Demographic changes in the European Union, including an ageing-population, a shrinking working age population and population decline more broadly, have created a labour deficit within the EU’s single market. European law and policy makers recognise that the EU will need to increasingly rely on external labour to offset this deficit and argue the EU’s legal migration framework needs to be reformed to make the EU a more attractive destination for potential labour migrants. Within these wider debates on potential reforms to the EU’s legal migration framework, the European Commission published a proposal to recast the existing 2003 Long-Term Resident Directive (LTR Directive) in April of 2022 (for an overview of the Commission’s proposed reforms, see here). Importantly, the LTR Directive does not address labour migrants’ legal pathways into the EU, instead, it improves the legal position of labour migrants who have resided in the territory of a Member State for five years and meet other financial, employment and integration criteria. EU long-term residency status (LTR status) encourages labour migrants to continue to work in the EU by providing them with additional socio-economic rights, greater protection from expulsion and intra-EU mobility rights. Proposed reforms to the LTR Directive that provide labour migrants with earlier access to these rights would help to
make the EU’s legal migration framework more attractive to both existing and future labour migrants.

Two separate but interrelated issues with the Commission’s proposed recast of the LTR Directive are examined in this post: the required residence period before labour migrants can receive LTR status as well as the intra-EU mobility rights and additional socio-economic rights that accompany LTR status. Debates around potential reforms to the LTR Directive have often assumed that these rights must be accrued simultaneously. However, unbundling labour migrant’s access to intra-EU mobility rights and additional socio-economic rights provides a potential political compromise between the existing positions within the Council and the Parliament, while still improving the legal position of labour migrants who have resided for an extended period of time within the territory of the EU.

The LTR Directive and the Commission’s proposed recast

The original justification for the introduction of LTR status at the EU level was that it provided ‘added value’ in comparison to national permanent residency schemes by allowing labour migrants to move between Member States and access opportunities across the entire EU labour market. During the initial debates on the proposed LTR Directive, the Commission argued that intra-EU mobility ‘constituted the most innovatory aspect’ of the proposed Directive. Nonetheless, some Member States in the Council sought to retain control over the movement of third-country nationals (TCNs) into their territory and supported the introduction of ‘a system of prior authorisation.’ Despite opposition from the Commission, the proposed Directive was amended to allow Member States to ‘examine the situation of their labour market’ before accepting EU LTR holders under Article 14 of the LTR Directive. The extent to which these amendments impacted the ‘added value’ of the scheme’s intra-EU mobility is unclear, as the Commission does not collect data on the movement of LTR holders between Member States. However, after ‘consultations’ with existing long-term residence holders, the Commission’s 2022 Impact Assessment Report found that labour migrants already residing in the EU were ‘negatively affected’ by the ‘shortcomings’ of the current LTR Directive, these shortcomings included ‘barriers’ to intra-EU mobility. Importantly, the LTR Directive does not prevent Member
States from introducing their own national permanent residency schemes and in 2019 only three million of the ten million TCNs who were residing in the EU with permanent or long-term residency status had acquired the EU’s LTR status over national alternatives. Within this context, the Commission’s proposed recast aims to ‘unlock’ the Directive’s added value and make the EU’s legal migration framework more attractive to potential labour migrants by removing ‘existing obstacles’ to intra-EU mobility and allowing labour migrants to more easily acquire LTR status. Proposed amendments to remove barriers to intra-EU mobility include: the removal of labour market tests and existing quotas, recognition of qualifications between Member States, and allowing LTR holders to commence work in a second Member State while their application is still being processed. The Commission’s proposal would also make it easier to fulfil the residence requirements to attain EU LTR status by allowing labour migrants to accumulate periods of residence in different Member States and include periods of residence for study, vocational training or after receiving protection status. Although this is an improvement on the LTR Directive’s existing requirement of five years of continuous residence in a single Member State, the Commission’s proposal still requires labour migrants to have resided within the Union’s territory for at least five years, including two years of continuous residence in the Member State in which they are applying for LTR status. The European Parliament has argued that the Commission’s proposal should go further and reduce the required residence period to three years. In a recent European Parliament Committee hearing, the Rapporteur for the Long-Term Resident file, MEP Abir Al-Sahlani, asked a Commission representative: ‘Why did the Commission choose to have five years as a cumulative time (period) and why not three or seven or one? Why the decision for five years?’ It is a question that can be divided into two sub-questions: why did the Commission originally select a five-year residence period when drafting the 2003 LTR Directive and why did it retain that five-year period when recasting the LTR Directive in 2022? The answers to these two questions highlights the existing tension surrounding the length of the residence requirement between many MEPs in the Parliament and some Member States in the Council when recasting the LTR Directive.
Why Five Years of Residence?

i) Why did the Commission’s proposal for the 2003 LTR Directive contain a five-year residence requirement?

A Council debate during the drafting of the LTR Directive in 2001 reflects the absence of any clear policy rational for the requirement of five years of residence over an alternative residence period. Greece, Portugal and Austria pushed for ‘a longer period of residence,’ while France, with the support of Spain, ‘wondered why’ LTR status ‘might not be granted much earlier than five years.’ The European Commission’s proposal appears to be based on the findings of a 2000 report it commissioned Radboud University Nijmegen to complete on permanent or long-term residence schemes at a national level. Although the report found that the period of residence in different Member States varied between 2-15 years, national legislation in eight Member States granted long-term residency after five years of residence. The Commission appears to have based its original proposal on the median found in this report. However, the lack of any compelling policy rational for a five-year residence period over a three, four or six year period meant that the residence requirement became a contentious and protracted issue during the Council negotiations. Two and a half years after the Commission published its initial draft proposal, Italy continued to argue that the residence period should be extended to six years. Council negotiations also reveal that certain Member States were concerned about the potential financial costs of providing labour migrants with wider socio-economic rights after they had acquired LTR status. German delegates stated that it was important that labour migrants applying for LTR status had ‘sufficient’ resources to prevent them from becoming a ‘burden on the Member State.’ The ability for Member States to regulate the entry of existing LTR holders into their national labour markets was also viewed by some Member States as a mechanism to prevent social assistance benefits from potentially being ‘exported’ from one Member State to another. Concerns about the potential financial costs of providing additional socio-economic rights to long-term labour migrants appears to have influenced some Member States’ opposition to any reduction to the Commission’s original five-year residence requirement.
ii) Why did the Commission’s recast retain the five-year residence requirement?

