



EU and US approaches to the management of immigration

Jan Niessen, Yongmi Schibel and
Raphaële Magoni (eds.)

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The Migration Policy Group (MPG) is an independent organisation committed to policy development on mobility, migration, diversity, equality and anti-discrimination by facilitating the exchange between stakeholders from all sectors of society, with the aim of contributing to innovative and effective responses to the challenges posed by migration and diversity.

This report is part of a series of 18 country reports prepared in the framework of the project *EU and US approaches to the management of immigration*, which was carried out by MPG with the support of the German Marshall Fund of the United States and in co-operation with partners in the European Migration Dialogue. Countries included in the project are Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Spain, Switzerland, and the UK.

Reports on these countries are available from MPG's website individually or jointly, together with EU-US comparative perspectives and European comparative perspectives. See Jan Niessen and Yongmi Schibel, *EU and US approaches to the management of immigration – comparative perspectives*, MPG/Brussels, May 2003.

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Preface

The European Union and the United States are areas of immigration, and both are entities of multi-level governance facing the task of managing international migration. However, unlike the United States most European states do not consider immigration as a matter of national interest.

In the US a regulated immigration system aims to enhance the benefits and minimise the drawbacks of immigration. The country's bi-partisan immigration policy receives strong support from a wide variety of stakeholders.

In Europe the emphasis is on immigration restriction and prevention, reflecting the position of most stakeholders that the costs of immigration outweigh its benefits. Immigration is a sensitive and sometimes controversial issue, as is demonstrated in recent elections in a number of European countries.

On both sides of the Atlantic migration ranked high on the agenda throughout the nineties. Changes in the size and direction of migratory movements as a result of global developments, EU enlargement and NAFTA received a great deal of attention. The ways in which migration policies are designed and implemented were reviewed and underwent some important changes.

In 1997, the US Commission on Immigration Reform presented its final report to Congress, proposing important changes in US immigration policies and management.

In Europe the 1997 Amsterdam Treaty empowered the European Union's institutions to act on migration, changing intergovernmental co-operation among member states into the development of joint policies on immigration and immigrant integration. A new debate emerged on the role of immigration to address economic and demographic imbalances.

The events of September 11 did not in themselves have an impact on the foundations of immigration policies' governance structures, or lead to changes in them, other than those already proposed. The events added, however, a range of other issues to the overall policy agenda (issues related to the fight against terrorism became a top priority) and the immigration agenda (where security issues became a priority). This resulted in a stagnation of the further development of immigration policies (the best example probably being the US- Mexico migration agreement) and in a refocusing of attention on countering the victimisation of immigrants and the straining of community relations.

It is against this backdrop that MPG launched the project *EU and US approaches to the management of immigration* in an attempt to identify the main drivers of immigration management in EU and US systems of multi-level governance. Building on an understanding of how migration needs are assessed and translated into policy on the national or state level, the project focused on the way in which national or state governments promote their immigration related interests within the federation (in the case of the United States) and the Union (in the case of the European Union). How successful are the different entities in shaping common policies according to their needs? Do they consider centralisation (which the extension of EU powers suggests), or decentralisation (as the campaigns of some states for a greater say in immigration matters suggest) more useful for realising their immigration-related goals?

The reports on fourteen EU Member States, three candidate countries and one associated state each have four chapters:

- The first chapter reviews the (emerging) debates on migration and pays particular attention to the terms of the debate. It examines whether migration is debated in terms of control, security and restriction, or rather in terms of migration management and the assessment of migration needs. It asks whether the terms of the debate are different for different types of migrants, for instance irregular migrants vs. highly qualified migrants. The chapter analyses whether immigration has been linked with and embedded in larger discussions about social and economic policies for the future. In particular, it looks at the debates around the labour market and demography and considers whether and how immigration has been considered as an option for meeting emerging challenges in these areas.
- The second chapter provides an inventory of stakeholders and an analysis of their activities. It gives a detailed account of who is responsible for which area of migration management in the different government departments. It also covers the activities of the various non-governmental organisations active in this field. The central question is which groups (within government, employers, trade unions, NGOs, academics and other experts) assess national migration needs, which instruments and mechanisms they use to make these assessments, and how they assert influence in the political decision-making process to translate these assessments into policies.
- The third chapter provides an analysis of migration management in the areas covered by three of the most important Directives proposed by the European Commission (on admission for employment, family reunification¹, and long-term residents). Rapporteurs compare the national legal framework with the proposed European measures, and assess the degree of convergence between the two. The chapter addresses each of the substantive points dealt with in the Commission's proposals and sets out the corresponding national provisions, if such provisions exist under the current system. Recent and impending changes of national law are also examined, with a view to assessing whether immigration management rules are moving closer to or further away from the proposed European legislation.
- The fourth chapter offers concluding remarks and evaluations by the rapporteurs. It addresses the Commission proposal for an Open Method of Co-ordination and considers whether such a mechanism would fit well with existing policy-making structures. Where appropriate, the chapter looks more closely at the proposed Guidelines and evaluates the degree to which they are already tackled in national policy. The impact of the European Employment Strategy on immigration management is also assessed. The fourth chapter also gives the rapporteurs an opportunity to make recommendations and to suggest alternative benchmarks for future debates and policy developments.

¹ Reports were drafted before the definition of a common approach to family reunification, which Member States agreed to at the Justice and Home Affairs Council of 27/28 February 2003. Rapporteurs base their comments on the text of draft Directive COM (2002) 225, published on 2 May 2002.

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Chapter 1: The terms of the policy debates

The new law regulating the entry, residence, exit and expulsion of foreign citizens from national territory published on 25 February 2003, brings some new issues into the immigration debate. The coalition government of Social Democrats² and Christian-Democrats that took office in April 2002 has introduced significant changes in the previous law that allowed for the regularisation of undocumented immigrants holding a valid work contract, on the grounds that it was too flexible and did not fulfil the expectations of immigrants regarding integration³. The new cabinet has drawn a more complex and elaborate law based on three arguments: 1) the promotion of legal immigration according to the country's labour market needs; 2) the effective or real integration of immigrants; 3) the fight against illegal immigration.

The significant increase in the number of foreigners in the last years of the 20th century (1996:172,912/2001:350,503) pointed to the lack of workers on the national labour market and the need to let immigrants in. However, due to the present economic recession experienced by the Portuguese economy (unemployment is rising and the GDP estimates are below the EU values), the reduction of public spending and the reorientation of EU structural funds towards the new candidate countries, the opportunities for foreign workers are becoming scarcer and the scenario for the introduction of labour requires a more cautious attitude regarding the selection of labour force. Thus, the idea behind the report issued every two years by the government after taking into account the comments and remarks from a set of labour and immigrant-related institutions assessing the labour needs in the various sectors and regions of economic activity, reflects this cautious attitude, but also, in the government's opinion, a fear of a development of extremist ideologies among the Portuguese population. The Government establishes a maximum annual limit for entries of third country nationals onto the national territory, and workers coming to Portugal must hold a labour visa or a residence permit⁴. The term "quota" is not mentioned in the law, but the quota principle is used. A new kind of work visa, for scientific and research activities, was created with the goal of keeping scientists and highly skilled people in Portugal. The explicit reference to the skills of immigrants is a new feature of this law and it shows the preference for workers who have already received some kind of professional training and are, therefore, more apt to perform a job.

It is also interesting to note that most of the institutions which opinion is taken into account for the elaboration of the report on labour import – Employment and Training Institute, Madeira and Azores Autonomous Regions, General Inspection of Labour, National Association of Portuguese Municipalities, Employers and Trade Unions Confederations, and High Commissariat for Immigration and Ethnic Minorities (ACIME) – are closely related to the labour market rather than to the immigrant field. Immigrant associations and NGOs are only represented by the ACIME, and in its new and more complex structure, through the Consultative Council for Immigration Issues (COCAI).

The pro-active attitude regarding immigration is not on the immigrant side anymore, but rather on the host country's side. Unlike what happened between January and November 2001, immigrant workers can no longer come to Portugal with a tourist visa

² Despite being named Social-Democratic, it is in fact a liberal party that is not a member (or even a close partner) of the Socialist International.

³ Between January 2001 and 31 October 2002, 169,953 "temporary-stay" (*permanence*) permits were granted to foreign workers. See Chapter 3 for more details on the "temporary-stay" (*permanence*) permit system.

