



TEMPORARY AND  
CIRCULAR MIGRATION  
IN PORTUGAL:  
FACTS, POLICIES  
AND STRATEGIES



# **Temporary and Circular Migration in Portugal: Facts, Policies and Strategies**

**European Migration Network**

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## **Executive Summary**

Over the course of the past decade Portugal has played a new role in the international migration system, especially in terms of the European migratory system. It has ceased to be a nation with residual immigration and significant emigration and has undergone different migratory waves that witnessed the entry and exit of migrants, consolidating its role as a nation of immigration while simultaneously emerging as a nation of emigrants (which it never really ceased to be). During this process the types of migratory fluxes from (and to) Portugal have changed and become more complex, as have the origins of the immigrants, the frequency of migratory fluxes and the total period during which these migrants stay in the country.

An analysis of Portuguese legislation reveals that over the course of the past two decades immigration policies in Portugal have emphasised framing immigration in the country as a long-term or permanent process and that a substantial part of legislative efforts are aimed at inserting and integrating immigrants, from the perspective of a long or permanent stay.<sup>1</sup> Apart from a set of policies aimed at promoting an effective social integration of immigrants into Portuguese society, encouraging social cohesion in the country (e.g. the Immigration Integration Plans), Portuguese migration policies have underscored the integration of immigrant labour, thus promoting a better insertion into Portuguese society. The regularisation of immigrants living in Portugal in an irregular situation, along with the changes introduced by the Immigration Law and the Nationality Law are just some examples of this process.

These policies were created with a view to integrating immigrants into Portuguese society and a set of extraordinary regularisation procedures emphasised the central role of labour in migration processes, enabling immigrants who were already working in the national territory to legalise their situation. Policies facilitating family reunification as well as the fact that a broad set of fundamental rights were extended to include immigrants in the national territory (e.g. access to healthcare, access to education) served to further consolidate an ambitious policy aimed at integration. These policies were further consolidated in 2006 by a new Nationality Law, widely considered to be an example of generous and humanist legislation, which allows immigrants legally resident in Portugal to access Portuguese nationality and thus to be fully inserted into Portuguese society, overcoming the constraints faced by foreign nationals. In this context, an analysis of Portuguese migration policies

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<sup>1</sup> As mentioned by Convey & Kupiszewski (1995, pp. 954-958), there are multiple policies directly and indirectly related to migration, including those related to the recognition of qualifications, social security, healthcare and ethnic minorities.

reveals that the respective national strategy is based on the presupposition that the majority of immigrants would access a long-term or permanent statute and legislation was thus developed so as to promote their integration and national social cohesion.

At the dawn of the 21<sup>st</sup> century Portuguese migration policies changed for a short period and became closer to a model of medium-term temporary migration (up to five years). The creation of Stay Permits (*Autorizações de Permanência* or AP for short) reflected a perspective whereby the labour market would determine, every year, the period during which these working migrants stayed in the country, i.e. the cycles of the market for immigrant employment would tend to accompany economic cycles. Programming for migratory quotas essentially entailed estimating the volume and type of migratory flows, which then served as the basis for issuing visas. Subsequently, the state regulated the volume of immigration present in Portugal, at least partially, by means of a mechanism of granting (2001-2003) and renewing stay permits every year. This regime was revoked by means of the changes introduced in the Immigration Law in 2003 and was never resumed thereafter.

It is only recently that the immigration policies of the Portuguese state have sought to react explicitly to the phenomenon of temporary or circular migration, although Portuguese legislation has contemplated a set of possibilities that have encompassed this kind of short or medium-term migration since the 1990s.

With regard to the conceptual aspects and the legal framework, Portugal is essentially accompanying the approach of the European Union (EU): in recent years it has viewed circular migration as a type of migration that has a great deal of potential, even though it does not yet play a significant role in terms of the panorama of migration in the country, while temporary migration is viewed as a way of resolving difficulties arising from a scarcity of labour in different sectors, by managing migratory fluxes.

The evolution of Portuguese legislation has followed the political strategy of the EU in this regard, especially the Council Conclusions of December 2007 in the context of pursuing an overall European strategy pertaining to migration so as to complement the policies of Member States.<sup>2</sup> Different stances assumed by members of the XVII and XVIII Constitutional Governments in Portugal and the participation of representatives of diverse Portuguese institutions in various

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<sup>2</sup> Accessed on 30 August 2010 at the following website:  
[http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressdata/pt/ec/97682.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/pt/ec/97682.pdf)

multilateral events reflect the existence of a *quasi* national strategy with regard to circular migration and temporary migration although the results cannot yet be ascertained on the basis of current migration statistics.

Law No. 23/2007, of 4 July, known as the Immigration Law (regulated by Regulative Decree No. 84/2007, of 5 November), is the legislative diploma that currently regulates the entry, stay, exit and removal of foreign nationals in Portuguese territory.<sup>3</sup> It consecrates the Portuguese legal framework with regard to circular or temporary migration, as well as the legal solutions that are aimed at reinforcing this kind of migration.

Portugal established the first agreement for temporary migration with Cape Verde in 1997 (which was revised within the scope of a multilateral EU agreement in 2007) and approved a bilateral agreement concerning temporary migration with Ukraine in 2003. The latter agreement resulted in the creation of an experimental programme for temporary migration by Ukrainian workers to Portugal, with a view to establishing migratory rotation in the context of professions subject to seasonal offers of employment (e.g. tourism, fishing or agriculture). This is a pilot project developed between Portugal and Ukraine with regard to temporary and circular migration, which will be subject to an assessment so as to identify the limitations and advantages of this programme and it is the main innovation that Portugal can contribute to this debate.

With regard to circular migration, it is important to note that Portugal does not have an active policy of incentives, even though the Immigration Law contains a set of provisions that are aimed at promoting the circular nature of migration, namely, by increasing the periods during which immigrants who hold residence visas are allowed to be absent from the national territory and allowing those who have returned voluntarily to their countries of origin the possibility of being able to return to Portugal. However, there are no records specifically pertaining to this circular process, which hinders an appraisal of the suitability of these legislative measures.

The possibility of conceiving programmes for circular migration, according to Portugal's needs, appears to be an example of a best practice that could be developed further. These programmes, designed on a case-by-case basis, will enable migrants to enter Portugal to work, study or engage in other activities during a given period. These migrants will be able to avail of a privileged channel for access created in accordance with the specific procedures of the institutions of the states

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<sup>3</sup> For an updated compilation of this legislation see: <http://sites.google.com/site/leximigratoria/legispedia-sef/links>.

involved. After being assessed, the pilot programme developed jointly with Ukraine will make it possible to ascertain the advantages and disadvantages of the system in real conditions.

An aspect that is worthy of note is the fact that if this kind of immigration is badly organised and managed it can easily become permanent, thus undermining the intended objective.

Very little data is available in terms of statistics pertaining to the issue of temporary and circular migration. In Portugal there is no statistical information about permanent or temporary immigration returning to the country of origin in the context of third country nationals resident in the country. Similarly, there is no specific statistical information about temporary immigration by third country nationals, especially with regard to Brazilian citizens in the context of activities allowed under the regime of being exempt from the requirement of possessing a visa to enter Portugal.<sup>4</sup> In terms of the quality of information about the resident foreign population (holding residence permits), there are few variables available with regard to this stock and the information has not been updated sufficiently (e.g. the data was compiled only during the first application, up to 2008, without updating renewals or subsequent changes in status, while all exits from the national territory are not monitored). In short, the statistical information available for this study is not very relevant and a new statistical structure would be necessary to analyse the phenomenon of contemporary migration, more specifically with regard to circular and temporary migration, a multi-faceted phenomenon with diverse and complex dynamics.

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<sup>4</sup> Agreement signed between the Portuguese Republic and the Federative Republic of Brazil regarding Facilitating the Circulation of Individuals, approved by Decree No. 43/2003, of 24 September, in the aspect that establishes a regime of exemptions from visa requirements for stays of up to 90 days (extendable for a similar period), for artistic, cultural, scientific, corporate, journalistic or sports purposes or academic internships. Accessed on 30 August 2010 at the following website: [http://www.idesporto.pt/DATA/DOCS/LEGISLACAO/doc05\\_045.pdf](http://www.idesporto.pt/DATA/DOCS/LEGISLACAO/doc05_045.pdf).

## **1. Introduction: Purpose and Methodology**

The main objective of this study is to understand, in legal terms and from the perspective of institutional practices, the characteristics of temporary labour migration and circular/repetitive migration by third country nationals in Portugal, over the course of recent years, especially after the entry into effect of the current immigration law – Law No. 23/2007, of 4 July – which approved the juridical regime for the entry, stay, exit and removal of foreigners from the national territory.<sup>5</sup>

This study will also examine the way in which the legislative and political strategies that have been adopted over the course of the past two decades in Portugal have contributed towards implementing an effective process for temporary labour migration and/or circular/repetitive migration. Another aspect that will be contemplated herein is how pertinent EU policies and legislation have helped define the Portuguese legal framework that promotes and regulates such migration.

This study will also seek, as far as possible, to assess the effectiveness of policies pertaining to migration by analysing the evolution of the migratory fluxes examined in the course of this document. Finally, it will describe some of the projects that have already been implemented with a view to establishing a programme for temporary labour migration and/or circular/repetitive migration to Portugal, highlighting the best practices detected and summarising any shortcomings that hinder the full potential of prevailing legislation.

The target audience of this study comprises, above all, political decision makers, at a national and EU level, who, by means of this document, can avail of an overview of the potential and limitations of temporary, circular and/or seasonal migration to (and from) Portugal. This target audience also includes the technical staff involved in implementing state policies in the field of migration as well as other agents working in the area in question, namely, social partners, non-governmental organisations, immigrant associations and human rights associations, academics, researchers in the area of the social sciences and journalists, amongst others. Similarly, this study could also be of interest to an emerging group of entrepreneurs and/or businessmen who use flexible labour owing to the vagaries of the labour market and thus interface with the kind of immigration profiled herein. It could likewise be of use to citizens concerned about the issue of international migrations, which, as is known, is an issue that, in recent years, has become increasingly prominent in the public sphere.

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<sup>5</sup> Law No. 23/2007, of 4 July. Accessed on 30 August 2010, at the following website: <http://www.sef.pt/documentos/56/NOVA%20LEI%20ESTRANGEIROS.pdf>

This report was produced by the [National Contact Point](#)<sup>6</sup> (NCP) of the [European Migration Network](#)<sup>7</sup> (EMN), provided by the [Aliens and Borders Service](#)<sup>8</sup> (SEF), which avails of the research and consultation support of [Númena – Centre for Research in Social and Human Sciences](#)<sup>9</sup> in the area of the social and human sciences while complying with the EMN tasks for 2010. This report was prepared by Pedro Góis, seconded by Sílvia Lima.

## 1.1 Methodology

### 1.1.1 Methodology adopted to identify sources

As a methodological strategy, this study has considered the hypothesis or presupposition that migratory policies and realities have the potential for or evidence a *de facto* lack of alignment. This lack of synchronicity could be merely temporal – international migrations take some time to react to changes resulting from the legislation governing such migrations – or, as is more often the case, could be the product of prevailing legislative shortcomings in the context of the increasingly complex and dynamic reality of international migrations. The evolution of local labour markets (Sassen 1995), the main recipients of migratory fluxes, requires a flexible legal framework and streamlined bureaucratic processes that can adapt to economic cycles and scenarios. However, empirical observations have demonstrated that the reception of fluxes and the approval of legislation only rarely occur in harmony.