As the EU’s legal migration framework has changed, so too has the Commission’s justification for preserving the five-year residence requirement. In 2004, the Free Movement Directive was introduced, which collated and amended a series of directives and regulations on the right of ‘citizens of the Union and their family members to move and reside freely within the territory of the Member States.’ Like Article 4 of the 2003 LTR Directive, Article 16 of the 2004 Free Movement Directive provides EU citizens who have ‘resided legally’ in a Member State ‘for a continuous period of five years’ the right to apply for ‘permanent residence.’ The Commission’s 2022 Impact Assessment on the proposed recast of the LTR Directive found that any reduction in the residence requirement for labour migrants could ‘place third-country nationals in a better situation than Union citizens.’ During hearings in the European Parliament Committee on Employment and Social Affairs and the European Parliament Committee on Civil Liberties, Justice and Homes Affairs in October of 2022, Commission representatives recognised that their decision not to adopt the European Parliament’s proposal to reduce the residence requirement from five to three years was ‘mainly due to the fact that the status for TCNs cannot be more favourable than the one for EU citizens.’ Although it has been suggested that both directives could be simultaneously amended, pairing reform of the 2003 LTR Directive with new amendments to the 2004 Free Movement Directive would be difficult to achieve politically.

Member States’ concerns about the potential financial cost of providing labour migrants with additional socio-economic rights during the initial drafting of the 2003 LTR Directive appear to have also influenced the Commission’s proposed recast. Article 26 of the Commission’s proposal provides the legal framework for labour migrants who have already received their first LTR status in one Member State but are seeking new employment opportunities in another Member State and want to apply for their second LTR status. Under Article 26, a labour migrant seeking to apply for their second LTR status may apply after three years of residence in the Member State. However, the second Member State ‘shall not be obliged’ to provide labour migrants with the right to social
assistance or maintenance aid for study or vocational training prior to five years of residence. Members States’ concerns about the financial costs of providing labour migrants’ with additional socio-economic rights prior to five years of residence appear to have also influenced the Commission’s decision to retain the five-year residence requirement for labour migrants who are applying for their first LTR status under Article 4 of the Commission’s recast. Ultimately, the Commission recognised that different stakeholders had a ‘divergence of views’ on the value of lowering the required residence period from five to three years for labour migrants who are applying for their first LTR status. The Commission concluded that a five-year residence requirement would ‘strike the best balance between the varied expectations’ of different ‘stakeholders’ and was ‘thus the most feasible politically.’

**Article 26: A Framework for a Potential Compromise between MEPs and Member States?**

This post argues that the legal framework present in Article 26 of the Commission’s proposed recast offers a potential compromise between the competing positions of some MEPs and Member States on the length of the residence period before a labour migrant is eligible to apply for their first LTR status. The legal framework in Article 26 not only provides Member States with discretion on whether to provide labour migrants with additional socio-economic rights after three years of residence, it also addresses the issue of labour migrants receiving more favourable treatment than EU citizens. If a Member State elects to provide a labour migrant with additional socio-economic rights after three years of residence, a Member State must also confer ‘the same treatment to Union citizens exercising free movement rights in accordance with Directive 2004/38/EC.’ This prevents more favourable treatment being offered to TCNs than existing EU citizens. Although Article 26 of the Commission’s recast addresses the concerns of Member States, the utility of unbundling access to LTR status and additional socio-economic rights for labour migrants who are applying for their second LTR status is less clear, as they have already acquired intra-EU mobility rights through their first LTR status.
The utility of the legal framework in Article 26 would be more fully realised for labour migrants by applying it to their first application for LTR status in Article 4 of the Commission’s proposed recast. It would allow labour migrants to access intra-EU mobility rights after only three years of residence in the EU, while still providing Member States with discretion on whether to grant additional socio-economic rights prior to five years of residence. Although this would allow Member States to withhold a potential additional safety net for labour migrants until after five years of residence, labour migrants do not currently receive these additional socio-economic rights prior to five years of residence under Article 4 of the existing LTR Directive, nor would they receive them under the Commission’s proposed recast. The advantage of applying this legal framework is that it creates expediated access to intra-EU mobility rights for labour migrants who are applying for their first LTR status. Earlier access to intra-EU mobility rights would also be strengthened by the Commission’s existing proposal to remove many of the current barriers to mobility, such as the removal of labour market tests, existing quotas and reducing application processing times. Utilising a legal framework that the Commission has already drafted and accepted, offers a politically feasible compromise between the competing positions of the European Parliament and some Member States on the length of residence period. Applying this legal framework to a labour migrant’s first application for LTR status, in combination with the Commission’s existing proposals, would make the EU’s LTR scheme more attractive to potential labour migrants and allow the LTR Directive to more fully realise its potential ‘added value’: enabling labour migrants to move earlier and more easily between Member States to access opportunities across the entire EU labour market.