⁴ See Chapter 3 for more details.

and ask for documents after overstaying the legal three-month period, because the Foreigners and Borders Office (SEF) will not accept these requests. Moreover, SEF now has more power and less bureaucratic procedures to follow when removing undocumented foreigners from the country. The host country decides who can cross the border to work, when, and, possibly, the region of destination. The reference to the geographical unit “distritos” as hosting areas is also remarkable because there had never been a reference to the settlement regions – until now, immigrants were absolutely free to choose their areas of residence.

Within this context, the first pillar of the new immigration policy - the promotion of legal immigration according to the country's labour market needs - has led to the establishment of a more regulatory attitude, by withdrawing the flexibility of the Portuguese hosting system. Curiously, if labour market needs are a justification for the acceptance of a certain number of new immigrants every year, demographic issues associated to ageing within the population and the progressive reduction of the natural increase are not considered in the most recent official documents. However, in the current debates on immigration involving NGOs, academics and trade unions, the relationship between population growth/ageing and immigration has been raised several times. Empirical data show that the age structure of immigrants is younger than the one displayed by the Portuguese population, and also that the contribution of immigrants to births is higher than their contribution to the total resident population⁵. In addition, 80% of the population growth registered between the Census of 1991 and that of 2001 is due to net migration and not to natural increase⁶. In a recent Conference (October 2002) organised by the Portuguese Parliament in Portugal in co-operation with the *Instituto de Ciências Sociais* and the *Centro de Estudos Geográficos*, the first panel focused precisely on the relationship between demographic decline, ageing and immigration. The experts invited⁷ stressed the contribution of immigration to the demographic growth of Portugal and the UE, mentioning also that immigrants may contribute to reduce the ageing process but are not “the solution”. In the discussion that followed the experts' presentations, trade union representatives and NGOs such as *SOS Racismo* mentioned that the government is aware of the demographic relevance of immigration but does not explicitly mention it. In fact, demographic references are absent from the preamble of the New Foreigners Law (with the exception of a minor reference to the demographic unbalance between developed and developing countries) and a Member of the European Parliament elected by one of the parties in the government coalition, who was present at the panel table (Mr. José Ribeiro e Castro), despite acknowledging the relevance of immigration for population growth in Europe, directed his attention to the policies on family and their possible role in supporting an increase in fertility.

The second pillar - the effective integration of immigrants - is almost absent from the preamble of the new law. However, the ACIME is partly responsible for the active development of this policy, and also for fighting social exclusion and racism. The main

⁵ On these issues see OECD/SOPEMI Report - *Tendances des Migrations Internationales-2001* and Carrilho, M.J. (2002) – “Os imigrantes no Processo de Envelhecimento em Portugal” in *Parlamento Europeu em Portugal/ICS/CEG, conferência “A Europa, o desafio demográfico e o espaço de liberdade, segurança e justiça”*.

⁶ On this issue, see the contributions of Cónim, C. And Malheiros, M. in Instituto de Estudos para o Desenvolvimento (2002) “A Política Europeia de Imigração”, *Desenvolvimento 10*, Lisbon.

⁷ In addition to Carrilho, the other experts present in this panel were Maria Lucinda Fonseca and Maria João Valente Rosa. Their interventions can also be found in *Parlamento Europeu em Portugal/ICS/CEG, conferência “A Europa, o desafio demográfico e o espaço de liberdade, segurança e justiça”*.

idea behind the reformulation of ACIME's competences and organisation⁸ is the promotion of the integration of those who come legally to Portugal to work. Despite referring to the respect for the immigrants' social and cultural identity⁹, the law is clear when defining the attributions of the High Commissariat: "the promotion of the knowledge and acceptance of the Portuguese language, laws, and also of the cultural and moral values of the Portuguese Nation as conditions for a complete integration" (Article no. 2b, DL no.251/2002, 22 November). What is brought into the discussion in terms of defining complete integration is not only the command of the Portuguese language or the respect for Portuguese law, two basic rules to live in a foreign country, but also/rather the acceptance by immigrants of the moral and cultural values of the nation. Considering that immigrants will be part of the Portuguese society, one might wonder if their moral and cultural values can also be incorporated into the Portuguese Nation in order to enrich it. The change of COCAI's composition is also noteworthy. The new COCAI includes the Adjunct to the High Commissioner, a representative of each of the following ministries – Internal Affairs, Education and Social Solidarity and Work – a representative of each Autonomous Region (Madeira and Azores) and a representative of the National Association of Portuguese Municipalities. Due to the growing diversity of immigrant communities in Portugal, a representative of each of the three largest non-CPLP¹⁰ immigrant communities living in the country has also been included in the Council. Despite this, the presence of the Government and State representatives is now stronger and when voicing opinions about bills on integration and immigration policies, it will certainly be more difficult to reach a consensus among COCAI's members. One of the new competences of the High Commissariat is to promote the research on immigrant and ethnic minorities' integration in the Portuguese society and to realise this, ACIME's Observatory of Immigration has already organised a public presentation of three studies¹¹.

In the scope of the integration policy pursued by the government, immigrants have seen the minimum residence period to obtain a long-term residence permit reduced from six to five years (CPLP countries) and from ten to eight years (other countries). Immigrant integration also deals with family reunification rights, and these have changed towards a more restrictive policy in which only the spouse, the children and the parents and parents-in-law can join the immigrant after one year of legal residence in Portugal. The one-year period of legal residence is, however, the shortest time imposed by Community directives in terms of family reunification.

The Decree-Law no. 34/2003 is very clear about the third pillar of the new immigration law - fighting illegal immigration - and there has been a clear reinforcement of the role and power of the Foreigners and Borders Office (SEF) in terms of controlling the entry, stay and removal of undocumented foreigners. SEF's bureaucratic procedures to withdraw a non-documented third country national from Portugal have been eased and simplified. On the employers' side, the sanctions for those hosting illegal workers have also hardened and the penalty paid per non-documented worker varies according to the size of the firm.

One of the goals of this new law is to harmonise Portuguese legislation on the control of migratory flows and prompt expulsion of illegal third country nationals from the national territory with the EU directives regulating the presence of third country

⁸ The High Commissariat for Immigration and Ethnic Minorities (ACIME) is composed of the High Commissioner, the Consultative Council for Immigration Issues (COCAI) and the Commission for Equality and Against Racial Discrimination.

⁹ Article no. 2c, DL no.251/2002, 22 November.

¹⁰ CPLP stands for Community of Portuguese Speaking Countries.

¹¹ On this issue, see section 2 of this part.

nationals in the Schengen area. This Decree Law also transposes three EU directives into Portuguese/internal law: the one on the responsibility of transportation companies in carrying passengers without the necessary documents to the Schengen area; the directive on the definition of help given to the entry, movement and residence of undocumented foreigners; and the directive on the reinforcement of the penal framework to prevent help given to the entry, movement and residence of illegal foreigners. All these changes show the clear security trend among EU authorities which focus on controlling the entry and movement of non-Schengen citizens inside the Community, but they are also an effort to cut down human smuggling and labour exploitation. The shocking news about immigrants being transported in containers or victimised by mafia networks who extort money by violent means has warned people about how dangerous human trafficking can be with underground criminal organisations operating quite freely in the EU. As a full EU member state, Portugal is also following this trend justified not only by the need to harmonise policies among the different member states, but also by a certain alarmism caused by the recent wave of arrivals.

Another interesting feature of this new law is the call for the participation of local authorities in the discussion of immigration issues, with clear references to their role as host agencies for immigrants who work very close to citizens. Since the establishment of the High Secretariat for Immigration and Ethnic Minorities (ACIME) in November 2002, municipalities have been represented in the COCAI through a representative of the National Association of Portuguese Municipalities, and their opinion is also taken into account when elaborating the report on the Portuguese labour market needs. However, the balance between the material and human resources available to work with the foreign population on the one hand, and the number of arrivals and diversity of needs on the other, makes it very difficult for local authorities to cope with this responsibility.