This report approaches the way in which the characteristics of temporary labour migration and circular/repetitive migration by third country nationals to Portugal are viewed in legal terms and in the context of institutional practices. It will examine these aspects at two levels: at the level of policies and at the level of the empirical reality of immigration (not exclusively labour immigration). In this sense, this study will analyse the broad lines of the Portuguese state's policies pertaining to temporary labour migration and circular/repetitive migration during the past decade, while simultaneously attempting to provide a profile of the migratory movements that effectively occurred from (and to) Portugal, which can be framed within this definition.

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<sup>6</sup> Accessible at the following website: <http://rem.sef.pt/>.

<sup>7</sup> Accessible at the following website: <http://emn.sarenet.es/>.

<sup>8</sup> Accessible at the following website: <http://www.sef.pt/>.

<sup>9</sup> Accessible at the following website: <http://www.numena.org.pt/entrada.asp>.

The methodology followed in this report is based on a triangulation of different research methods and techniques that are deemed to be complementary (Tashakkori & Teddlie 1998), namely: an analysis of documentation, statistical analyses and interviews with privileged informants. In this case, the choice of a mixed approach – which deals with the empirical object on the basis of pre-existing documents, reports and statistics while simultaneously seeking to reduce complexity by means of observation as a mediation mechanism – proved to be the sole methodology possible in order to obviate the scarcity of statistical data about the types of migration studied.

The choice of sources was determined by the requirements of the specifications produced by the [European Migration Network](#) (EMN) for this study. Once the necessary information had been determined, this study identified the sources that could best provide this information, a task carried out by the researchers who prepared this study in close articulation with the SEF. The existence of a National Migration Network, dynamised by the NCP, made it possible to streamline the procedures for obtaining information from the government bodies that are part of this network. The collaboration of the authors of the study entitled *Satisfying Labour Demand through Migration in Portugal* proved to be essential in terms of accessing unpublished statistics and documents as were the concise summary tables that were prepared for the said study. In the case of sources for qualitative information, namely legal documents and annotated analyses of such documentation,<sup>10</sup> preference was given to official sources, such as the [SEF Internet portal](#). A consultation of the reports regarding the demand for labour and other reports prepared by the Portuguese Institute for Employment and Vocational Training (IEFP) about the implementation of the overall quota was an important tool for profiling temporary migration and existing recruitment processes. Consultations of the [IEFP NETemprego Portal](#) and the [IEFP Netemprego Portal for immigrants](#) made it possible to ascertain the way in which offers of employment were publicised and the pertinence of the information provided.

As in the case of the study entitled *Satisfying Labour Demand through Migration in Portugal*, this study also analyses two main types of secondary sources: legislative documents and official statistics. These sources are considered to be privileged means of accessing legal procedures, institutional practices and the characteristics of temporary labour migration and circular/repetitive migration by third country nationals from (and to) Portugal. The study has also availed of inputs from a set of organisations/institutions, interviewing their representatives or perusing unpublished

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<sup>10</sup> Accessible at the following website: <http://sites.google.com/site/leximigratoria/legispédia-sef/texto-da-lei> (consulted in July, August and September 2010).

reports pertaining to projects directly related to the subject being examined herein. Various “privileged informants” were interviewed in order to obtain information directly related to projects for temporary migration, circular migration or means of functioning, namely within the scope of “practical communities” or “epistemic communities”.

### **1.1.2 Types of information and types of sources**

In order to provide the quantitative information requested in point 3 of the specifications this study used as a reference the data available on the newly created [Aliens and Borders Service Statistics Portal](#) (data obtained through the SEF’s Integrated Information System and available in the annual published reports). This is the best source available since it is based on coherent and harmonised statistical information about the foreign population in Portugal. This study also used the statistical data published by the High Commission for Immigration and Intercultural Dialogue (ACIDI)<sup>11</sup> and the IEFPP to obtain a set of data regarding offers of employment for non-resident foreigners, along with reports concerning the demand for labour and IEFPP reports about the implementation of the overall quota.

### **1.1.3 Organisations that were contacted and which cooperated in this study**

Diverse organisations and institutions were contacted in order to prepare this report, namely: SEF – at its headquarters as well as various delegations in Portugal and liaison officials in Portuguese embassies abroad; International Organization for Migration (IOM); IEFPP; ACIDI; the Portuguese National Statistics Institute (INE); Portuguese Confederation for Agriculture and HUBEL Portugal. All these organisations and institutions cooperated to provide the requested information.

### **1.1.4 Difficulties faced**

Various difficulties were encountered while preparing this study, none of which were, however, sufficient to obviate its preparation. It is important to highlight the dearth of specific studies about the Portuguese case with regard to circular or temporary migration, the absence of statistical data about such migration and even a conceptual overlapping between the terms used to define these migratory fluxes in the Portuguese context. Difficulties in being able to access some official reports also constituted an impediment that delayed the conclusion of the tasks.

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<sup>11</sup> Accessible at the following website: <http://www.acidi.gov.pt/>.

### **1.1.5 Divergences from specifications**

The main divergence has to do with the difficulties encountered in presenting updated statistical tables as requested in point 3 of the specifications for this study. This was due to the limitations of the quantitative sources available in Portugal, namely at the level of the segregation of data and/or the circulation of this data. Another difficulty was related to the fact that several of the programmes and projects pertaining to the subject of this study are still underway and data is not yet available that would enable an effective appraisal of their impact. This is the case with the pilot project developed by Portugal and Ukraine with regard to temporary and circular migration, whose assessment in the near future will be essential in order to understand the difficulties faced by such programmes and the best practices that can be learnt from such experiences. With regard to this case, in particular, since it is an innovative pilot study, it would be advisable that when the conclusions of the assessments are finalised and made public, they be associated with this study.

### **1.1.6 Caveats**

As in the case of the study entitled *Satisfying Labour Demand through Migration in Portugal*, it is important to highlight the fact that the quantitative data that was available for the preparation of this report had many shortcomings, from the point of view of the requirements stipulated in the respective specifications. For example, the SEF data pertaining to the flows and stocks of labour immigrants per year are not classified with the level of segregation required by the guidelines for this thematic study, more specifically with regard to the qualifications of temporary migrants. This lack of alignment is both due to insufficiencies at the level of recording data as well as difficulties in articulating existing databases. The category of “seasonal worker” is not even contemplated in the records of this database, since such labour has not yet been typified in Portuguese legislation. Similarly, the legislative changes implemented over the course of the last decade (namely in 2003, by the Immigration Law, [Decree-Law No. 34/2003, of 25 February](#) and by [Law No. 23/2007, of 4 July](#)) introduced numerous alterations in the typologies of visas and stay, residence or work permits in effect in Portugal. These changes likewise impede an effective comparison between the different categories, since they introduced various divergences in the statistical series over the course of very short periods of time. It is also essential to note the fact that both temporary migration as well as circular migration are, in general, types of migration that are hard to detect given the existing system of recording entries and exits in the set of nations that form the EU.

## 1.2 Definitions

The main concepts of this study have been used, whenever possible, with the meaning that has been attributed to them in the specifications for this study and in conformance with the [EMN European Glossary for Migration and Asylum](#).<sup>12</sup> However, it was not always possible to ensure a total harmony in terms of concepts, since there are some divergences between the definitions in the glossary and the definitions adopted in Portuguese legislation and official documents, which had to be used while describing national legislation and policies. On the other hand, the concepts and reality are occasionally out of alignment (the latter being far broader in scope), making it necessary to go beyond the limits of the concepts so that the national study is not bereft of interest and objectivity.

Portuguese legislation contains a set of clear concepts such as those pertaining to: seasonal or short-term migration; return migration; migration for studies (including student exchanges, unpaid training and voluntary activities); migration to engage in research and development activities (R&D) and research and technological development (R&TD); and/or temporary migration, as well as another set of more fluid concepts regarding circular migration or migratory “circularity”.

On the other hand, the definition of each of the groups of immigrants encompassed by this study is liable to generate some overlapping between some of the concepts (e.g. between seasonal migration, temporary migration, circular migration) and, in some cases, a relative lack of definition with regard to the preferential criteria for classifying immigrants in one category of another. For example, there is not yet a rigorous definition for what would transform “repetitive seasonal migration” into “circular migration” or what distinguishes the seasonability of migratory temporality in an initial migratory moment.

To better clarify the definitions used, this study has opted to segment the two main concepts (circular migration and temporary migration) into their various components, seeking, over the course of this document, to consolidate the dimensions that characterise them by comparing them with legislation, institutional practices and the data being analysed.

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<sup>12</sup> *Asylum and Migration Glossary – A Tool for Better Comparability*, produced by the European Migration Network. Accessed on 28 July 2010 at the following website: <http://rem.sef.pt/forms/content.aspx?MenuID=2&Publico=1>.

In keeping with the reference framework of the European Union<sup>13</sup>, the Portuguese state has viewed **circular migration** as a form of migration that is capable of enabling a certain degree of mobility for immigrants between the country of origin and the destination country and vice-versa, in a back and forth and legally regulated movement. Thus, according to Portuguese legislation:

- (i) Immigrants who are legally resident in Portugal can be absent from Portuguese territory to legally engage in an activity (e.g. trade, freelance activities, voluntary or other activities) in their country of origin, as a contribution towards development, without losing their status of resident. After returning, such migrants can maintain a privileged form of mobility based out of Portugal; and
- (ii) Third country nationals are allowed to enter Portugal on the condition that, after a given period of time (which has been defined beforehand), they will return to their country of origin, which is their main residence. After returning to their homeland, such migrants can maintain a privileged form of mobility in which Portugal is the destination (e.g. circularity, seasonability, etc.).

These are the general presuppositions that frame the type of migration being studied herein, in keeping with the national legislation.

In Portugal **temporary migration** can be divided into two types:

- (i) temporary labour migration with contracts (dependent or independent labour); and
- (ii) temporary migration for purposes of studies.

Temporary migration takes place while engaging in a professional activity of a temporary, seasonal or short-term nature without exceeding a period of six months, except when the activity is carried out within the scope of an investment contract.<sup>14</sup> In migration for purposes of studies, third country nationals can temporarily move to Portugal to study or pursue training (or a combination of these two activities), as long as, at the end of the period for which they have been allowed to enter, they re-establish their main residence and activity in their country of origin.

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<sup>13</sup> Listed in the specifications for this study: “Specifications for EMN Study on Temporary and Circular Migration”.

<sup>14</sup> Article 3 and Article 56 of Law No. 23/2007, of 4 July. Consulted on 30 August 2010, at the following website: <http://www.sef.pt/documentos/56/NOVA%20LEI%20ESTRANGEIROS.pdf>.

It is possible to arrive at a more complex definition of “circular or temporary migration” at a second analytical level. This study has adopted a broad definition of “circular or temporary migration”, which contemplates diverse categories of immigrants, namely, third country nationals who come to Portugal to engage in temporary labour activities; immigrant workers with a seasonal job; immigrants who are in Portugal for studies and skilled or highly-skilled immigrants who engage in research and development activities and/or research and technological development activities (R&D and R&TD). This definition likewise also included immigrants resident in Portugal who return temporarily to their countries of origin for periods that are longer than a given time frame (for example, for periods greater than 90 days) but with the expectation of returning to Portugal after a certain period.

These definitions cannot be disassociated from the framework of the question of the broader scope of the EU, on the one hand, and what can be called the “Portuguese-speaking space” on the other.<sup>15</sup> In the context of the former it is important to note political and legislative factors, more specifically the right of establishment and the circulation of people and supplying services, as well as the framework of a common policy for immigration and asylum<sup>16</sup>; and the Schengen agreement. The “Portuguese-speaking space”, based on “privileged ties of friendship and cooperation with Portuguese-speaking nations” (Art. 7(4) of the Constitution of the Portuguese Republic), is a political and constitutional pillar of Portuguese foreign affairs, manifested in the possibility of attributing to nationals of such countries rights that are not granted to other foreigners. In a dimension that combines foreign relations and immigration, this framework is reflected in certain aspects of the legal framework, evidenced in a set of projects and programmes that have been dedicated to these nations.

