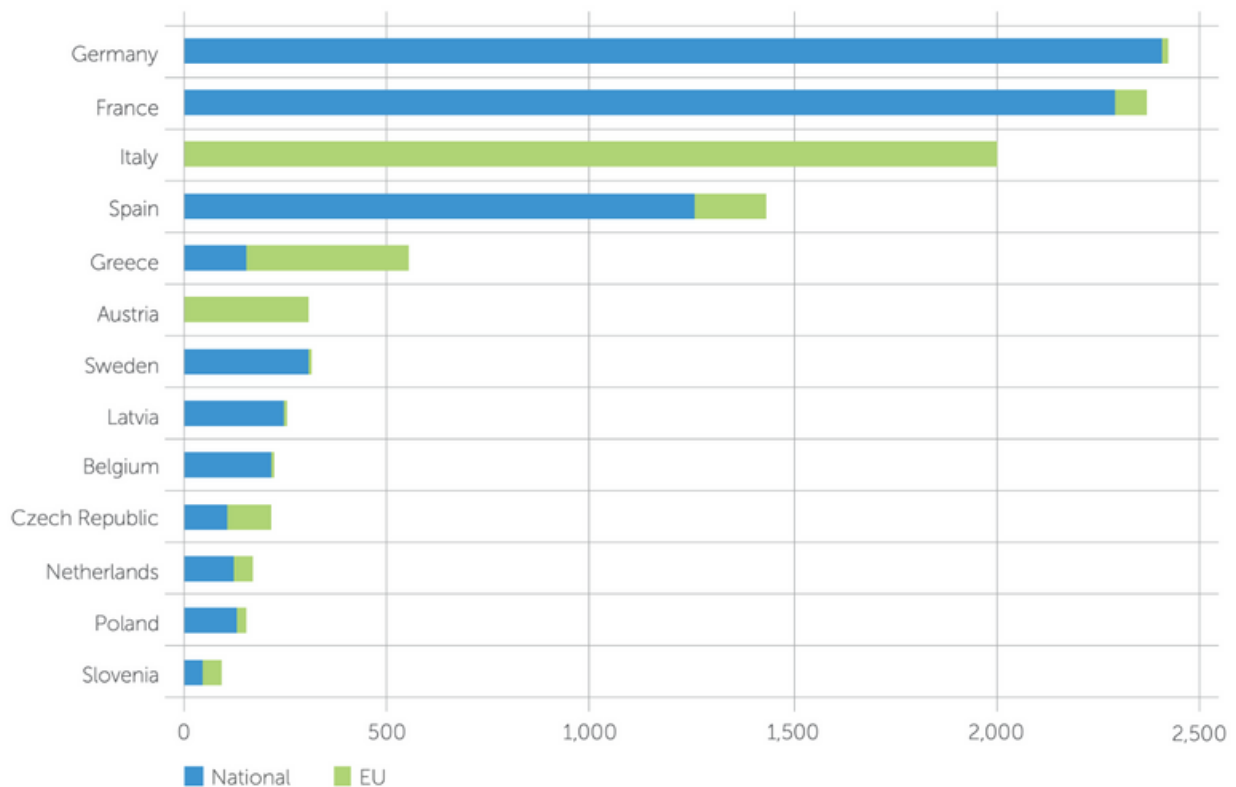
The CJEU clarified that an LTR may reside in a second Member State in the exercise of economic activity in an employed or self-employed capacity, or in the pursuit of studies or vocational training.

An impact assessment report from the European Commission published on 27 April 2022, highlighted the shortcomings in the implementation of the Directive:

- barriers for TCNs to access the European LTR status and benefit from it;
- barriers to the integration of LTRs due to a lack of clarity and consistency in the rights granted by the status;
- barriers to intra-EU mobility of LTRs;
- circular migration opportunities for LTRs are limited;
- there is a risk of abusive acquisition of the LTR status on the basis of the investor residency scheme.

Overall, the impact assessment demonstrated that migrants already residing in or considering moving to the EU were negatively affected by the shortcomings of the Directive. Similarly to the Single Permit Directive, the administrative burden, lengthy waiting times, uncertainty, and confusion were the main identified problems. Additionally, MS have been intent on promoting national LTR status, which does not grant intra-EU mobility to the TNC.

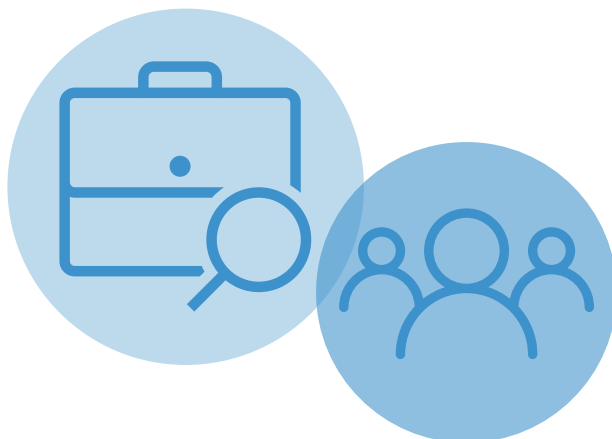
Figure 1 Number of long-term residence permits issued by selected EU member states, 2021
(thousands)



Source: Eurostat (MIGR_RESLONG), own compilation.

As shown in the above figure, in 2021, most MS issued many more national LTR status to TNCs. The identifiable exceptions are countries like Italy and Greece which are migrant arrival hubs. These countries have more incentives to promote intra-EU mobility to TCNs to avoid having too many migrants remain on their territory.