According to a recent questionnaire submitted to several local authorities of the Lisbon Metropolitan Area¹², the main concerns of politicians regarding immigrants are housing, social issues and education. Although not directly orientated towards immigrants, the Special Re-housing Programme (PER) allowed municipalities in both metropolitan areas (Lisbon and Porto) to eliminate the shanty neighbourhoods where families with economic difficulties lived. Among them, there were immigrant families who, facing the constraints of the housing market, “solved” their housing problem by building a shack. The social issues mentioned by local authorities have to do with insertion or integration challenges posed by citizens with different cultural and social backgrounds to the municipal authorities. Single-headed households, without family support networks (grandparents, for example), and high fertility rates among women, imply the need for kindergartens and crèches open for long periods (due to the working hours of mothers who often work as office cleaners, cooks, domestic servants) with little fees and preferably located in neighbourhoods where immigrants live. Speaking their native language at home, rather than Portuguese, or having no parental support at home to do their homework, makes school success a more difficult goal to achieve for immigrant children. Education was the issue mentioned in third place by local authorities which see the Entreculturas Project (“Among Cultures” Project) launched by the Ministry of Education as a efficient tool to reach children with different cultural backgrounds (immigrant and gipsy children).

¹² Fonseca, L.; Caldeira, M.J. and Esteves, A. (2002) – “New forms of Migration into the European South: challenges for citizenship and governance – the Portuguese case” in *International Journal of Population Geography*, 8, pp.135-152.

In order to develop closer work with immigrant communities living in the municipalities, some local authorities have established immigrant consultative councils or special offices to attend to immigrants' needs. Lisbon and Amadora were the pioneers in founding consultative councils where associations representing immigrants and local authorities discussed issues pertinent for both parts. Loures has an office dealing with immigrants' representatives and is now setting up an observatory on immigration to keep pace with the changes in its large immigrant population (GARSE), and Odivelas, a recent municipality formed by territory taken from Loures, had for some time a similar structure (GARSI). The budgetary constraints due to an environment of economic recession have led to a substantial reduction of expenditures, and the activities developed in the scope of the consultative councils have been included in the general activities¹³. Thus, no budget provision has to be made for the activities developed with immigrants associations. This is a prejudicial situation to them, as through consultative councils, associations had a privileged contact with local authorities. Their requests and needs were "more efficiently" attended to and they voiced their opinions about local policies directly to the mayor and deputy mayors. Now, they must fill their requests for financing and support to the respective municipal department (sports, health, culture) just like other associations, which makes it more difficult for them to obtain the help needed¹⁴.

¹³ Officially, both Lisbon and Amadora still have immigrants' consultative councils.

¹⁴ The Amadora municipality has a PAMA – Programme of Support of the Associative Movement.

Chapter 2: The stakeholders

The recent massive increase in immigration to Portugal, especially the new migratory flow coming from Eastern Europe, has made waves in the media and has prompted a great national debate about immigration policy. In its agenda, the new governmental coalition of the centre-right formed in April 2002 included the development of a National Plan for Immigration (*Plano Nacional de Imigração*, or PNI) that would contain a document summarising the legislative framework already in place, as well as initiatives to be developed, focusing on the recognition of immigrants' rights and responsibilities and the methods and actions to be taken in order to work towards their integration in Portugal.

2.1. Governmental agencies

In the current governmental structure, the Presidency of the Council of Ministers, the Ministry of Internal Affairs, the Ministry of Foreign Affairs, and the Ministry of Social Security and Labour are those primarily responsible for directing and implementing immigration policy.

The role of the Ministry of Internal Affairs is to define and implement immigration and asylum policy, namely the concession of nationality, the statute on equality and on refugees, and the control of entry, stay, departure, and expulsion of foreigners from the national territory, with the Immigration and Borders Service (*Serviço de Estrangeiros e Fronteiras*, or SEF) being the entity responsible for the implementation of this policy. The Presidency of the Council of Ministers is responsible for policies dealing with the inclusion of immigrants in Portuguese society. For this purpose, the High Commissariat for Immigration and Ethnic Minorities (*Alto-Comissariado para a Imigração e Minorias Étnicas*, or ACIME), under the supervision of the Prime Minister, was created. It is presided over by a High Commissioner who is chosen by the government and holds a three-year term of office (Decree-Law no. 251/2002). This structure, with its headquarters in Porto, relies upon a permanent representation in Lisbon, coordinated by an Adjunct to the High Commissioner. ACIME promotes exchange and dialogue between entities that are representative of immigrants and ethnic minorities in Portugal, as well as a thematic study on the social inclusion of immigrants and ethnic minorities, in collaboration with social partners, welfare institutions and other public or private entities that are involved in this domain. The High Commissariat, with its interdepartmental structure, functions as a reference for and offers support to the government in matters linked with immigrants and ethnic minorities.

The Ministry of Foreign Affairs, via Portuguese embassies and consulates, is in charge of the concession of different types of entry visas and visas for prolonged stays on Portuguese territory for non-European Community citizens. Furthermore, in conjunction with the Ministry of Social Security and Employment, it is responsible for the implementation of bilateral acts and accords between the Portuguese State and third countries, in order to promote the mechanisms necessary to satisfy the employment needs of workers from outside the European Union.

The Ministry of Social Security and Labour is involved, by way of the Institute for Employment and Professional Training (*Instituto de Emprego e Formação Profissional*, or IEFP) and the Inspector-General for Labour (*Inspecção-Geral do Trabalho*, or IGT), in deciding the maximum annual limit on entries into Portugal by foreign citizens from outside the European Community, according to the sector and the regional labour needs. In addition, the IGT plays an important role in monitoring the illegal employment of immigrants.

The levels of influence of the aforementioned institutions in the definition and the discussion of immigration policy are highly associated with the specific responsibilities of each institution. Thus, SEF has a great influence on the definition of the control mechanisms of migratory fluxes. The Ministry of Social Security and Labour is involved above all in the management of the fluxes, seeking to harmonise them with the needs of the labour market, and combating illegal employment. Finally, ACIME has a significant role in the definition and implementation of the policies linked with the integration of immigrants and ethnic minorities in Portuguese society, and in the promotion of public debates about these policies.

In the legislative plan that the new government has recently introduced, i.e. the Decree-Law no. 34/2003 of 25 February 2003, profound alterations were made to the legal regime for entry, stay, departure and expulsion from the national territory established by the earlier Decree-Law no. 4/2001 of 10 January 2001. SEF played an important role in the definition of the new law, and saw its responsibilities reinforced regarding the application of fines and other restrictive measures against illegal acts related to clandestine immigration and the exploitation of undocumented foreign workers. Furthermore, SEF has actively participated in conferences and seminars promoted by a variety of organisations in order to discuss Portugal's immigration issues.

ACIME is, among the governmental institutions involved, the one which has been most active in the diffusion of information about immigration policy in Portugal and in the promotion of public participation in the discussions about these policies. As such, in its 2002-2003 agenda, it emphasises three primary lines of involvement:

1. The creation of a National Immigrant Information Network (Rede Nacional de Informação ao Imigrante), which includes the publication of a monthly information bulletin, educational leaflets and brochures, as well as the creation of an information call centre (accessible in three languages) and the transmission of information via the Internet (www.acime.gov.pt);
2. The creation of a National Immigrant Assistance System (Sistema Nacional de Apoio ao Imigrante), which involves the installation of help centres at national level (in Lisbon and Porto, both of which are already working), at regional level (in district capitals), and at local level (in a variety of location throughout the country)¹⁵. In these centres, immigrants can obtain the necessary information on legalisation, employment, healthcare, education, social assistance, and so on. These centres have come to be involved in partnerships with a variety of institutions, both public and private, including the following: the Immigration and Borders Service (SEF), the Institute for Employment and Professional Training (IEFP), Social Security, the Ministry of Education, the Ministry of Health, municipalities and non-governmental organisations;
3. The creation of an Immigration Observatory (Observatório da Imigração), composed of a coordinator chosen by ACIME and an informal council comprised of university research centres¹⁶. The Observatory promotes public discussion and the development of studies on immigration and ethnic minorities living in Portugal.

¹⁵ There are currently 15 local information centres.

¹⁶ The following institutions: the Centro de Estudos Geográficos from the Universidade de Lisboa, the Centro de Estudos das Migrações e das Relações Interculturais from the Universidade Aberta, the Centro de Estudos Multiculturais from the Universidade Independente, the Centro de Estudos Sociais from the Faculty of Economics at the Universidade de Coimbra, SociNova from the Universidade Nova de Lisboa, and the Gabinete de Ecologia Humana do Laboratório Nacional de Engenharia Civil e Associação Numena (Portuguese representative in the European Observatory on Racism and Xenophobia).