In fact, these definitions are, as this study will seek to demonstrate in the Portuguese case, conditioned by two main influences, namely, the bilateral or multilateral relationship established in recent decades by the EU and/or Portugal with some third countries (e.g. Ukraine, Cape Verde or Moldavia) or groups of countries (e.g. the Community of Portuguese Speaking Countries) and, on the other hand, the history of migrations from (and to) Portugal, contextualised by the respective legal framework and pertinent international agreements (e.g. social security agreements), which are of noteworthy juridical relevance.

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<sup>15</sup> This Portuguese-speaking space has been formalised as the Community of Portuguese-Speaking Countries (CPLP), whose members include (apart from Portugal) Angola, Brazil, Cape Verde, Guinea-Bissau, Mozambique, São Tomé & Príncipe and Timor-Leste.

<sup>16</sup> Consecrated by the 1997 Amsterdam Treaty.

If one adds to this range of influences existing EU political options and legal instruments it is clear that – as could be expected – Portuguese migratory policies have been largely stimulated by policies originating in the socio-political spaces in which the country is inserted and, on the other hand, still depend greatly on bilateral diplomatic relations. The different bodies of the European Union, while wielding their specific competences, directly or indirectly influence – according to their specific attributions – the national legislation of EU Member States (Boeles *et al.* 2009; Currie 2008; Guild *et al.* 2009). At the same time, some of the bilateral agreements concerning migration signed by Portugal suggest a reactive action to the presence of immigrant communities in the national territory and have been implemented after extraordinary procedures for regularisation in which these communities had a relevant visibility. In other words, the presence of immigrant communities in Portugal has likewise mobilised political priorities and legislative choices on the part of the Portuguese state, thus being an influence in terms of the preparation of Portuguese policies pertaining to migration, both by means of internal actions as well as on the initiative of relevant third countries.

## **2. Portugal's approach to circular and temporary migration**

### **2.1 National strategy, policies and programmes**

In the context of Portugal's migratory policies, the main objective of Portuguese legislation is to encompass the three main alternatives present in a migratory project (return, stay and/or circulation). These alternatives are determined by a complex set of variables of which the legal framework of the destination country is only one part, it being necessary to also contemplate the history of migrations, policies aimed at integration, periodic and structural opportunities in the labour market, amongst others.<sup>17</sup>

An analysis of the immigration scenario in Portugal reveals that over the course of the last two decades, Portuguese policies have favoured viewing immigration as a long-term or permanent process, a substantial part of legislative efforts being aimed at inserting and integrating immigrants, from the perspective of a long-term stay. Apart from a set of policies aimed at promoting an effective social integration of immigrants into Portuguese society, stimulating the nation's social cohesion (e.g. reflected in the Immigrant Integration Plans), Portuguese migration policies have favoured the labour integration of immigrants, thus encouraging a better insertion into Portuguese society. The regularisation of immigrants in an irregular situation as well as the changes in the Immigration Law and the Nationality Law are examples of such efforts.

The basis of these policies is to integrate immigrants into Portuguese society. A set of extraordinary regularisation procedures emphasised the key importance of employment in migration processes and enabled immigrants who were already working in the national territory to legalise their situation. Policies aimed at family reunification as well as the extension of a broad set of fundamental rights to include immigrants present in the national territory (e.g. access to healthcare, access to education) serve to consolidate an ambition policy of integration. These policies were further augmented in 2006 by a new Nationality Law, generally considered to be generous and humanist, which enables immigrants legally resident in Portugal to access Portuguese nationality and thus be fully inserted into the host society, overcoming the constraints experienced as foreigners. In this context, an analysis of migratory policies reveals that the national strategy is

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<sup>17</sup> As mentioned by Convey & Kupiszewski (1995, pp. 954-958), there are multiple policies directly and indirectly related to migration, including those related to the recognition of qualifications, social security, healthcare and ethnic minorities.

based on the presupposition that the majority of immigrants would access a long-term or permanent status and legislation has been implemented with a view to promoting their integration and national social cohesion.

In the transition from the 20<sup>th</sup> to the 21<sup>st</sup> century migratory periods were altered for a brief period and drew closer to a model of medium-term temporary migration (up to five years). The creation of Stay Permits (AP) reflected the adoption of the perspective that the labour market would dictate, annually, the duration of the period during which these labour migrants would stay, i.e. the cycles of the immigrant employment market would tend to accompany economic cycles. The programming of the migration quotas served to estimate the volume and the type of migratory flows and guided the issuing of visas. Subsequently, the Portuguese state regulated the volume of immigration present in Portugal, at least partially, by means of the mechanism of granting (2001-2003) and annually renewing stay permits. This regime was revoked by means of the changes introduced in the Immigration Law in 2003 and was never resumed.

It is only recently that the immigration policies of the Portuguese state have sought to react explicitly to the phenomenon of temporary or circular migration, although Portuguese legislation has contemplated a set of possibilities that have encompassed this kind of short or medium-term migration since the 1990s.

### **2.1.1 The State's view of circular and temporary migration in Portugal**

The approach to “circular migration”, as presently understood in Portugal, is derived from the communiqué issued by the European Commission to the European Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions regarding circular migration and partnerships for mobility between the EU and third countries,<sup>18</sup> implementing the 2005 Hague Programme.<sup>19</sup> Enriched by reflections and debates about this subject, this communiqué lists the presuppositions for this type of migration and the objectives to be pursued so as to result in a *win-win-win* situation, involving the country of origin, the migrant and the destination country. In this pioneering document, “circular migration” (or “migratory

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<sup>18</sup> Communiqué dated 16 May 2007, COM (2007) 248 final. Accessible at the following website: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0248:FIN:EN:PDF>.

<sup>19</sup> As part of the Hague Programme the Council proposed a comprehensive approach towards migration as a means of improving the capacity to manage migratory fluxes, preventing and combating illegal migration and promoting channels for legal migration, thus integrating immigration into relations between the European Union and third countries.

circulation” in an alternative formulation) is defined as being a regulated, repetitive and cyclical alternating mobility (country of origin-country of destination). The scope of this definition goes beyond the definition traditionally used for migration, drawing closer to the concept of a concerted management between countries of origin and destination. This concept is part of a vaster paradigm of promoting and managing a selective migration as an ideal parameter for the EU. Moreover, it also combines the dimension of development assistance, seeking, by means of “migratory circularity” to combat the drain of human resources migrating from less developed to more developed nations.

In this study the definition of circular migration and temporary migration in Portugal must, perforce, be framed within the scope of a global approach towards migration adopted by the EU Council and, more specifically: the Conclusions of the EU Council regarding Partnerships for Mobility and Circular Migration within the scope of a Global Approach, adopted on 10 December 2007, compiled in a set of political documents containing the main guidelines regarding this subject.<sup>20</sup>

In a generic manner it is possible to define **circular migration** as being a temporary and legal transfer of third country nationals<sup>21</sup> for the purposes of work, study, research or training in Portugal, or the transfer of third country nationals resident in Portugal to their countries of origin with a view to remaining there for a certain period of time, later returning to the sites of initial residence,<sup>22</sup> in a repetitive movement. **Temporary migration** can be defined as a temporary and legal transfer of third country nationals to Portugal to temporarily engage in a professional activity or studies, research or voluntary activities, in a seasonal or non-permanent manner.

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<sup>20</sup> See, namely, the European Commission Communiqué regarding Circular Migration and Partnerships for Mobility between the EU and third countries, adopted on 16 May 2007; the Conclusions and the Action Plan of the Ministerial Conference regarding migration and development held in Rabat in July 2006 and the Partnership regarding Migration, Mobility and Employment adopted by the second EU-Africa Summit on 9 December 2007. All these documents have been mentioned in the specifications for this study - “Specifications for EMN Study on Temporary and Circular Migration” available at the following website: <http://tiny.cc/ffp0p5n60l>.

<sup>21</sup> The juridical regime governing the entry, stay, exit and removal of foreign citizens from Portuguese territory contained in the Immigration Law does not prejudice the special regimes envisaged in international conventions signed by Portugal; moreover, except for express references to the contrary in the Immigration Law, the entry of citizens of EU nations or countries that are part of the European Economic Space is governed by specific legislation (cf. articles 4 and 5 of the Immigration Law and art. 16 of the 2003 Immigration Law). Citizens encompassed by the EU regime are subject to the principle of freedom of circulation and residence. Cf. Law No. 37/2006, of 9 August, which revokes Decree-Law No. 6/93, of 3 March, modified by Decree-Law No. 250/98, of 11 August, which regulated the special conditions for the entry and stay in Portugal of foreign nationals who are citizens of EU Member States, including their family members and family members of Portuguese citizens.

<sup>22</sup> Adapted from: [http://www.dgai.mai.gov.pt/cms/files/conteudos/hiperl\\_AGM%20MigrCirc\(1\).pdf](http://www.dgai.mai.gov.pt/cms/files/conteudos/hiperl_AGM%20MigrCirc(1).pdf).

Employment is a key element of both these definitions, emerging as a concept that links migration and its characterisation as “circular” or “temporary”, expressing a recent priority of European migratory policies, which favour labour immigration or immigration to engage in an economic activity, according to the needs of the host nation, safeguarding a more or less obligatory return to the countries of origin after a predefined period of time. On the other hand, promoting the benefits of this migration in the countries of origin is also a key factor and a great challenge for these processes. Combining the demand for labour in the labour markets of the European nations with a flexible supply, thus being able to meet periodic needs without permanent migration has emerged as an EU strategy for the near future and Portugal has sought to accompany this strategy in legislative terms, within the scope of its migratory policies.

As has been mentioned, the dimension of employment as a key element in terms of regulating migratory fluxes has emerged as a primary tendency of the migratory policies of the Portuguese state over the course of the past two decades.<sup>23</sup> In this regard, these migratory policies have been constructed around two main segments for the insertion of immigrants in a labour market assumed to be of a dual nature: (i) a segment that is characterised by a demand for highly-skilled immigrants and (ii) another segment encompassing semi- or unskilled immigrants. With regard to temporary migration, Portuguese legislation has contemplated this solution since 1990, seeking to provide a legal framework allowing sojourns for a typology of immigrants that does not intend to stay for long periods or in a permanent manner in the national territory.<sup>24</sup> The attempt to respond to the different types of applications by immigrants in terms of the time frame for their migratory project – permanent immigration, temporary immigration or migratory circulation – has, in our view, been perfectly framed in legislative terms, albeit with different levels of precedence.

Presently, the national strategic vision conceives of circular and temporary migration as an integral part of a global approach to migration, viewing these processes as relevant mechanisms to provide

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<sup>23</sup> Cf. The European Migration Network Study entitled *Satisfying Labour Demand through Migration in Portugal*.