It was considered that employers were negatively affected by the underuse of the LTR status which gives their employees more stability. EU citizens were also indirectly affected as the EU's labour laws did not contribute to tackling skills shortages, a shrinking work population, and an increasing old-age dependency ratio.



The Recast - What does the EP want?

The main aim of the recast is to facilitate the acquisition of LTR status for those TCNs (including workers) who have settled down in the EU, as well as further improve their rights while strengthening the EU's competitiveness and economic growth. On 21 November 2022, Rapporteur Damian Boeselager (Greens/EFA, Germany) for the LIBE Committee, published the Draft Report on the recast of the Directive.

The length of the process - The Draft Report set out that the required period of residence to acquire LTR status should be reduced from 5 to 3 years.

Validity of the status - Member States should allow TNCs to cumulate periods of residence in different Member States. Member States should not take into account periods of interruptions that are less than two months into the calculation of the duration of the residence period. The Draft Report also emphasized that there should be more flexibility in regard to the period spent on EU territory for people who might not have the choice to leave for a temporary period.

Flexibility - It should be possible for Member States to grant EU LTR status to vulnerable third-country nationals who have resided in the EU for less than the required duration of residence, due to their individual circumstances. Victims of human trafficking, for example, should have their migration journey facilitated after such traumatic experiences.

Protection from abuse - Additionally, the Rapporteur included a provision stating that the LTR status should not be given on the basis of investment in a MS, purchase or renting of property, investment in government bonds, investment in corporate entities, donation or endowment of an activity contributing to the public good and contributions to the state budget, putting wealthy TCNs at an advantage. The recasts' aim was to better promote the labour migration of low and medium-skilled workers rather than wealthy investors.

The scope - To facilitate the integration of low-wage job workers, seasonal workers and au-pairs should have the prospect of obtaining EU LTR status. Additionally, time as a student should be counted in full towards the length a TNC's stay, instead of half, to encourage international students to remain in the EU for their careers.

Equal treatment - When an EU long-term resident chooses to apply for a national residence permit, the Member State where the national residence permit is granted should explicitly mention on the permit that the third-country national is a holder of an EU long-term residence permit. Both the EU long-term resident and his or her family are entitled to related rights, including equal treatment, and procedural safeguards.

Timeline

- **27 November 2001:** The European Commission adopts its initial proposal on the LTR Directive.
- **25 November 2003:** Publication of Directive 2003/109/EC concerning the status of third-country nationals who are LTRs.
- **11 May 2011:** Publication of Directive 2011/51/EU, amending the scope of Directive 2003/109/EC by including the beneficiaries on international protection.
- **29 March 2019:** The Commission conducted a fitness check on EU legislation on legal migration and adopted an implementation report following MS complaints.
- **23 September 2020:** The Commission adopted a New Pact on Migration and Asylum to provide a new comprehensive policy framework at EU level. The Pact announced the “Skills and Talent package” to attract talent to the EU and facilitate the intra-mobility of TCNs already residing in the EU.
- **21 May 2021:** The EP voted on a Resolution acknowledging the contributions that migrants make to society and for the EU to set more ambitious goals for enhanced legal migration, using and improving the existing legislative framework. The Parliament welcomed the Commission's planned review of the LTR Directive which it saw as an opportunity to enhance mobility and simplify and harmonize procedures.
- **25 November 2021:** The EP voted on a Resolution demanding the proper implementation of the LTR Directive to allow TCNs to reside permanently within another Member State from the day their permit is issued on terms similar to the terms applicable to Union citizens and to reduce the number of years of residence required to acquire EU LTR status from five to three years.
- **27 April 2022:** In its communication ‘Attracting skills and talent to the EU’, the Commission proposed a recast of the LTR Directive.

Stakeholder Reactions

● PICUM

PICUM (Platform for International Cooperation on Undocumented Migrants) is in favour of a broader and more inclusive scope for the Directive while keeping the requirement of stay in the EU to 5 years. They are also in favour of more flexibility for people with particular circumstances. They argue that trafficked people, for example, should be granted LTR status without having lived 5 years in the EU. The restriction that exempts people who have recourse to social assistance should also be removed. In addition to children of LTR born in the same MS automatically obtaining the status, PICUM wishes to see similar privileges granted to adopted children in a second MS.

The European Policy Center stated that maintaining national LTR permits alongside the EU LTR would continue fostering confusion on people's rights and would therefore not necessarily promote intra-EU mobility.



Latest Development & Next Steps



- 23 March: The EP LIBE Committee adopted the Draft Report and voted to enter into inter-institutional negotiations on the Single Permit Directive
- 28 March: The EP LIBE Committee adopted the Draft Report and voted to enter into inter-institutional negotiations on the LTR Directive
- 8-9 June: General Approach on the LTR Directive in EPSCO

Conclusion

Overall, the Commission's plan to recast these Directives simultaneously showed the EU's ambition to have more coherent and efficient migration policies. The European Year of Skills 2023 established a good framework to not only set the scene for the recasts but also justify the Commission's choice to go forward with legal migration as a means to fill gaps in the labour market.

Labour migration has proved to be a politically sensitive topic.. The focus of the EU on reskilling and upskilling the workforce to match the needs of the labour market not only highlighted the need for new skills but also the need to better protect those that have chosen to settle and work in the EU.

In an era of globalisation, the EU should focus on making itself more attractive for TCNs who could thrive and benefit from European society and this entails easier rules to follow and abide by, and better protection from exploitation.

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