In 2002, the Immigration Observatory conducted three studies:

4. 'Representations (Images) of Immigrants and Ethnic Minorities in the Media', coordinated by Francisco Rui Cádima, from the Observatory of Communication (Observatório da Comunicação);
5. 'Preliminary Analysis of Two Surveys on Immigrants in Portugal: Portuguese Opinion and Immigrant Opinion', conducted by Mário Lages and Verónica Policarpo, from the Centre on Portuguese-Speaking Peoples and Cultures (Centro de Estudos dos Povos e Culturas de Expressão Portuguesa) and the Portuguese Catholic University Survey Centre (Centro de Sondagens da Universidade Católica Portuguesa);
6. Study on the Impact of Immigration in Portugal regarding the Accounts of the State, conducted by André Almeida, from the Portuguese Catholic University (Universidade Católica Portuguesa).

The reports of these studies are available on the ACIME website (www.acime.gov.pt) and their results were presented and debated in a one-day series of open seminars, sponsored by ACIME in Lisbon and Porto, that received a good deal of media coverage. The format adopted by the Immigration Observatory for the debate on these studies comprised panels with a variety of invited commentators, such as academics, representatives from immigrant organisations and non-governmental organisations, journalists, members of parliament, union representatives, employers' association representatives, the Immigration and Borders Service (SEF), and the Inspector-General for Labour (IGT). The conferences in which the first and third studies were presented also involved the participation of Spanish researchers who had carried out similar studies on the Spanish situation. In addition, some of these studies, as well as the observations made by the commentators invited, will be published as a book.

In order to stimulate the spread of values of tolerance and the defence of human rights, ACIME created the 'Immigration and Ethnic Minorities: Journalism for Tolerance' award, to be awarded annually by means of a public contest. The aim is to pay tribute to the journalistic works and academic research on journalism that have best contributed to the promotion of a culture which accepts differences and condemns all forms of discrimination. At the same time, the award honours editorial freedom, professional quality and journalistic ethics, as well as the quality and scientific rigour of academic research on these themes.

ACIME, by way of the Consultative Council for Immigration Issues (*Conselho Consultivo para os Assuntos da Imigração*, or COCAI)¹⁷, also has the function of evaluating, on behalf of the government, the opinions of associations representing immigrants, social partners and welfare institutions about the legal projects related to the rights of immigrants, to the social integration policies that promote the elimination of all forms of discrimination against immigrants, as well as the respect for their identity and culture. On 5 November 2002, COCAI met to discuss the project to alter the law on immigration. In addition to ACIME, representatives from a variety of immigrant associations (Guinea-Bissau, Cape Verde, São Tomé and Príncipe, and Brazil), welfare institutions (Centro Padre Alves Correia, SOS Racismo, Serviço de Migrações e Apoio Social), and representatives of a union federation (UGT) were attending the meeting. The discussion on the project for the new law was based on the issue of the legalisation of undocumented immigrants, with a focus on the risks of expulsion that threaten all illegal immigrants, as well as on immigration quotas. Such quotas are a

¹⁷ As mentioned in the first chapter, the new government altered the structure of COCAI, integrating it into the High Commissariat for Immigration and Ethnic Minorities (ACIME), and consequently turning it into a more governmental organisation.

result of the reported number of employment opportunities and of the inequalities introduced by the adoption of an extremely restricted concept of 'foreign resident', limited to foreigners who are in possession of a valid Portuguese residence permit. However, the government was not receptive to the criticisms that were made by numerous members of the Consultative Council about the aforementioned points. Instead, the project was approved, proclaimed and became a law on 12 March 2003.

2.2. Other significant actors

In addition to governmental institutions, different types of actors who try to generate discussions and influence political decision-making in the area of immigration can be distinguished:

- Political parties;
- Trade unions and professional organisations;
- Immigrant associations;
- Churches and associations of religious character;
- Non-governmental organisations that, either directly or indirectly, are involved in offering assistance to immigrants and ethnic minorities;
- University institutions that are dedicated to research in the area of international migration.

Political parties, especially those represented in Parliament, play a significant role in the discussion on immigration policy, not only in parliamentary debates and within the party structures, but also through the contacts that they maintain with authoritative bodies, local power (municipalities and parishes), immigrant associations, unions, employers' associations, non-governmental organisations, etc., as well as by way of their participation in discussion forums sponsored by other actors interested in this subject. In 2002, the discussion was focused on the alterations proposed by the government to the Law on Entry, Stay and Expulsion of Foreigners on national territory, commonly known as 'Immigration Law'; these proposals met strong resistance from opposition parties.

Both union federations (UGT and CGTP-IN) have gained a more active role in the discussion on immigration policy, as the participation of immigrant workers has become increasingly important in national employment figures, particularly in the private construction sector. The UGT and the CGTP-IN have directed their energy towards ways of combating the illegal employment of foreign workers and to fight against conditions of exploitation by employers and human traffickers to whom many immigrants - especially those who are illegal - are subject. Therefore, they have fought for the need to legalise immigrants who are already working in Portugal, for the intensification of investigations concerning employers who have hired illegal workers, and for harsher penalties for illegal employment - the only ways to effectively combat clandestine immigration and the exploitation of immigrant workers. Both UGT and CGTP-IN have sought to encourage the debate and to influence immigration policy by means of their participation in COCAI and in the Economic and Social Council, through direct contact with members of the government who are directly responsible for immigration policy, and furthermore, by participating in conferences, seminars and workshops dedicated to these themes, whether on their own initiative or on that of other institutions.

The increase and diversification of migratory fluxes towards Portugal, as observed in the last five years, have been reflected in the strengthening of the various associative movements of immigrants, and has brought on a growing interest in the defence of the

rights of non-European citizens and in the possibility to offer different forms of assistance for their integration in the host society - especially for those most in need - by a host of non-governmental organisations as well as welfare and religious institutions, namely those related to the Catholic Church. Due to the nature of the activities that they develop, these institutions have sought to influence policies by focusing their energy on combating all forms of discrimination and exploitation to which immigrants may be subject, as well as on the development of social policy that seeks to facilitate their integration in Portugal. They have used their influence in the government's consultative organs in which they are represented, publicised their opinions by means of the media, and forged unified stances with other relevant institutions and actors. The disclosure of its stance by the Coordinating Secretariat of Immigrant Associations (Secretariado Coordenador de Associações de Imigrantes, or SCAI), a group comprising 15 associations, about the alterations proposed by the government to the legal regime of entry, stay and expulsion of foreigners from the national territory (DL 244/98 of 8 August 1998, with alterations introduced by the law 97/99 of 26 July 1999 and by the Decree-Law 4/2001 of 10 January 2001) constitutes a good example of the combined efforts by immigrants to increase their influence and political power¹⁸.

The Bar Association has participated in the discussion on the legal resolutions that define the conditions of entry, stay, departure and expulsion of foreigners from the national territory, the concession of nationality, the right to asylum and the statute of refugees, as well as the social, economic and political rights of immigrants settled in Portugal.

It is important to note the increase in scientific research in different disciplines (demographic, juridical-political, geographic and socio-economic) and on different spatial scales, dedicated to the study of Portuguese immigration. Additionally, a high number of publications, numerous conferences and seminars have taken place both nationally and internationally, promoted by or with the participation of academics. In Portugal, however, the dialogue between researchers and political decision-makers remains very limited and, because of this, the influence of scientific knowledge on the formulation of immigration policy is quite tenuous.

¹⁸ Available at: www.casadobrasildelisboa.rcts.pt/guia-scai-documentos.htm

Chapter 3: European legislative proposals

3.1. Admission for economic purposes

3.1.1. Background issues: elements on the presence of foreigners on the Portuguese Labour Market

At the end of 2001, there was a total of 232,000 registered foreign workers on the Portuguese labour market (around 4.5% of the labour force), approximately 127,000 with “temporary”-stay (*permanence*) permits¹⁹ and 105,000 with residence permits²⁰. As in other EU countries, the relative weight of foreigners in the labour force is higher than their percentage in the total population (less than 3.5%).

The significant growth in the number of registered foreigners present on the Portuguese labour market between 1999 and 2001 reveals the incapacity of the internal offer to fully satisfy the labour demand, particularly in sectors that require low-skilled and demanding work, e.g. construction, industrial and domestic cleaning, shops and, more recently, agriculture, *horeca*²¹ and some branches of labour intensive industry. Although traditionally polarised between highly qualified occupations (managers, directors, professionals) and unskilled or low-skilled jobs (especially in construction and industrial and domestic cleaning), the structure of participation of foreigners on the Portuguese labour market has changed in the last years, with an increase in the proportion of the second category.