<sup>24</sup> The origin of entry and stay permits for engaging in labour activities for short periods, which did not entitle the holder to the right of residence, dates back to the temporal limitation of work visas implemented by the norms contained in Art. 18(4) and Art. 32 of Decree-Law No. 59/93, of 3 March, determining that it be granted up to a limit of 90 days, extendable just once for a period of up to 60 days (accessible at the following website: <http://dre.pt/pdf1sdip/1993/03/052A00/09290943.pdf>). Allowing holders of temporary stay visas to engage in professional activities had already been envisaged in Art. 38(2) of Decree-Law No. 244/98, of 8 August, as per the text provided by Decree-Law No. 34/2003, of 25 February (accessible, respectively, at <http://dre.pt/pdf1sdip/1998/08/182A00/38323851.pdf> and <http://dre.pt/pdf1sdip/2003/02/047A00/13381375.pdf>). However, this professional activity by holders of temporary stay visas was only permitted in duly justified cases, under the terms that would be stipulated by Art. 36 of Regulative Decree No. 6/2004, of 26 April (accessible at the following website: <http://dre.pt/pdf1sdip/2004/04/098B00/25712586.pdf>).

solutions for national labour needs and as a way of minimising *brain drain*, conferring an overall coherence to the policies aimed at managing legal migration, in close articulation with the countries of origin.

### **2.1.2 The potential of circular and temporary migration**

It is only recently that Portuguese immigration policies have sought to react explicitly to the challenge of temporary migration or circular migration, even though, at least since the 1990s, the national legal framework has contained a set of possibilities that could frame such migration. Essentially, Portugal follows the EU approach in this regard. In recent years circular migration has been viewed as a type of migration with a great deal of potential, although it currently represents only a negligible percentage of the migration panorama at a national level.

According to this political approach, circular migration can constitute a credible alternative to illegal migration, being capable of balancing the supply and demand for labour originating in third countries and contributing towards the effective distribution of available resources and economic growth while simultaneously limiting the negative effects of brain drain in the countries of origin – particularly in a specific labour segment – and the consequent drain of qualified human resources.

The framework for developing common lines of action<sup>25</sup> has leeway for safeguarding the specific priorities and realities of the different Member States, in the context of national competences with regard to managing labour migration, particularly with regard to the concession of long-term visas. To this end, it is important to highlight the fact that Portugal has adopted rules to streamline such forms of migration (namely related to the re-entry of immigrants), consecrated in the Immigration Law, preceding the aforesaid communiqué issued by the European Commission. In this context, the possibility of being able to return temporarily to the country of origin, without losing the right of residence in Portugal, is especially relevant as a mechanism to promote an effective migratory circularity. However, the potential of this legal regime is far from having been exhausted.

Portugal has likewise sought to promote links between its migratory policies and the development of the countries of origin of the main immigrant communities present in the national territory, with a view to optimising the potential advantages for all the parties involved, in keeping with the aforesaid *triple win* logic. For example, the temporary employment programmes developed within

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<sup>25</sup> As listed in the European Commission Communiqué on circular migration and partnerships for mobility.

the scope of bilateral protocols or agreements with Cape Verde and with Ukraine,<sup>26</sup> sought to respond, in this manner, to the labour needs of the host state (Portugal) contributing simultaneously, by means of the obligatory return, towards the development of the countries of origin, due to the acquisition of skills and other advantages on the part of participating migrants. Moreover, Portugal also participates in programmes that support a definitive or temporary return of highly-skilled immigrants to their countries of origin, so that they can engage in their professional activities there (e.g. the MIDA project<sup>27</sup>).

In political terms, the XVII and XVIII Constitutional Governments have proved to be favourably inclined towards underscoring the pertinence and advantages of promoting types of circular or temporary migration from and to Portugal, even during periods of economic crisis. These incentives are viewed as “factors for stability and economic, social and cultural growth in our societies [in which the] crisis should not be a pretext to annul the efforts to rapidly implement procedures for granting visas/ residence permits for purposes of employment”.<sup>28</sup> Thus, immigration is viewed as a structural phenomenon in Portugal and the management of migratory fluxes must be implemented from a long-term perspective, by creating policies that make it possible to respond to the social, economic and labour complexity of contemporary realities.

The awareness that circular migration will have a greater preponderance in the future of migrations from (and to) Portugal implies expanding the base of potential recruitment so as to frame the two main segments of labour migrants that Portugal tends to host, according to the expected duration of these needs: (i) semi- or unskilled migrants and (ii) highly-skilled migrants. With these objectives, the Portuguese state has created a set of suitable legal instruments and has supported partnership projects aimed at stimulating temporary and circular migration, whose main contours are described below.

In the past five years this vision has gradually been consolidated, namely by means of the new Immigration Law (2007), some experience acquired within the scope of pilot projects, which is relevant for future renegotiations of agreements, and by means of the creation of practical communities that link Portuguese institutions and organisations in terms of contracting workers

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<sup>26</sup> See point 2.1.3 of this study.

<sup>27</sup> See point 2.1.3 of this study.

<sup>28</sup> Speech by the Assistant Secretary of State and the Administration of the XVII Constitutional Government at the Ministerial Conference on “Building Partnerships for Migration” held in Prague (Czech Republic), available at: [http://www.portugal.gov.pt/pt/GC17/Governo/Ministerios/MAI/Intervencoes/Pages/20090428\\_MAI\\_Int\\_SEAAI\\_Migracao.aspx](http://www.portugal.gov.pt/pt/GC17/Governo/Ministerios/MAI/Intervencoes/Pages/20090428_MAI_Int_SEAAI_Migracao.aspx) (accessed on 11 July 2010).

from abroad. In any case, the experience of implementing legal mechanisms is still a relatively recent development and assessments of the experience acquired have not yet been consolidated, there still being a significant potential to be explored.

However, despite the policies implemented, the available data reveals that only a minority of migratory projects tend to be temporary and, in some case, circular or seasonal. Similarly, empirical experience seems to indicate that most individual migratory projects in Portugal will tend to be permanent or long-term although they could temporarily assume characteristics of a circular migration, especially in the early phases of the individual migratory cycle. In this context, it is important to note that this study focuses on an existing immigration niche in Portugal and not a generalised or “generalisable” migratory type, which has an obvious impact on the depth and richness of the data presented herein.

### **2.1.3 Specific policies and programmes to promote circular or temporary migration**

The link with a migratory time-frame for individual projects or a migratory circularity has been developed from a dual perspective in Portuguese migratory policies: (i) as a solution to the real needs of the Portuguese labour market, as compared to the demand for temporary or seasonal labour; (ii) promoting a potential link between migration and the development of the countries of origin, in a quest to obviate a drain of human capital or even, in the case of some specific programmes, to encourage the countries of origin to benefit from the experience and knowledge that immigrants have obtained in Portugal.

In order to realise these objectives, the Portuguese state supports a set of specific programmes in partnership with the countries of origin of the main immigrant communities resident in Portugal and likewise participates in some multilateral programmes promoted by the EU. It also establishes and supports, through Portuguese institutions and organisations, cooperation agreements with institutions and organisations in the countries of origin of immigrant communities in Portugal. Although not an exhaustive list, the following are some examples of such efforts.

***Cooperation with Cape Verde with regard to processes of temporary and circular migration***

**a) Bilateral agreement concerning the temporary emigration of Cape Verde workers**

It can be said that this instrument represents the beginning of the creation of specific migratory policies directly linked to circular migration to Portugal and/or temporary migration in Portugal. The protocol concerning the temporary emigration of Cape Verde workers to Portugal (Decree-Law No. 60/97, of 18 February 1997)<sup>29</sup> was applicable to Cape Verde workers who, by means of pre-established contracts that were duly registered by the Portuguese Ministry for Employment and Social Solidarity, stayed in Portugal for limited periods of time to engage in their professional activities as salaried workers.<sup>30</sup> In practice this was a pioneering protocol that was aimed at resolving temporary labour needs in Portugal. It allowed access to a work visa valid for one year, renewable for a maximum of three years. At the time it represented a factual advance as compared to the legislation that was then in effect. The results of this protocol were not, to the best of our knowledge, assessed and hence it is impossible to ascertain whether it was a suitable solution for the initial objectives that were proposed at the time.

This agreement was revised and updated within the scope of the Partnership for Mobility established between Cape Verde and the EU in June 2008,<sup>31</sup> with a view to continuing to promote the admission of certain categories of Cape Verde workers, namely on a temporary basis and from the perspective of circular migration. Simultaneously, while implementing this partnership, a bilateral cooperation instrument was signed between the Portuguese IEFP and its counterpart in Cape Verde, with a view to simplifying and reinforcing the efficacy of the procedures for labour migration. We are not aware of reports assessing these agreements and hence it is likewise impossible for this study to ascertain their real impact. An assessment of the impact of such legislation should be carried out periodically so as to provide context and disseminate best practices that have already been developed or to correct any problems that might be detected. .

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<sup>29</sup> Agreement regarding the Temporary Emigration of Cape Verde Workers to Work in Portugal (Praia, 18 February 1997). Approved by Decree No. 60/97, of 19 November, accessible at the following website: <http://dre.pt/pdf1sdip/1997/11/268A00/62746275.pdf>.

<sup>30</sup> This agreement was signed in the wake of the General Agreement regarding Migration signed between Portugal and Cape Verde, published in Decree-Law No. 524-G/76, of 5 July, accessible at the following website: <http://dre.pt/pdf1sdip/1976/07/15503/00140015.pdf>.

<sup>31</sup> The Joint Declaration regarding a Partnership for Mobility between the European Union and Cape Verde was signed formally on the sidelines of the Council for Justice and Internal Affairs on 5 June 2008 by Cape Verde, Portugal, Spain, France, Luxembourg and the European Commission.

### **b) The MIDA Project (“*Dias de Cabo Verde*”)**

The MIDA-Cape Verde Project (Migrations for Development in Africa – Cape Verde), also known as “*Dias de Cabo Verde*” - *Diaspora for Development of Cape Verde*, is an international project for multilateral cooperation between States,<sup>32</sup> which seeks to mobilise for Cape Verde the capacities and skills of Cape Verde personnel residing in partner countries in sectors that are considered to be essential for the development of this island nation. The programme is supported within the scope of the *AENEAS - Financial and Technical Assistance to Third Countries in the Field of Migration and Asylum* programme. Through this project, Portugal supports the activities of the Institute for Cape Verde Communities (IC) in matters of migration and development, with a view to promoting the circular migration of highly-skilled migrants between the two countries. The MIDA-Cape Verde programme has made it possible to develop a circular migration oriented by both states, i.e. coordinated institutionally, by means of a process of sustaining partnerships between institutions and organisations from the two nations. By means of this project, highly-skilled Cape Verde citizens resident in Portugal are given support to temporarily return to their country of origin to engage in a professional activity there, related to their specific skills, returning to the country of residence at the end of these activities. Such projects are part of the Portuguese state’s policies that aim to obviate a brain drain from the immigrants’ countries of origin and have a direct link with the logic of the circular migration that is the subject of this study.

### **c) The Campo Project – Support Centre for Migrants in the Country of Origin**

The *Campo - Support Centre for Migrants in the Country of Origin*<sup>33</sup> project was created in 2007, as a result of an agreement signed between the Portuguese Institute for Development Support (IPAD), the ACIDI, the IC and the Azorean Immigrants Association, as the managing entity in Cape Verde. This pilot project was promoted under the aegis of the Joint Advisory Committee for Cape Verde Immigration,<sup>34</sup> which was created in 2005, and its main objective was to host and provide counselling and information to Cape Verde citizens who intended to emigrate to Portugal while they were still in their country of origin.

<sup>32</sup> Portugal is part of this project, coordinated by the IOM, along with Italy and Holland.

<sup>33</sup> Accessible at the following website: <http://www.campo.com.cv/>.

<sup>34</sup> The joint advisory committee for immigration questions relating to Cape Verde was created in 2005 and, on the Portuguese side, includes representatives from the Ministry for Foreign Affairs (MNE) (namely IPAD and DGACCP), the Presidency of the Council of Ministers (ACIDI, I.P.) and the Ministry for the Internal Administration (through the SEF), cf. *Plano para a Integração dos Imigrantes* (accessible at the following website: <http://dre.pt/pdf1sdip/2007/05/08501/00020023.pdf>) and *Relatório Anual de Execução: Maio de 2007 – Maio de 2008* (accessible at the following website: [http://www.portugal.gov.pt/pt/Documentos/Governo/PCM/PII\\_Rel\\_2007\\_08.pdf](http://www.portugal.gov.pt/pt/Documentos/Governo/PCM/PII_Rel_2007_08.pdf)).

In 2008, the *Campo* project expanded its scope as part of the Partnership for Mobility that was established between Cape Verde and the EU, approved during the Portuguese Presidency of the European Union in 2007.<sup>35</sup> In this context, the “Project for Reinforcing Cape Verde’s Capacity to Manage Migration and Returning Migrants” was begun in January 2009, within the framework of the Partnership for Mobility that was signed with the EU. Currently, the partners of the *Campo* project include the Cape Verde Institute for Employment and Vocational Training and the IC, ACIDI, IOM, IPAD and the Spanish Agency for International Development Cooperation (AECID). This project is articulated with other similar projects in Cape Verde, more specifically, with the *Díaspóra* project (a contribution promoted by AECID), with the aforesaid MIDA, with the cooperation agreements signed between Portugal and Cape Verde as part of IPAD’s activities and programmes for scholarships, amongst other initiatives.

The general objective of the current *Campo* project consists of promoting legal mobility between the EU and Cape Verde by means of an effective management of legal migration; preventing and reducing illegal migration and promoting synergies between development and migration. In the wake of the *Diaspora for Development of Cape Verde* project, the *Campo* project supports Cape Verde citizens or their descendants who reside outside Cape Verde, who, over the course of time, have acquired know-how, experience and material resources and now wish to use these resources to promote development in their country of origin. The specific objectives of the project include: 1) facilitating a correspondence between the skills of immigrants and available employment and providing information to promote the use of legal migration channels; 2) facilitating the re-integration of Cape Verde citizens living in EU nations into the Cape Verde labour market.

The current objectives of this project also include: attenuating the negative effects of emigration by highly-skilled individuals and developing appropriate solutions, namely by means of policies to encourage a temporary or definitive return specifically aimed at highly-skilled Cape Verde migrants and European nationals originally from Cape Verde; promoting the temporary migration of highly-skilled Cape Verde citizens in order to improve their qualifications and facilitate the recognition of skills and qualifications; developing student exchanges, researchers and specialists, developing training programmes and programmes for short-term employment opportunities; providing support for a voluntary return and sustainable reintegration of returning migrants; reinforcing cooperation to provide training for migrant workers who are candidates for returning to their country of origin;

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<sup>35</sup> See line (d), ahead.

contributing towards developing entrepreneurialism and reinforcing the juridical framework for investments and business; and developing reflections about the social dimension of migration in the country of origin.

**d) The Partnership for Mobility between the EU and Cape Verde**

Within the scope of a Partnership for Mobility established between the EU and Cape Verde, approved during the Portuguese Presidency of the European Union, in 2007, and signed in June 2008,<sup>36</sup> Portugal, as a party to this multilateral agreement, has developed a set of initiatives that aim to facilitate the existence of a circular or return migration and to develop employment opportunities for Cape Verde immigrants in Portugal.<sup>37</sup> Amongst the instruments for action that have already been implemented, it is important to note the creation of the aforesaid *Campo* project, the creation of a common centre for short-term visa applications managed by Portugal and reinforced cooperation for managing borders and maritime security.

**e) Social Security Agreement signed between the Portuguese Republic and the Republic of Cape Verde**

Likewise within the scope of partnerships and agreements signed with Cape Verde, it is important to note that by means of Decree No. 2/2005, of 4 February, the Portuguese state approved the Social Security Agreement that was signed on 10 April 2001 between the Portuguese Republic and the Republic of Cape Verde. This reformulated the Agreement that had been signed on 17 December 1981, which was approved for ratification by Governmental Decree No. 45/85, of 6 November, whose objective was to ensure a continuous and adequate social protection for individuals who are or have been subject to the legislations of the two states, thus seeking to promote their integration into the respective host societies. This agreement was also the object of an Administrative Agreement regarding the Means of Applying the Social Security Agreement, signed between the Portuguese Republic and the Republic of Cape Verde,<sup>38</sup> signed in Cape Verde, on 25 July 2007. Such bilateral agreements are a way of consolidating strong migratory ties between the two nations

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<sup>36</sup> Accessed on 30 August 2010 at the following website:

<https://infoeuropa.euroid.pt/registo/000041404/documento/0001/>.

<sup>37</sup> This partnership for mobility is part of the spirit of the European Commission's proposal as defined in the European Commission's Communiqué to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions regarding circular migration and partnerships for mobility between the European Union and third countries (accessible at the following website:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0248:FIN:EN:PDF>).

<sup>38</sup> Accessed on 30 August 2010 at the following website: <http://www.dre.pt/pdf1sdip/2007/11/22300/0856308570.PDF>.

as well as a way of promoting mechanisms that do not hinder (or encourage) migrants returning to their country of origin. It simultaneously ensures that should they choose to return to their country of origin, migrants enjoy the same rights that they would have enjoyed had they remained in Portugal.

***Cooperation with Ukraine with regard to processes of temporary and circular migration***

**a) Bilateral agreement regarding temporary migration by Ukrainian workers**

An agreement was signed in 2003 between the Portuguese Republic and Ukraine regarding the Temporary Migration of Ukrainian Citizens to Work in the Portuguese Republic. This agreement was signed in Kiev on 12 February 2003 and was approved by Decree No. 3/2005, of 14 February.<sup>39</sup> The agreement sought to establish rules and principles aimed at facilitating temporary migration to Portugal by Ukrainian citizens with a view to engaging in temporary professional activities. The contents of this agreement are very similar to those of the agreement that was signed in 1997 with Cape Verde. Within the scope of this instrument – as in the case of the agreement signed with Cape Verde – some institutions and organisations play an essential role in implementing the policies for temporary labour migration, as understood by Portuguese migratory policies. The key actors in this regard include, namely, the potential employer in Portuguese territory; the IEFP; the SEF; the Directorate-General for Consular Affairs and Portuguese Communities (DGACCP) and their counterparts in the immigrants' countries of origin. The IOM likewise plays an important role as a mediator (if and when asked to do so).

Within the scope of the agreement signed with the Ukraine, these institutions and organisations serve specific functions. The IEFP and the Ukrainian State Centre for Employment and Vocational Training of the Ministry of Labour and Social Policies interact directly to exchange information about employment opportunities, the sectors of activities in which such employment is offered and the availability of labour. Every six months the former institution informs the latter about the number of Ukrainian workers, recruited under the aegis of this agreement, with a view to better coordinating the demand and supply of labour. The Portuguese Embassy in Ukraine issues the work visas, valid for the duration of the work contract, up to a maximum period of one year. The SEF organises the recruitment process through a liaison official in the Portuguese embassy in Kiev. The

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<sup>39</sup> Decree No. 3/2005, of 14 February, accessed on 1 September 2010 at the following website: <http://www.dre.pt/pdf1sdip/2005/02/031A00/10141017.PDF>.

agreement establishes the functions, the procedures and the response times for each of the entities, thus creating an easily understood routine for the process. By means of the regulation and the implementation of this agreement, Portuguese migratory policies aimed at encouraging temporary migration have assumed a political form, abandoning the legal terms to become part of active migratory policies.

**b) The Portugal-Ukraine pilot project regarding temporary and circular migration**

With a view to implementing the aforesaid agreement, it is important to note the creation of a pilot project regarding circular and temporary migration. The *Portugal-Ukraine Pilot Project regarding Temporary and Circular Migration* was based on the agreement signed between the two nations concerning the temporary migration of Ukrainian citizens to work in Portugal, approved on 14 February 2005. This project is derived from a SEF initiative, in partnership with the IOM, and is co-financed by the European Commission (thematic programme for cooperation with third countries in the area of migration and asylum) and the World Bank (WB).

The objective of the *Portugal-Ukraine Pilot Project regarding Temporary and Circular Migration* was to promote legal emigration/immigration and to integrate a set of Ukrainian immigrants into Portuguese companies for a predetermined period of time (with a temporary work visa with validities ranging from between three and six months), with the commitment to return to Ukraine after this period was over.

More specifically, the project consisted of selecting 50 Ukrainian candidates to engage in a professional activity in Portugal, for a period of six months, in Portuguese companies, in sectors of activity such as agriculture, hotels & restaurants and construction. To this end the Ukrainian candidates are granted temporary stay visas. In this process, the IOM finances the outward and return journeys and provides support for reintegrating the immigrants when they return to Ukraine after their temporary sojourn in Portugal, since the objective is for them to return to their country of origin in order to implement projects aimed at creating employment, working independently or as salaried workers, based on the skills they have acquired in the meanwhile.

Likewise in keeping with the initial objectives, this pilot programme also aims to help establish future criteria that would make it possible to design measures and/or programmes for promoting circular migration, or temporary migration with a facilitated return to the country of origin. The WB will analyse the results and the impact of this temporary migration, comparing the situation of the

successful candidates with that of 50 other candidates who were not selected and who remained in the Ukraine, within the scope of a study aimed at assessing the benefits and costs of this kind of migration. In a subsequent phase, in case the results achieved are positive, the set of workers who participated in the pilot project will be given preference in a second recruitment process and will be able to avail of facilitated admission procedures, based on the logic of migratory circularity. This assessment will be a very useful tool providing perspectives for future programmes for temporary and circular migration in Portugal.

**c) Social Security Agreement signed between the Portuguese Republic and Ukraine**

Likewise within the scope of partnerships and agreements with Ukraine, it is important to note that, by means of Decree No. 8/2010, of 27 April, the Portuguese state approved the Social Security Agreement between the Portuguese Republic and Ukraine, signed in Lisbon on 7 July 2009. The objective of this agreement is to ensure a continuous and adequate social protection for individuals who are or were subject to the legislation of both states, to thus promote their integration into the respective host societies.

***Cooperation with Brazil regarding processes of temporary and circular migration***

**a) Agreement signed between the Portuguese Republic and the Federative Republic of Brazil regarding the Reciprocal Contracting of Nationals**

Decree No. 40/2003, of 19 September, established an agreement between the Portuguese Republic and the Federative Republic of Brazil regarding the Reciprocal Contracting of Nationals. This agreement was signed in Lisbon on 11 July 2003,<sup>40</sup> in the wake of the Treaty for Friendship, Cooperation and Consultation that was signed between Portugal and the Federative Republic of Brazil on 22 April 2000. This agreement, commonly known as the “Lula agreement”, allowed Brazilian citizens who went to Portugal for limited periods of time to engage in a salaried professional activity there, along with an exceptional set of rights, including the possibility of being able to obtain a work permit after arriving in Portuguese national territory.<sup>41</sup> In practice, this regime allows Brazilian citizens who have gone to Portugal to seek employment after entering the country to subsequently regularise their situation. This mechanism is directly related to the potential that

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<sup>40</sup> Accessed on 30 August 2010 at the following website:  
[http://www.mreis.pt/biblioteca/doc\\_word\\_pdf/dec40-2003.pdf](http://www.mreis.pt/biblioteca/doc_word_pdf/dec40-2003.pdf).

<sup>41</sup> This was an extraordinary regularisation for the aforesaid purposes, aimed at Brazilians who were in Portugal at the time when this international agreement was signed.

exists for a circular migration while simultaneously seeking to manage temporary migration originating in Brazil for sectors that depend on Portuguese-speaking labour (e.g. services or tourism). At the same time, apart from a strong migratory pressure, this agreement reflects the importance of the bilateral relations between the two nations and the integration of migratory matters into Portugal's foreign relations.