Table 1 - Inflow of foreign labour in 2001 by type of occupation (immigrants who applied for residence permits)

Occupations	Total		EU		Africa		Brazil	
	Abs.	%	Abs.	%	Abs.	%	Abs.	%
Managers and Directors	408	6.9	286	13.5	16	0.6	18	3.7
Professionals	1,327	22.6	1,029	48.6	108	4.3	100	20.7
Intermediate Technicians	522	8.9	249	11.8	69	2.8	140	29.0
Clerical employees	232	3.9	103	4.9	88	3.5	32	6.6
Semi-skilled employees of service and commerce	738	12.6	183	8.6	278	11.1	63	13.1
Agriculture and fishery workers	85	1.4	53	2.5	26	1.0	2	0.4
Manufacturing and construction workers	1,191	20.3	113	5.3	925	36.9	60	12.4
Transport workers and tool operators	211	3.6	39	1.8	103	4.1	19	3.9
Non qualified workers	1,160	19.7	61	2.9	892	35.6	48	10.0
Total	5,874	100.0	2,116	100.0	2,505	100.0	482	100.0

Note: The table does not include the people who registered when looking for their first job.

Source: INE, Estatísticas Demográficas, 2002.

¹⁹ The “temporary”-stay (*permanence*) permit corresponded to a status created by the Decree-Law no. 4/2001 of 10 January that could be obtained until 30 November 2001 by foreigners present in Portugal and lacking a valid or adequate visa. These foreigners were given the opportunity to stay in the country for one year (possibly renewed up to four times) if they were in possession of a work contract registered by the General Labour Inspection.

²⁰ Estimate based on the supply of foreign workers and on the annual inflows.

²¹ It stands for hotels, restaurants and cafes.

Table 2a - Work contracts obtained in 2001 by immigrants with “temporary”-stay (permanence) permits (occupation groups vs. main national origins)

CEA	Eastern	Brazil	PALOP	South Asia	China	Others	Total
Agriculture and Fishery	4,184	416	220	192	68	246	5,326
Mining and quarrying	962	47	14	0	4	16	1,043
Manufacturing	16,895	2,028	784	212	149	561	20,629
Water, gas and	39	6	5	0	0	0	50
Construction	34,470	6,613	7,987	3,776	116	3,101	56,063
Commerce (retail and	5,309	3,147	1,200	559	904	606	11,725
Hotels and restaurants)	5,001	5,731	2,012	423	1,906	690	15,763
Transports and	1,398	528	106	15	1	116	2,164
Other services	11,174	7,424	6,813	1,691	167	1,604	28,873
Total	79,432	25,940	19,141	6,868	3,315	6,940	141,636

Source: Relatório Inspeção Geral do Trabalho, IGT. (10 Janeiro a 31 de Dezembro de 2001)

Table 2b - Work contracts obtained in 2001 by immigrants with “temporary”-stay (permanence) permits (occupation groups vs. main national origins) (%)

CAE	Eastern Europe	Brazil	PALOP	South Asia	China	Others	Total
Agriculture and Fishery	5.3	1.6	1.1	2.8	2.1	3.5	3.8
Mining and quarrying	1.2	0.2	0.1	0.0	0.1	0.2	0.7
Manufacturing	21.3	7.8	4.1	3.1	4.5	8.1	14.6
Water, gas and electricity	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Construction	43.4	25.5	41.7	55.0	3.5	44.7	39.6
Commerce (retail and wholesale)	6.7	12.1	6.3	8.1	27.3	8.7	8.3
Hotels and restaurants	6.3	22.1	10.5	6.2	57.5	9.9	11.1
Transports and communications	1.8	2.0	0.6	0.2	0.0	1.7	1.5
Other services	14.1	28.6	35.6	24.6	5.0	23.1	20.4
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Tables 1, 2a and 2b clarify the picture described above. Taking apart the inflow of (mainly EU) Europeans who applied for residence permits, which is dominated by highly skilled professionals, all the other groups (with the exception of the Brazilians - Table 1) display patterns of labour market insertion that privilege sectors (construction, cleaning, retail selling, restaurants) requiring a high level of unskilled work²². It is important to note that the construction sector is very relevant to both the dominant groups of the first immigration wave (the PALOP citizens) and to the main groups of the last immigration wave (the Eastern Europeans). However, whereas the PALOP workers disclose a second concentration in the low-skilled service sector, Eastern Europeans show an over-representation in manufacturing, a sector of activity where the recruitment of foreigners has only recently become significant. Brazilian immigrants reveal higher levels of sector dispersion, despite a tendency to concentrate in tertiary activities, both skilled and unskilled. Finally, the Chinese display a pattern found in several other countries, being highly involved in ethnic businesses, in particular in retail trade and restaurants.

²² It is important to mention that a high proportion of Eastern Europeans are clearly over-qualified for the tasks they carry out. Ongoing research developed in the Universities of Minho, Aveiro and Coimbra shows a very high percentage of people in possession of technical and college degrees. In the study conducted by the Institute of Employment and Professional Training (IEFP) on the people who followed the training programme *Portugal Acolhe*, 76% of the trainees, mostly coming from Eastern Europe, had similar skills.

In conclusion, the current shortages that the Portuguese labour market cannot solve internally are mostly concentrated in the low-skilled segments of construction, *horeca*, retail trade, cleaning, agriculture and, eventually, intensive industry. The need for skilled professionals to fill qualified jobs is clearly more limited, despite the shortage of nurses (mostly supplied by Spanish professionals).

As mentioned in the initial chapter, the current situation of the Portuguese economy, characterised by stagnation and unemployment growth, reduces the capacity of absorption of the national labour market, even in its unskilled segments.

3.1.2. The Portuguese legislation on foreigners' work and the Directive contents

Since the publication of the Decree-Law no. 244/98 of 8 August, the principle present in Portuguese legislation is that the recruitment of foreigners for paid employment must be made outside the Portuguese territory. If the changes introduced by the Decree-Law no. 4/2001 of 10 January created the "temporary"-stay (*permanence*) permit, allowing for the regularisation of the situation of foreign workers overstaying in the country without a valid visa, the very recent Decree-Law no. 34/2003 of 25 February terminated the "temporary"-stay (*permanence*) permits system and emphasised the principle of recruitment of foreign workers outside the national territory.

Taking into consideration the procedures present in the aforementioned DL no. 34/2003, immigration to Portugal for the exercise of legal work is regulated as follows:

- People who want to work temporarily in Portugal must apply for a work visa, valid for a maximum of one year, in a Portuguese Consulate (article 36). According to article 37, there are four sub-types of work visas: the first one for sports and leisure professionals, the second one for highly skilled researchers and technical professionals²³, the third one for independent workers, and the fourth one for the remaining types of paid workers.
- People arriving in Portugal with the purpose of working on a long-term basis (*long term migrants*) must apply for a Residence Visa justified by work reasons. This residence visa allows the holder to obtain a residence permit in Portugal, first on a temporary basis (for a period of 2 years possibly renewed for additional three year periods) and after 5 or 8 years²⁴ in Portugal, on a permanent basis. Foreigners holding a work visa continuously for three years are also allowed to apply for a residence permit.

However, the possibility of obtaining either a work visa or a residence visa for work reasons is subject to a set of conditions, i.e.:

²³ This is a new type of work visa, introduced by DL no. 34/2003. On the one hand, it may contribute to facilitate the integration of over-qualified workers who are able to find jobs adequate for their skills. On the other hand, it may help the future recruitment of highly qualified non-EU professionals, if such a need becomes relevant on the Portuguese labour market. For the moment, outside the internal ETN's recruitment system, the shortages of highly skilled professionals have been felt in a few specific sectors of activity such as medical care (doctors, dental surgeons, nurses, personnel specialised in elderly care), marketing and IT (not so evident nowadays).

²⁴ Portuguese legislation includes dispositions that discriminate positively against citizens coming from Portuguese speaking countries. This situation, mentioned in article 15 of the Constitution, is responsible for the difference present in article 85 of the DL no. 34/2003 that gives nationals of Portuguese speaking countries the possibility to obtain long-term residence permits in 5 years, whereas all other third country nationals need 8 years.

i) Since the changes introduced by the DL no. 4/2001 of 10 January, the Government has been responsible for the preparation of a report that forecasts the labour opportunities which cannot be filled by the internal and EU offer, in each branch of activity. Initially, the report was drafted yearly and presented estimates of the needs for the following year. With the DL no. 34/2003, the report has become bi-annual and is supposed to distinguish general labour market needs from seasonal labour market needs. In addition, it is also supposed to adjust the regional labour market estimates with the reception capacities of each region. This last goal not only seems highly unrealistic, but also has an implicit idea of potentially controlling the internal mobility of foreigners, which seems to go against the Portuguese Constitution. According to this new law, if a foreign worker comes with a contract to work for a determined employer, s/he will have, in principle, to settle down in the area of his/her work. Whenever there is a change of professional activity, the holder of the work visa must inform the Employment and Training Institute in order to check its conformity with the previously mentioned report.

The first two reports (2001 and 2002), elaborated under the DL no. 4/2001 dispositions, despite mentioning that a certain number of foreign workers were needed that year (the implicit quota principle), ended up acting more as a flexible guideline. Even if the present government has revealed its intention of setting a maximum number of foreign workers allowed to enter every year²⁵, the recent empirical experience shows the limits of such rigid *aprioristic* estimates.

ii) In addition to the adjustment of the new entries of workers to the needs supposedly identified in the bi-annual reports, article 41 of the DL no. 34/2003 states that labour needs are primarily covered by EU nationals and third country nationals already settled in Portugal.

iii) When asking for a residence visa, even for work reasons, foreigners must give proof of means of subsistence and accommodation (general principle). These means of subsistence must be sufficient to support the travel and the stay of the foreigner in Portugal. The amount will be defined in a specific legal document.

Despite these general conditions, some groups of foreigners may benefit from special prerogatives. Article 41 of DL no. 34/2003 states that the admission of highly qualified foreigners or people developing relevant activities in the artistic and social fields is not dependent on the aforementioned report estimates. Although the majority of non-EU foreigners arriving in Portugal display a labour market distribution concentrated in unskilled activities, this measure shows that the Portuguese authorities are concerned about the potential lack of highly skilled professionals, which is for the moment limited to a few activities, such as healthcare.

As far as self-employed foreigners are concerned, their settlement in Portugal depends on the issuance of a work visa (type III), or of a residence visa if they want to settle on a more permanent basis.

²⁵ This estimate, aimed at becoming the total implicit bi-annual quota of immigrant workers, is based on economic and social criteria and forces the government to obtain opinion reports from the Institute of Employment and Professional Training (IEFP), the General Inspection of Labour, the National Association of Portuguese Municipalities, the Trade Unions, the Employers Confederations and the High Commissioner for the Immigrants and Ethnic Minorities (ACIME) (preamble of the DL no. 34/2003).

When comparing the recently modified Portuguese Law with the Council Directive COM(2001)386, it appears that the basic national principles and goals are in accordance with the EU ones. However, several procedures do not coincide:

- a) In Portugal, non-EU workers and self-employed foreigners get the same kind of residence permit. Residence permits are initially issued for two years - the Directive mentions less than 3 -, and the Portuguese government has justified this option expressly mentioning it. However, if a foreigner asks for a work visa (type III for self-employed and type IV for paid work) with the goal of developing short-term activities (less than one year), the documents s/he receives are different.
- b) Portuguese legislation does not mention as clearly as the Council Directive all the categories of people which must be considered before attributing a job to a non-EU national. However, it states that priority on the labour market is given to EU citizens and to legal non-EU foreigners already settled in Portugal (article 41 of the DL no. 34/2003).
- c) The Directive mentions the possibility of obtaining a *residence permit-paid worker* after being legally settled in the country. As far as Portuguese legislation is concerned, this possibility is limited to certain specific categories (family members of nationals of the European Economic Area, ex-refugees, recognised professionals in the scientific, social, cultural and economy fields...); all the others need to previously obtain a residence visa in a Portuguese Consulate.
- d) The sub-categories "seasonal workers", "frontier workers" and "intra-corporate transferees" mentioned in section 2 (special norms) of the Directive are not discriminated against in Portuguese legislation. In addition, the sub-category "training" is not specified in the DL no. 34/2003 and falls into the category *students*, who may ask for a student visa (also for training purposes) valid for one year (article 35 of the above-mentioned Decree-Law). Non-EU foreigners with student visas are allowed to work part-time, if they have good results in their studies.
- e) As was previously mentioned, the entry of foreign paid-workers is dependent on the estimates of labour needs by regions and branches of activity. The definition of a maximum number of entries each year (the global quota principle) will be based on a bi-annual technical report elaborated by the government. In addition to this general approach, the acceptance of each individual candidate is dependent on several factors that are in line with the ones presented in the Council Directive, although possibly less specific. In order to obtain a work visa or a residence visa for work purposes, a foreigner must show proof that s/he does not have a criminal record, has a health insurance, a work contract, the necessary qualifications to practice his/her profession, and also proof of means of subsistence. Those who settle in Portugal to develop independent activities must provide the national authorities with a document attesting their foreign investment operation.

The privileges granted to certain professionals (researchers, artists/athletes, highly skilled technicians) and to citizens coming from Portuguese-speaking countries, respect the principles contained in the Directive. In fact, Portugal has three temporary labour agreements with third countries, two of them being inactive (Romania and Bulgaria) as they were not ratified by the Parliament, and one active, allowing the arrival of workers from Cape Verde. These temporary workers receive work visas of type 4, and are in principle preferred to workers of other nationalities.

The establishment of the first principles of immigration policy in Portugal took place in the early 1990s, when the first extraordinary regularisation of immigrants took place (1992/1993) and immigration and asylum laws became more restrictive. In spite of the discourses about immigration control and the promulgation of a more restrictive legislation, the mismatches on the Portuguese labour market, particularly in low skilled segments of sectors like construction, domestic and industrial cleaning, shops, and

more recently agriculture and some branches of manufacturing, have justified a continuous increase in the presence of foreign workers, which accelerated between 1998 and 2001.

Due to the inefficiency of the regulatory mechanisms, the number of undocumented immigrants started to increase immediately after the first regularisation period (1992/1993), when approximately 39,000 people were regularised²⁶. Due to this, and also to the lack of adequate information associated to the first regularisation process, the Socialist government elected in 1995 opened a new regularisation process in 1996. The second regularisation process lasted for six months (between June and December 1996) and followed a pattern similar to the first one. The communication of information was improved compared to the first regularisation process, and NGOs played a more active role. However, some delays and communication problems were identified, and a differentiation was made²⁷ between Portuguese-speaking foreigners and other non-EU foreigners - the first ones could apply for regularisation if they had entered the country before 31 December 1995, whereas the second ones could only apply if they had arrived in Portugal before 25 March 1995. Finally, approximately 35,000 applications were made.

Curiously, after the second regularisation, particularly after 1997/1998, the issue of foreign work went up in the policy agenda. Around 2000, the growing pressure of employers associated to the changing characteristics of immigrants (more numerous, coming from other countries, more qualified...) and to a noticeable presence of non-documented workers (mentioned in the Cabinet resolution 14/2001 of 14 February) frequently brought into the country by trafficking networks, led the government of that time to act on the matter of immigration, following three basic policy guidelines:

1. An effort to control the flows and to regularise the situation of undocumented immigrants already present in the country (this justified the creation of the “temporary”-stay (*permanence*) permit, attributed to undocumented foreigners working in Portugal who could present valid work contracts);
2. The decision of implementing a more realistic immigration policy linked to the country’s labour market needs;
3. The decision to further develop the policy of foreigner’s insertion that experienced relevant advances in the second half of the 1990s.

The creation of the “temporary”-stay (*permanence*) permit by the DL no. 4/2001 of 10 January played, in fact, the role of a third extraordinary regularisation, aiming at the ex-post regulation of a *de facto* situation. However, the “temporary”-stay (*permanence*) permits scheme showed some differences compared to previous regularisations. Firstly, it clearly associated, for the first time, the possibility of regularisation to the condition of having work in Portugal (i.e. a valid work contract). Secondly, it created a new immigrant status – confirmed by the DL no. 34/2003, because people in possession of a “temporary”-stay (*permanence*) permit are not considered residents in Portugal (not even temporary/short-term ones) and, therefore, have reduced civic rights²⁸ - it is important to remember that almost 170,000 foreigners working in Portugal have obtained such status.

²⁶ This regularisation applied to all residents present in Portugal before 15 April 1992 (six months before the Regularisation Law was published) and lacking the necessary permits. This included both working population and non-working population.

²⁷ SOS Racismo (2002) - *A imigração em Portugal*. Lisboa, p.162-164.