**b) Agreement signed between the Portuguese Republic and the Federative Republic of Brazil regarding Facilitating the Circulation of Individuals**

For the purposes of this study it is important to note the Agreement between the Portuguese Republic and the Federative Republic of Brazil regarding Facilitating the Circulation of Individuals,<sup>42</sup> approved by Decree No. 43/2003 of 24 September, which establishes a regime that exempts citizens from the need to obtain a visa for stays of up to 90 days (extendable for a similar period), for artistic, cultural, scientific, corporate, journalistic or sports purposes and academic internships. The ultimate aim of this regime is to facilitate the circulation of nationals from the contracting nations who are professionals in these areas.<sup>43</sup> Although the visa exemption excludes being able to engage in an activity remunerated by an entity in the destination country (except for daily allowances, scholarships, reimbursement of costs and prizes) the promotion of circular migration is very explicit in this agreement, especially with regard to the aspect of the acquisition of skills and an exchange of experiences in the areas of the aforesaid activities.

***Cooperation with Moldavia with regard to processes of temporary and circular migration***

In the context of partnerships aimed at promoting mobility, as defended by the EU,<sup>44,45</sup> a multilateral agreement regarding temporary migration was signed between Portugal, various other EU Member States and the Republic of Moldavia. Consultations are currently underway between officials and diplomats from Portugal and Moldavia with a view to implementing this partnership.

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<sup>42</sup> Accessed on 30 August 2010 at the following website:

[http://www.idesporto.pt/DATA/DOCS/LEGISLACAO/doc05\\_045.pdf](http://www.idesporto.pt/DATA/DOCS/LEGISLACAO/doc05_045.pdf).

<sup>43</sup> Especially artists, teachers, scientists, researchers, entrepreneurs, executives, sports professionals, journalists and/ or interns.

<sup>44</sup> The Joint Declaration for a Partnership for Mobility between the European Union and the Republic of Moldavia was formally signed on 5 June 2008, on the sidelines of the Council for Justice and Internal Affairs, by Portugal, Bulgaria, Cyprus, the Czech Republic, France, Greece, Germany, Hungary, Italy, Lithuania, Poland, Romania, Slovenia, Slovakia and Sweden, the European Commission and the Republic of Moldavia.

<sup>45</sup> See the note by the Ministry for the Internal Administration regarding this partnership. Accessed on 1 September 2010 at the following website:

[http://www.dgai.mai.gov.pt/cms/files/conteudos/hiperl\\_AGM%20PpM%20MOL%20\(1\).pdf](http://www.dgai.mai.gov.pt/cms/files/conteudos/hiperl_AGM%20PpM%20MOL%20(1).pdf).

Likewise within the scope of partnerships and agreements with Moldavia it is important to note that on 16 July 2010 the Portuguese parliament approved the Social Security Agreement between the Portuguese Republic and the Republic of Moldavia, signed in Lisbon, on 11 February 2009, which has been ratified by the Moldavian parliament in the meanwhile and is scheduled to come into effect in the near future.

### ***Multilateral agreements aimed at promoting the mobility of students***

In the multilateral context Portugal participates in a set of programmes aimed at promoting the mobility of students, which can be viewed from the perspective of promoting the temporary migration and circular migration that are being examined herein.<sup>46</sup> Portugal is part of various such programmes for mobility, including Erasmus, Erasmus Mundus, Tempus and Nyerere, for example, which offer qualified European and African students the opportunity to benefit from a greater mobility within Europe; the Youth in Action programme, which supports mobility between Europe and Africa for youths; or the Atlantis Programme signed between the EU and the United States of America, amongst various other such initiatives.

### ***Cooperation with Romania and Bulgaria with regard to processes of temporary and circular migration***

From a historical perspective, given the full integration of Romania and Bulgaria as EU Member States,<sup>47</sup> it is also important to note the cooperation agreements that Portugal signed with these two nations regarding temporary and/or circular migration. Very similar to the agreements described above signed with Cape Verde, Ukraine and Brazil, these agreements established rules and principles that facilitated temporary migration by Romanian and Bulgarian citizens to Portugal with a view to temporarily engaging in professional activities.

In the case of Romania, the cooperation between the two countries was formalised by means of an agreement regarding the temporary stay of Romanian citizens to work in Portugal, signed on 19 July 2001 and approved by Decree No. 18/2005, of 6 September.<sup>48</sup> This agreement established rules and principles aimed at facilitating temporary migration by Romanian citizens to Portugal with a view to temporarily engaging in professional activities.

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<sup>46</sup> With regard to students who participate in EU programmes aimed at promoting mobility to the European Union or to the Community of Portuguese-Speaking Countries, see Ordinance No. 208/2008, of 27 February, accessible at the following website: <http://www.azores.gov.pt/NR/rdonlyres/664F2A7E-AAE6-4B12-B739-8B3E69715DA5/203565/Portaria2082008de27Fev.pdf>.

<sup>47</sup> Without prejudice to the restrictions regarding work by nationals of these countries still in effect, imposed by some Member States.

<sup>48</sup> Accessed on 30 August 2010 at the following website: <http://www.dre.pt/pdfgratis/2005/09/171A00.PDF>.

In the case of Bulgaria, an agreement was signed in Sofia on 26 September 2002 between the Portuguese Republic and the Republic of Bulgaria regarding the Reciprocal Contracting of Nationals, which was approved by Decree No. 23/2003<sup>49</sup> and came into effect on 12 July 2003.

### **2.1.3.1 Entry quotas and managing migration from a perspective of circular or temporary migration**

Since the beginning of this decade, the Portuguese approach to the management of fluxes of economic immigration has been based on a policy of quotas for the admission of new immigrants. Thus, in 2001, Art. 36 of Decree-Law No. 4/2001, of 10 January, instituted the preparation of a report containing a “forecast of employment opportunities and the sectors of activity in which these opportunities existed”, which serves as the guide for granting visas for the purposes of temporarily engaging in a professional activity in Portugal.<sup>50</sup> After the changes that were introduced in 2003 in the Immigration Law – [Decree-Law No. 34/2003, of 25 February](#) –, this report, which was now prepared every two years, fixed an “imperative annual maximum limit” for the entry of foreign citizens from states that were not part of the “Schengen space”.<sup>51</sup>

Specifically with regard to engaging in salaried employment in Portugal, prevailing legislation gave priority to workers from EU nations as well as third country nationals legally resident in Portugal to satisfy job offers as compared to access by new third country nationals to the Portuguese labour market by means of suitable visas (cf. Art. 41 of Decree-Law No. 34/2003). In this context, the IEFP was responsible for accompanying and assessing the implementation of the aforesaid report regarding employment opportunities (cf. Art. 41(2) of the said diploma). In any case, Portuguese legislation enshrined the possibility of employment outside these stipulated quotas or areas of activity in cases where such employment was “essential for the national economy” or was of a “highly-skilled nature or of relevant scientific, artistic or social interest” for Portugal, subject to an obligatory prior opinion issued by the Portuguese Institute for Employment and Vocational Training (IEFP) (cf. Art. 41(3) of the said diploma). From the time these quotas were implemented the IEFP has played a preponderant role in managing offers of employment for foreign citizens.

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<sup>49</sup> Accessed on 30 August 2010 at the following website: <http://www.gddc.pt/siii/docs/dec23-2003.pdf>.

<sup>50</sup> With regard to the year 2001, cf. the short term diagnosis and forecast for labour needs in Portugal entitled *Portugal: Relatório final de Junho de 2001*, annexe to Cabinet Resolution No. 164/2001, accessible at the following website: <http://dre.pt/pdf1sdip/2001/11/278B00/75987663.pdf>.

<sup>51</sup> The Labour Opportunities Report delineated at the time was prepared by the government, on the basis of an opinion issued by the IEFP and after hearing the Autonomous Regions (Azores and Madeira), the General Labour Inspectorate (IGT), the National Association of Portuguese Municipalities (ANMP), employer and trade union confederations and the then High Commission for Immigration and Ethnic Minorities (ACIME, currently known as ACIDI).

The current juridical regime for the entry, stay, exit and removal of foreign citizens – [Law No. 23/2007, of 4 July](#) –, implemented a similar solution as the aforesaid legal framework. Thus, the government approves every year, on the basis of a prior opinion by the Permanent Council for Social Coordination,<sup>52</sup> “a resolution that defines an indicative overall quota for employment opportunities that will presumably not be filled”<sup>53</sup> by “Portuguese workers, nationals of EU Member States, countries that are part of the European Economic Space, third countries with which the European Community has signed agreements for the free circulation of individuals as well as third country nationals who are legally resident in Portugal”.<sup>54</sup> This overall quota also contemplates specific quotas for the autonomous regions of the Azores and Madeira.

In the current Immigration Law, the IEFP continues to play a decisive role, both in terms of defining the job opportunities that will effectively correspond to the overall quota (after publicising the respective offers of employment in the national territory and Portuguese diplomatic representations),<sup>55</sup> as well as in terms of preparing the half-yearly report about the implementation of the said quota.<sup>56</sup> The IEFP, the DGACCP, which is part of the Ministry for Foreign Affairs (MNE) and the SEF are the main actors in defining and applying the principles linked to the policy of quotas for the entry of new immigrants. These three entities, which are subordinated to three different ministries, constitute the main community for Portuguese practices related to this process and their productivity and capacity for articulation are the main factors for the successful implementation of prevailing legislation.

The current Immigration Law also allows, on an exceptional basis, that irrespective of the employment opportunities fixed within the scope of the overall contingent “third country nationals who have a work contract” can engage in a salaried professional activity<sup>57</sup>, “as long as they prove that the offer of employment was not filled”, by the categories of workers that legislation has

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<sup>52</sup> Organ of the Economic and Social Council, presided over by the prime-minister, whose main mission is to promote dialogue and a tripartite coordination between the government and social partners, to contribute towards regulating labour relations and for defining policies regarding prices, income, employment, professional training and social protection. The Economic and Social Council, created in 1991, is an advisory, coordinating and participatory constitutional body active in the area of economic and social policies (Art. 92 of the Constitution of the Portuguese Republic).

<sup>53</sup> Cf. Art. 59(2) of Law No. 23/2007, of 4 July.

<sup>54</sup> Cf. Art. 59(1) of Law No. 23/2007, which, when compared to the solution contained in Decree-Law No, 244/98, of 8 August, promoted an expansion of the “classes” of foreign nationals that were deemed to have priority while filling the announced employment vacancies.

<sup>55</sup> Cf. Art. 59(4) of Law No. 23/2007.

<sup>56</sup> Cf. Art. 59(8) of Law No. 23/2007.

<sup>57</sup> In the Portuguese case the work permit is integrated into the residence permit.

identified as having priority.<sup>58</sup> In the view of successive governments, the management of migratory fluxes by means of a half-yearly forecast of employment opportunities and the sectors of activity in which they exist seeks to contribute towards improving the conditions for adjusting the labour market in Portugal, facilitating circular migration and promoting temporary migration by migrant workers.

From the perspective of managing labour migration and the needs of the labour market in Portugal, two complementary mechanisms have emerged: quotas, predominantly aimed at long-term labour needs, and circular migration, which provides solutions for temporary or seasonal labour needs. These two mechanisms are both part of an integrated management of admission and stays in the national territory, in harmony with the management of the demand for labour. This approach is part of the national strategy aimed at opening up legal and transparent channels that enable the legal entry and stay of sufficient immigrants who are necessary for the needs of the Portuguese economy and can simultaneously be integrated, especially by means of access to the labour market, without jeopardising national cohesion.