²⁸ When justifying the changes introduced by the new law, the government expressly mentioned the need to “clarify the concept of resident” which attributes an important set of civic rights “to which the holders of precarious resident titles, such as “temporary”-stay (*permanence*) permits,

Despite the intentions of the government to control labour migration and adjust new entries to the Portuguese labour market needs, the previous experience of Portugal in extraordinary regularisations seems to show the limits of the proposed policy. Firstly, most Portuguese employers do not recruit abroad and most of them will probably not start this practice in the next years. However, they employ foreigners who are already in the country, which means that they will probably arrive without the appropriate visas and contracts (i.e. as undocumented immigrants). Secondly, despite the reinforcement of SEF competences, the current situation of Portuguese public finances makes it difficult to implement large operations of expulsion which also have social costs. Therefore, in addition to the people arriving in Portugal with work or residence visas, the experience would advise to allow a certain number of entries with the purpose of job seeking.

To finish this section, three final comments need to be made:

- a) The present law (DL no. 34/2003 of 25 February) emphasises excessively the labour dimension of immigration, somehow at the expenses of the human and social dimensions;
- b) The suppression of the “temporary”-stay (*permanence*) residence permits scheme and the fact that people in possession of such titles are considered as non-residents has created inequality among the categories of foreigners living in the country;
- c) Despite the positive intentions of controlling immigration flows, doubts remain on the effectiveness of the proposed measures. Naturally, immigration flows, both regular and irregular, will tend to reduce in the coming years due to the present economic situation of Portugal.

In the 2002 National Action Plan for Employment, Portugal set the promotion of the articulation with the Foreign Service (SEF) and Labour Inspectorate as a priority in order to combat illegal immigration and immigrant workforce exploitation.

3.2. Family reunification

Family reunification is, after economic reasons, the primary motive for immigration into Portugal. Between 1999 and 2001, family reunification was mentioned by 23.9% of the foreigners applying for residence permits. However, this percentage seems to underestimate the real importance of family reunification, given that the majority of reasons presented have been classified as ‘other motives’ (43.4% of the total) and many of them are certainly also associated with cases of family reunification, especially concerning women. Furthermore, there are also numerous cases in which, although the motive indicated for migration may be of an economic nature (when both spouses come to work), the decision was based on a reasoning that involved the family.

The weight of family reunification in migratory processes in many European countries justifies the growing attention that the European Union and the governments of the member states have come to give to regulation, and the attempt to unify family reunification policies. The objectives of this policy seek, without putting into question the right of family protection established in the Universal Declaration of Human Rights, to reinforce the mechanisms to control it, in particular via more or less restrictive definitions of the concepts of family and family reunification that they adopt.

are not entitled” (justification for the changes to be introduced in article 4 of the DL no. 34/2003).

The concept of family applied is a restrictive concept, in that a family is defined as a nuclear family, which is a characteristic of western societies. This has led to problems for many immigrants, especially for those of African origin. In fact, according to the terms of family reunification in the majority of E.U. countries, relatives and other family members are not even considered eligible, with some special exceptions.

Portuguese legislation regarding the right to family reunification, which is similar to that of other E.U. countries, suffered recent alterations that were introduced by the new law regulating the conditions of entry, residence, departure and expulsion of foreigners from the national territory (Decree-Law no. 34/2003 of 25 February 2003). Community resolutions have been adopted, requiring “a real connection between the applicant and the country, namely a legal period of residence during a specific period of time”, opting, for humanitarian reasons, for the shortest period of time fixed by the Community Directive (one year).

Portuguese law considers the following family members entitled to reunification (Art. 57):

- “1. a) The spouse;
 - b) Minor or handicapped children who are the responsibility of one or both of members of the couple;
 - c) Minors adopted by the applicant or by his/her spouse if they are not married, as a result of a decision made by the competent authority of the country of origin, provided that the law of that country recognises the rights and responsibilities of adopted children as being identical to those of natural children and that the decision is recognised by Portugal;
 - d) First degree relatives in the direct ascending line of the applicant or his/her spouse, provided they are the responsibility of the applicant and his/her spouse;
 - e) Minor siblings, provided they are the responsibility of the resident, in accordance with a decision made by the competent authority of the country of origin that is recognised by Portugal.
2. In case the minor or disabled child is the child of one of the spouses, family reunification will only take place if the applicant or the spouse has legal custody”.

Portuguese law is incomplete when it comes to the potential for violation of the clauses that have to do with family reunification referred to in Art. 4 of the Community Directive, especially the clause dealing with polygamous marriages (paragraph 4). Therefore, the decision is made by the Immigration and Borders Service (SEF), according to the clause in Art. 56 (3) of the abovementioned Decree-Law no. 34/2003 of 25 February 2003: “the Immigration and Borders Service (SEF) is responsible for the reception of family reunification applications and the decision made on them”.

As far as the resources and time periods (Art. 7 and 8) mentioned in the Community Directive are concerned, Portuguese law is less restrictive regarding the requirements expressed in Art. 7, Sect. 1(b) (sickness insurance covering all risks normally covered for its own nationals in the Member State concerned, for the national himself/herself and the members of his/her family) and establishes the minimum time period for legal residence in the host country to one year.

Portuguese law guarantees access to education and professional training for the family of immigrants who are legally resident in Portugal. However, it does not recognise (with some exceptions) the right to employment for holders of temporary residence permits (Art. 38 of the Decree-Law no. 34/2003). This limitation is extremely restrictive in the case of family reunification and increases the risk of poverty and social exclusion for

many immigrant families, as the average salary that immigrants earn makes it very difficult for families to survive on only one income.

3.3. Long-term residence right

Concerning Portugal, the basic principle is that of equality of rights between nationals and foreigners (with the exception of some political rights and a few state functions), as expressed in article 15, paragraph 1 of the Portuguese Constitution. It is noteworthy that the same article mentions, in its paragraph 3, that foreigners coming from Portuguese-speaking countries may be granted advantages in the process related to the attainment of certain social and political rights. An element of differential treatment that privileges people coming from the former Portuguese colonies is taken into account in the fundamental law of the country and will influence more specific legal regulations.

Following this basic principle of equality of rights, the action of the Portuguese authorities has focused in the removal of barriers that foreigners face in the access to economic (e.g. labour market), social (education, housing, welfare) and even political (the right to vote in local elections under conditions of reciprocity) issues. If the ethnic categorisations that can be found in the countries which follow more explicitly the multiculturalist model are absent in Portuguese policy documents, an effort has been made to recognise immigrants' associations as political partners (as consultative bodies), both at national and local levels. The equality of rights between nationals and foreigners being the basic principle, this means that the granting of individual citizenship rights to immigrants is a key factor. However, it is assumed that some problems faced by immigrants are not individual, but common to a whole group of persons who may share the same ethnic background and the same geographic origins (in the case of big national associations representing the different groups of immigrants).

Since the first half of the 1990s, we have progressively witnessed an extension of the civic rights of the foreigners present in the country. The Co-ordinating Secretariat of the Projects of Multicultural Education/*Entreculturas*, which developed its activity (promotion of equal opportunities and development of multicultural education at the basic education level) within the Ministry of Education, was created in 1991. This measure was a first step in the development of initiatives aimed at improving the situation of ethnic minorities in Portuguese society. After this first measure, other important steps were taken in the fields of labour, social security and housing. In the field of employment, a common resolution of the State Secretaries of Employment and Social Affairs came out in April 1993 and mentioned explicitly the development of measures aimed at the social and professional integration of immigrants²⁹.

Following social movements supported by opposition parties, NGOs and immigrants' associations, and the establishment of the National Programme Against Poverty in 1991, the government reacted and launched a major programme (PER - Special Relocation Programme) aimed at re-housing people living in shanty towns in the municipalities of the Metropolitan Areas of Lisbon and Porto (Decree-Law no. 163/93 of 7 May 1993). The final goal of this programme is the total eradication of the shanty towns by 2004 in most municipalities of the two metropolitan areas. The programme is based on a contract signed between the central administration and the municipalities³⁰,

²⁹ See Rocha-Trindade *et al.* (1995) – *Sociologia das Migrações*, Universidade Aberta, pp. 208-209, 317.

³⁰ NGOs which proved capable of promoting housing for the population in need were also allowed to sign contracts with the government, under the same rules.

according to which the first part would pay 50% of the total costs (land, infra-structure and construction) and the municipalities the remaining 50%, while being also responsible for the development of the projects (planning and construction)³¹. Although this programme was not conceived especially for foreigners, its impact among unprivileged groups of immigrants and ethnic minorities was quite significant. First, the demographic, social and housing surveys that supported the intervention clarified the social and statistical dimension of ethnic minorities in shanty neighbourhoods. The result was an increasing visibility of this problem, leading public authorities to the conclusion that re-housing was necessary for both foreigners and nationals, and to the removal of previous restrictions that limited the access of foreigners to public housing. Finally, the preparation process and the execution of re-housing operations required the co-operation of the local populations, which re-enforced the role and recognition of local associations as privileged actors.

The institutionalisation of the Guaranteed Minimum Income (Law no. 19A/96), a policy instrument aimed at combating poverty and social exclusion, is another example of the inclusive perspective of the national social policy developed in the second half of the 1990s, as poor documented foreigners were among the beneficiaries of this measure. This instrument included both the granting of financial benefits (the minimum income) and the request for participation in social programmes aiming at the improvement of the social resources possessed by the beneficiaries (professional training, literacy classes, registration in employment centres, self-employment support, programmes for alcoholics and drug addicts). Law no. 20/98 of 12 May on foreigners' work was also a positive step in the direction of equality of rights, as it removed some restrictions to the activities that could be developed by foreigners, and also to the limits imposed on firms which use aliens' work (a limit of 10% foreigners was imposed on Portuguese firms with more than five employees by the previous 1977 Law).

Other examples of progress are related to political rights. Law no. 50 of 3 November 1996 introduced the necessary legal changes and allowed for the participation in local elections of EU citizens and other foreign residents in Portugal. The participation of the latter is subject to two basic conditions: length of residence in Portugal (two years for nationals of Portuguese-speaking countries, three years for the others) and a reciprocity principle (the right of vote is given if the Portuguese living in the country of origin re also given the right of vote in local elections there).

The question of xenophobia and discrimination was addressed in a specific anti-discrimination law (Law no. 134/99 of 28 August) that expressly prohibits discriminatory practices based on race, colour, nationality and ethnic origin. The text deals with particular issues, such as economic activities and labour market, as well as access to public services like education or health. The dispositions of this law included the creation of the Advisory Committee for Equality and Against Racial Discrimination.

As can be seen from the progress in Portuguese legislation over the last 10 years, resident foreigners settled in Portugal benefit from a set of rights that is identical to the set of rights of national citizens, in most domains.

Regarding the fields of equal treatment mentioned in article 12 of the COM(2001) 127 of 13 March, Portuguese legislation basically respects all the issues mentioned and even includes the right to vote in local elections, although subject to a reciprocity *clausula*. Some problems remain regarding the recognition of diplomas and professional competences, but this issue still causes some distress to EU citizens

³¹ Municipalities are allowed to contract loans at special rates directly with the National Institute of Housing (INH) or through financial institutions.

settling in Portugal. In addition, the interpretation of the aforementioned *clausula* of the DL no. 34/2003 that associates the *distrito* of work (and residence) of the foreigner to the identification of regional labour market needs, may display some contradiction with line i) of the above-mentioned article of the draft Directive.

Another difference between Portuguese Law and the Commission Proposal concerns the time of residence in the host country necessary to obtain long-term residence status. Despite the time reduction introduced by the DL no. 34/2003, non-EU foreigners coming from non Portuguese-speaking countries still need 8 years to be eligible for long-term residence status (article 85)³². In order to comply with the contents of the draft Directive, an additional harmonisation effort must be introduced in Portuguese legislation.

Concerning the withdrawal of the long-term residence status, both the draft Directive and article 93 of the DL no. 34/2003 mention two years of not clearly justified continuous absence from the host country as a justification for the loss of the status.

As far as the expulsion of long-term residents is concerned, article 101 of the Portuguese DL is very much in line with the contents of COM(2001) 127 of 13 March. In Portugal, the expulsion of long-term foreign residents is only possible if they are sentenced to more than one year in prison and only in cases considered a threat to public order or national security. Even in these cases, the decision of expulsion is only applied after considering individual elements such as the length of residence in Portugal, the level of insertion in Portuguese society, the effective exercise of parenthood of a minor children and the age of arrival in the country (foreigners who settled before the age of 10 cannot be expelled).

³² As mentioned in previous chapters, PALOP citizens only need 5 years of continuous residence to obtain this status.

Chapter 4: Recommendations and open method of co-ordination

Most relevant policy issues regarding the management of migration flows and the integration of immigrants were discussed in the previous chapters. To conclude, we would like to address two additional topics and, finally, to identify a certain number of policy issues that need a reform or, at least, a deeper debate.

First, the National Immigration Plan that the Portuguese Government is currently preparing may respond to the majority of the points mentioned in COM (2001) 387. The idea of estimating the necessary number of immigrants (actually, the intention is to establish a clear maximum per year that can not be exceeded) in relation with the labour market (and social) capacities of the country, matches the ideas expressed in the Commission document.

As far as co-operation issues are concerned, Portuguese legislation is relatively poor. Despite some advantages given to nationals from Portuguese-speaking countries, Portuguese immigration policy, especially concerning the management of flows, seems to be dominated by security issues and is basically directed towards the satisfaction of labour market needs. The co-operation with countries of origin, not mentioned in the new law, is envisaged in the policy discourse as a means of preventing further immigration.

The support of voluntary return in co-operation with IOM is mentioned in article 126-A of the DL no. 34/2003. However, this voluntary return leads to the loss of long-term residence status and prevents foreigners who benefited from this help to come to Portugal for a period of 5 years. This last disposition seems to be too strict and contrary to the spirit of co-operation between home and host countries that may benefit from the experience of immigrants, ex-immigrants and transmigrants.

In addition to this last issue, and taking into consideration what has been discussed in this report, a revision of Portuguese immigration policy should follow a path envisaging a certain number of changes, in particular:

- Opening the concept of resident foreigner in order to grant the same rights to all foreigners settled in Portugal, including those who got “temporary”-stay (*permanence*) permits under Law no. 4/2001 of 10 January. Additionally, foreigners coming from non Portuguese-speaking countries should also be allowed to obtain long-term residence status after five years, and not eight.
- As far as labour migrants are concerned, the present policy should be combined with the concession of a certain number of visas for job seeking in Portugal, valid for a certain period of time. Taking into consideration the Portuguese experience and also the experience of other southern countries of the EU, this could be an additional contribution to the fight against illegal immigration.
- Changing the nationality law, and facilitating the access of children of immigrants to Portuguese citizenship.
- Moving one step forward in the extension of political rights, giving the right to vote in local elections to all foreigners settled in the country after a certain number of years, and eliminating the reciprocity *clausula*.
- Changing the Portuguese network of embassies and consulates in order to adjust it to the reality of a country of emigration and immigration, and also to deal with the different origin of the most recent waves of immigrants.

Nevertheless, all these issues must be set in the context of the ongoing national debate on immigration issues. Despite the increasing number of sessions, discussions

and media presentations about the presence of immigrants in Portuguese society and Portuguese immigration policy, new topics and new participants must be called into the process. For example, the relationship between demography and immigration needs to be debated further, as well as questions of transnational belonging and co-operation between countries of origin and host countries (and the Portuguese emigration experience may be a relevant element to incorporate in this process). In addition, there is still a deficit, not just in the incorporation of private companies in the national debate on immigration, but also in the promotion and diffusion of good practices in this domain.

Organisations' profiles

Luso-American Foundation - The Luso-American Foundation (FLAD) is a private non-profit grant and loan-making institution. It aims to contribute to Portugal's social and economic progress primarily by encouraging corporate, educational, scientific, technological and cultural co-operation between Portugal and the U.S. FLAD has concentrated particularly on backing, among others, socio-economic research and projects in domains such as regional planning, environment and international migration. FLAD is a member of the International Metropolis Project/Network.

www.flad.pt

Centro de Estudos Geográficos – The Centro de Estudos Geográficos (CEG) is the research partner of FLAD in the partnership *European Migration Dialogue*. The Centro de Estudos Geográficos of the University of Lisbon is the oldest Portuguese research institution in the field of Geography, with continuous activity since 1948. Presently, the CEG aggregates more than 50 researchers from the different fields of Geography involved in several national and international projects. In the domain of migration, CEG is currently developing projects, such as “Reinventing Portuguese Metropolis” (sponsored by the Portuguese Foundation of Science and Technology) and “Study of Family Reunion Perspectives” for the High Commissariat for Immigration and Ethnic Minorities.

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