#### **2.1.4 Policies for circular migration and return**

Without prejudice to the programmes for voluntary return, Portugal does not have an active policy aimed at encouraging the return of immigrants who are legally resident in the national territory. In this context, the voluntary return of legally resident foreign citizens constitutes a negligible part of the programmes for the voluntary return of foreigners in Portugal, which are immediately recorded in statistical terms (corresponding to less than 1 in 8 recorded voluntary returns). The majority of immigrants return without direct state support and the effects of this movement are felt later instead of at the moment when the immigrant departs from the national territory. The circularity linked to the aspect of return is a dimension that has not been studied in depth and hence the relevance of the dimension of returning immigrants linked to circularity in the Portuguese case must be viewed as being quite diminutive.

In this context, the programme for Voluntary Assisted Return is a miniscule part of the general strategy for managing migration in Portugal and aims to promote the return and reintegration of immigrants who cannot or do not wish to remain in the country. Portugal has been involved in

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<sup>58</sup> As in the case of previous legislation, the Immigration Law allows, on an exceptional basis and as long as all the general conditions necessary for granting visas have been fulfilled, granting a residence permit for professional purposes. Cf. Art. 59(7) of Law No. 23/2007.

programmes aimed at providing support for voluntary return since the late 1990s<sup>59</sup>. The underlying logic of such programmes has been to provide support for immigrants who are illegally resident in Portugal to return to their countries of origin. The Portuguese state is responsible for implementing activities regarding assisted return in Portugal and collaborates with the IOM in this regard. While developing the main principles pertaining to assisted return, as envisaged by Art. 139 of Law No. 23/2007, of 4 July, the regulatory framework of this programme derives, namely, from the Cooperation Agreement for Implementing the Voluntary Return Programme, of 20 December 2001, signed between Portugal and the IOM.

In recent years, Portugal has been involved in two programmes aimed at providing support for voluntary return, within the scope of two projects: *Assessment of Brazilian Migration Patterns and Assisted Voluntary Return Programme from selected EU Member States to Brazil* (co-financed by the EC Return Programme – 2006) and the *Programme to Support Voluntary Return and Reintegration* (financed by the European Return Fund – 2008 and by the SEF) both managed, in the Portuguese case, by the IOM in Lisbon. In 2006-2008, the SEF and the IOM likewise participated in the *SuRIIA - Sustainable Return – Network for Information and Counselling* project,<sup>60</sup> in order to constitute a decentralised network providing support for voluntary return.

#### **2.1.4.1 The dimension of return in the context of policies and programmes for circular and temporary migration**

Based on a flexible vision of this migratory typology, the Portuguese policy aims to include the dimension of return in the context of circular and temporary migration, essentially in two aspects: in migrations from the countries of origin and the movement of workers who are third country nationals resident in Portugal.

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<sup>59</sup> Activities regarding assisted voluntary return began in Portugal in a consistent manner in 1997. At the time, within the framework of an agreement signed between the Portuguese state, more specifically the Ministry for Foreign Affairs (MNE), the Ministry for the Internal Administration (MAI), the High Commission for Immigration and Ethnic Minorities (ACIME) and the IOM Mission in Portugal it was possible to implement the Pilot Programme for Voluntary Return. A new agreement was signed in 2001, which defined the annual implementation of the Voluntary Return Programme, automatically renewable for identical and successive periods, which is currently in effect.

<sup>60</sup> The *SuRIIA - Sustainable Return – Network for Information and Counselling* project is an initiative promoted by the Aliens and Borders Service (SEF), co-financed by the [European Commission](#), in which the IOM is the operational partner. The SuRRIA project aims to improve counselling and access to information for potential beneficiaries of the Voluntary Return Programme. A network was created in order to implement the programme in practical terms, constituted by various institutions, organisations and associations in Portugal whose main activities are to provide support and counselling for immigrants.

With regard to migration from countries of origin, the legislation safeguards, whenever possible, conditions for returning within the scope of programmes established for the effect and in the case of movements of residents with professional ties to their countries of origin, by means of the adoption of legal rules to protect this migratory circulation. In the case of protocols or agreements pertaining to temporary migration of labour signed with Cape Verde and/or with Ukraine, for example, the obligation to return to the country of origin is formally contained in a contractual clause that is part of the work contract and visa conditions.

In the case of movements by residents in Portugal who have professional links with their countries of origin, the return policies consist of participating in specific programmes for supporting the circulation of personnel or technical experts (e.g. the *Dias de Cabo Verde* programme) and support for policies expressed in bilateral social security agreements as well as allowing expanded periods of absence from Portuguese territory, under the terms of the current Immigration Law – Art. 85(4) of Law No. 23/2007, of 4 July.

According to the Portuguese migratory policy, circular migration, in its dimension of voluntary return to countries of origin, should promote the transfer of skills to developing nations. In other words, Portuguese migration policies envisage a potential link between return policies and support for the development of the immigrants' countries of origin. Simultaneously, however, this type of programmes function as an outlet valve for some migrants whose migratory projects were not entirely successful,<sup>61</sup> avoiding coercive removals and reducing social conflicts.

Alongside these policies aimed at return, it is possible to identify a best practice aimed at promoting circular migration, with the underlying element of return, in the policies for scholarships offered by the Portuguese Institute for Development Support (IPAD), which, in recent years, has modified the process for attributing such scholarships, favouring the attribution of scholarships for Master's and Ph.D. degrees, to the detriment of graduate degrees. In order to promote the effective return of students awarded scholarships to their country of origin, IPAD promotes the recruitment of scholarship candidates directly from African institutions, attributing these scholarships to individuals who have a placement upon their return, i.e. who have links with institutions in their country of origin. Returning to their country of origin is an obligatory condition for the attribution

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<sup>61</sup> Cf. *Retorno Assistido e Reintegração em Países Terceiros: Programas, Estratégias e Incentivos* available at: <http://www.google.com/url?sa=t&source=web&cd=10&ved=0CEUQFjAJ&url=http%3A%2F%2Femn.sarenet.es%2FDownloads%2Fdownload.do%3Bjsessionid%3D9C4724FC020A7CB06A847063715653E9%3FfileID%3D936&rct=j&q=%22ProjectoSuRRIA%22&ei=uyCGTNDUA5bKjAf0-8GOCA&usg=AFQjCNG4OdspWX6NVvdLB0HRZMYcQ1d6jQ> accessed on 30 August 2010.

of such scholarships.<sup>62</sup> Moreover, IPAD does not attribute scholarships for successive degrees unless the candidates have returned to their country of origin for a minimum period of two years, after which they can once again apply for a new scholarship.

It is likewise important to note that within the scope of the II Immigrant Integration Plan (2010-2102)<sup>63</sup> and in the context of support for family reunification, Portugal has opted to create instruments that facilitate circular migration by elderly and retired immigrants, by expanding the scope of circular migration to groups of non-labour migrants, which is a relevant innovation in the context of programmes aimed at promoting circular migration.

### **2.1.5 Assessing these programmes**

In the context of the protocols or agreements regarding processes of temporary migration and circular migration signed by the Portuguese state with Cape Verde, Ukraine, Brazil, Bulgaria, Moldavia and Romania, the IEFP is responsible for preparing reports monitoring the indicative overall quota for employment opportunities, which serve as reports that periodically assess these protocols and agreements. These reports have been prepared in conformance with the frequency stipulated by prevailing legislation but have not been used widely while managing circular or temporary migration.

In the case of the agreement signed with Cape Verde regarding the temporary emigration of Cape Verde workers to Portugal, approved by Decree-Law No, 60/97, a Joint Advisory Committee was constituted regarding questions of immigration from Cape Verde. Within the scope of the Joint Declaration of the Partnership for Mobility signed between the EU and Cape Verde a local follow-up group was instituted, within the framework of the EU/Cape Verde Special Partnership, which likewise assesses the implementation of the agreement. Even though no formal assessment has yet been carried out it has been observed that a significant part of the workers who came to Portugal under the aegis of this agreement ended up by remaining in Portugal by resorting to mechanisms aimed at regularising immigrants that were promoted at the time, in a context of an expanding economy and labour market.

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<sup>62</sup> IPAD Regulations for Granting Scholarships <http://dre.pt/pdf2sdip/2009/09/185000000/3867238677.pdf>; accessed on 30 September 2010.

<sup>63</sup> Cabinet Resolution No. 63-A/2007, DR 85 SERIES I dated 2007-05-03, available at: <http://www.gep.mtss.gov.pt/planeamento/pimigrantes.pdf>; accessed on 30 August 2010.

With regard to the pilot project established between Portugal and Ukraine regarding temporary and circular migration, the World Bank is responsible for assessing the results and the impact of this temporary migration, by comparing the situation of the successful candidates with the results and impact of 50 other candidates who were not selected and who remained in Ukraine. The preliminary assessment, which entailed interviews with the two target groups, has revealed a general satisfaction amongst the migrant workers. The questionnaire that was used also identified some interesting aspects from the perspective of sustainability, such as the possibility of immigrants returning to the same employing entity and the desire to obtain documental proof that they had worked in Portugal. It was also concluded that the majority of participants managed to save funds to improve their lives in Ukraine, for example, to create small businesses, pay debts or to finance the education of their children. Nevertheless, as has been mentioned, a final assessment of this project has not yet been carried out.

#### **2.1.6 Assessment of such programmes by civil society and academic circles**

In general, it can be said that neither civil society nor the academic world have a clear perception of the mechanisms for temporary and circular migration that would enable them to formulate a balanced judgement about these processes. This fact is also linked to the limited dimensions and awareness about this phenomenon in Portugal. Amongst the institutions involved, the IOM, a partner for various programmes pertaining to circular or temporary migration in Portugal, including programmes for supporting return, is the entity that has the most relevant information for assessing such programmes. However, no formal assessment documents or evaluation practices have been instituted to date, either involving the IOM or any other institution from civil society or the academic world in Portugal with regard to circular migration or temporary migration.

#### **2.2 National legislation, conditions, criteria and their application**

Neither current Portuguese legislation nor past legislation has expressly encouraged circular migration, even though the legislative framework does include some mechanisms that enable circularity. In this context, the analysis contained in this chapter merely highlights the legal possibilities that allow migrants resident in Portugal access to this kind of migratory strategy although there are currently no active policies aimed at promoting this kind of migration.

It is important to note that the current Immigration Law is still in a relatively early phase of being in effect and has coincided with an important financial and economic crisis that, in its turn, generated a crisis in the labour market, with a decline in the number of available jobs. These circumstances do not favour a comprehensive interpretation of the potential for circularity that exists in the context of immigration in Portugal. In any case, the economic and financial crisis could prove to be an occasion that triggers new kinds of temporary circularity, such as the temporary return of immigrants to their countries of origin while waiting for more favourable employment conditions to be re-established.

Circular migration appears as a form of migration that, if managed well, could contribute towards ensuring an adjusted equilibrium between the supply and demand for labour at an international level, thus contributing towards a more effective distribution of available resources and towards economic growth. However, circular migration could also raise some problems. If badly organised and badly managed this supposedly circular migration could easily become permanent and thus undermine the intended objective. The following analysis of prevailing legislation underscores some of the potential and possibilities contained in legislation pertaining to temporary or circular migration.

### **2.2.1 National legislation supporting temporary and circular migration**

Since the early 1990s the Portuguese state has been building and developing migratory policies, such as those that are in effect currently, in a cumulative but relative coherent and consensual manner, irrespective of the party comprising the government. In fact, many of the precepts of the current Immigration Law are the result of incorporating or slightly changing the contents of previous laws, which, in a way, demonstrates the continuity of migratory policies. Nevertheless, it is important to emphasise that substantial changes have also been progressively introduced, namely with regard to the kinds of visas, the regime governing the stay of foreign citizens in the national territory and the rights of foreign nationals. One can likewise note the impact of the transposition of a set of EU directives over the course of the past two decades. Since 1991, successive constitutional governments have adopted migratory policies where the dimension of labour has assumed a key albeit not hegemonic position, without overlooking other relevant aspects of migration, namely at the level of integration, family reunification, voluntary return or support for the development of the countries of origin.

It is known that under the direct impact of international migrations the labour markets of developed countries tend to become segmented; the host societies become multicultural and multiethnic and the states involved tend to substantially modify national policies and their international relations. Portugal was no exception. Thus, an overview of the evolution of pertinent legislation is useful in the context of understanding Portugal's most recent migration policies, including those related to circular or temporary migration. It is important to note that this political and institutional framework perforce includes diverse political instruments, such as extraordinary regularisations, bilateral and multilateral agreements, the legal framework for the acquisition of nationality, labour legislation, laws for foreigners, the framework legislation for systems for social protection, legislation pertaining to healthcare protection and legislation for education, amongst other aspects.

### ***Historical evolution of Portuguese policies pertaining to migration: From regulating fluxes to a holistic view of migration***

Essentially, it was Portugal's entry into the EEC in 1986 that decisively influenced contemporary Portuguese immigration policies and gave rise to substantial changes in this area. This was a historical landmark after which Portugal became a definitive part of the set of more developed nations and the processes of globalisation. Nevertheless, distinct signs of structural delays still persist at the level of the active Portuguese population, of which it is especially important to note low levels of qualifications and low salaries. This dichotomy is a characteristic hallmark of Portuguese society, which, just like the labour market, is also segmented internally. Along with the new legal framework that allows the free circulation of Portuguese nationals within the EU space this aspect has had a profound impact on the migratory dynamics that can be observed in Portugal.

From the economic and social point of view, Portugal's entry into the EEC led to a considerable financial influx of structural funds that gave rise to increased public investments and, simultaneously, an increase in foreign investments in Portugal, resulting in the creation of jobs and economic development. These factors – the entry of structural funds and the development of a policy of public works – dynamised activity in the construction sector and resulted in a growth in the demand for unskilled labour in this sector, which would be satisfied, as shall shortly be seen, largely by immigrant labour.

The service sector, including personal and domestic services, also expanded, keeping pace with the rise in Portugal's levels of development. In general, the past three decades saw improvements in

most social indices and levels of comfort for families. At the same time, a process of accelerated economic restructuring began and Portugal went from being an economy based on the primary and secondary sectors to an economy that was based increasingly on the tertiary or services sector. This new economic matrix also attracted a significant number of immigrants to these sectors, many of whom were highly-skilled workers. All these factors contributed towards a greater capacity to attract immigrants and resulted, on the one hand, in an increase in migratory flows originating in nations that had traditionally been a source of immigration to Portugal and, on the other hand, in a diversification in the countries of origin of these flows.

Gradually, Portugal became a nation of immigration, hosting diverse types of immigrants from multiple countries of origin. An analysis of the statistics pertaining to immigration in Portugal reveals this evolution: in 1981, the number of foreigners residing in the national territory was only 54,414, the equivalent of 0.6% of all of the resident population. Even though the growth in the foreign population remained constant during the 1980s and 1990s, in 2000 the number of foreigners legally resident in the country was still merely 208,198 individuals or approximately 2% of the nation's population.<sup>64</sup> At the turn of the 21<sup>st</sup> century immigration from third countries to Portugal was mainly constituted by immigrants from Portuguese-speaking nations (76% in 1999 and 77% in 2000), i.e. from former Portuguese colonies in Africa<sup>65</sup> and from Brazil. The remaining percentage was divided over more than one hundred nationalities, none of which was very significant in numerical terms.<sup>66</sup> In short, it can be said that the presence of immigrants in Portugal was, up to 2000, relatively limited and the majority of movements were directly derived from Portugal's colonial past, historical and cultural relations and its economic relations. During this period, Portuguese legislation tended to reflect this reality, as can be seen below.

### ***Portuguese migratory policies from 1981 to 2001: The bases for a flexible management of migrations to Portugal***

In 1981, the Portuguese government approved [Decree-Law No. 264-B/81, of 3 September](#),<sup>67</sup> which regulated the entry, stay and exit of foreign citizens in the national territory, bringing Portuguese

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<sup>64</sup> Baganha, M. I., & Marques, J. (2001). *Imigração e Política: O caso Português*. Lisbon: Luso-American Foundation and SEF. Serviço de Estrangeiros e Fronteiras (SEF) (Statistics for the year 2000). Lisbon, SEF (polycopied).

<sup>65</sup> Angola, Cape Verde, Mozambique, Guinea-Bissau and S. Tomé & Príncipe.

<sup>66</sup> SEF. *Estatísticas de 1999*; SEF. *Estatísticas de 2000*.

<sup>67</sup> Decree-Law No. 264-B/81, of 3 September, accessed on 25 August 2010 at the following website: <http://dre.pt/pdf1sdip/1981/09/20201/00110024.pdf>.

legislation closer to that of other European states with regard to the conditions for the entry, stay and removal of foreign nationals from Portuguese territory as well as with regard to entry visas and residence permits (Baganha & Góis 1998/1999: 266). This was thus the juridical framework governing immigration that was in effect when Portugal joined the EEC in 1986.

The first change to the legal framework after 1986 took place when the XII Constitutional Government presented a request to the parliament for legislative authorisation to review Decree-Law No. 264-B/81, in order to transpose diverse EU directives to the national juridical framework and to conform to Schengen requirements. This legislation initiative resulted in two distinct regimes pertaining to the entry, circulation and residence of foreign nationals; one of these regimes was applicable to EU citizens and the second to third country nationals, who were effectively subordinated to a legal regime for foreigners. This parliamentary authorisation, consecrated in [Law No. 13/92, of 23 July](#),<sup>68</sup> resulted in: 1) [Decree-Law No. 60/93](#),<sup>69</sup> aimed at nationals of EU Member States; 2) [Decree-Law No. 59/93](#)<sup>70</sup> applicable to third country nationals; 3) and [Decree-Law No. 212/92](#),<sup>71</sup> which instituted a process of extraordinary regularisation aimed at third country nationals residing in Portugal in an irregular situation.

During the 1990s, in order to grapple with the problem of illegal immigration, the Portuguese government began a process of extraordinary regularisation, which took place between October 1992 and March 1993. From the juridical and institutional point of view, Law No. 13/92 resulted in a review of the regime for the entry, stay, exit and expulsion of foreigners from the national territory and also set in motion the process that led to the first extraordinary regularisation of immigrants in an irregular situation, framed by Decree-Law No. 212/92.

As mentioned in the preamble of the aforesaid Decree-Law, it simultaneously sought to put an end to illegal situations of immigrants in Portugal, prevent marginality and integrate immigrants who were in an irregular situation into Portuguese society. The process of extraordinary regularisation was the result of the official acknowledgement of the growth in the number of immigrants in Portugal in an irregular situation (who had been settling in Portugal over the course of the 1980s) as

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<sup>68</sup> Law No. 13/92, of 23 July, accessed on 25 August 2010 at the following website:

[http://www.igf.min-financas.pt/inflegal/bd\\_igf/bd\\_legis\\_geral/Leg\\_geral\\_docs/LEI\\_013\\_92.htm](http://www.igf.min-financas.pt/inflegal/bd_igf/bd_legis_geral/Leg_geral_docs/LEI_013_92.htm).

<sup>69</sup> Decree-Law No. 60/93, of 3 March, accessed on 25 August 2010 at the following website:

[http://www.igf.min-financas.pt/inflegal/bd\\_igf/bd\\_legis\\_geral/Leg\\_geral\\_docs/DL\\_060\\_93.htm](http://www.igf.min-financas.pt/inflegal/bd_igf/bd_legis_geral/Leg_geral_docs/DL_060_93.htm).

<sup>70</sup> Decree-Law No. 59/93, of 3 March, accessed on 25 August 2010 at the following website:

[http://www.igf.min-financas.pt/inflegal/bd\\_igf/bd\\_legis\\_geral/Leg\\_geral\\_docs/DL\\_059\\_93.htm](http://www.igf.min-financas.pt/inflegal/bd_igf/bd_legis_geral/Leg_geral_docs/DL_059_93.htm).

<sup>71</sup> Decree-Law No. 212/92, of 12 October, accessed on 25 August 2010 at the following website:

[http://www.igf.min-financas.pt/inflegal/bd\\_igf/bd\\_legis\\_geral/Leg\\_geral\\_docs/DL\\_212\\_92.htm](http://www.igf.min-financas.pt/inflegal/bd_igf/bd_legis_geral/Leg_geral_docs/DL_212_92.htm).

well as the situations of vulnerability and precariousness associated with this reality. One of the presuppositions of this legislative framework had to do with the view that, after this process, Portugal would become a “zero immigration” nation (or rather a nation in which admission was highly controlled by means of rigorous admission channels), a political option that was very much in vogue in Europe at the time.

By means of Decree-Law No. 59/93, the Portuguese government assumed the new context of “Portugal as a nation of immigration situated within the EU space”. The objectives of this diploma included “perfecting the discipline of granting visas, clarifying the regime for granting residence permits and reinforcing controls to obviate situations of illegal stays in the country”.

More specifically, this diploma stipulated that entry into the national territory depended on possessing a suitable and valid visa and granted the state the legal mechanisms to expel from the national territory all immigrants who were in an irregular situation or who engaged in a professional activity illegally in Portugal. Nevertheless, it is also important to highlight another legal innovation: Art. 64 of this diploma established that in exceptional cases of acknowledged national interest the Ministry of Home Affairs (MAI) could grant or renew residence permits to foreign citizens who did not fulfil the requirements specified in the said diploma. The MAI could also, according to the contents of the said law, delegate this competence to the director of the SEF.<sup>72</sup> This regime, initially conceived as a discretionary, residual and very limited solution for situations of irregular stays in the country, ended up by functioning as an instrument to implement a humanist vision of migrations, aimed at responding generically, in a casuistic and simplified manner, to a broad set of situations of immigrants who were already in the national territory in an irregular manner and whom the Portuguese state felt it was important to regularise in the said context. This legal regime, albeit with other formulations, has continued to exist in the different Immigration Laws to date. Although its impact has varied according to the articulation with other applicable legal norms, in overall terms it had a significant impact on the stock of immigrants resident in Portuguese territory, as this study will attempt to demonstrate.

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<sup>72</sup> From the point of view of administrative law, the “delegation of competences” (or “delegation of power”) is an act by which an administrative body that is usually competent to act in a given area allows, in accordance with the law, another body or agent to practice administrative acts regarding the said area.

In 1996, during the administration of the XIII Constitutional Government, based on a proposal by the Socialist Party, the Portuguese parliament approved [Law No. 17/96, of 24 May](#),<sup>73</sup> which promoted a new process of extraordinary regularisation. This process had a duration of six months and a dual objective: on the one hand, it aimed to regulate the migratory influx from Portuguese-speaking nations (based on the framework of the policy of Portugal's special relationship and cooperation with these nations), and, on the other hand, to respond to the demand for labour in the Portuguese labour market.

The relevance of situations of an irregular stay by immigrants from Portuguese-Speaking African Nations (PALOP), as well as their involvement in clandestine labour conditions is clearly discernable in the data from the 1996 extraordinary regularisation process. Of the about 35,000 applications accepted by the SEF, more than 25% were from Cape Verde citizens who along with nationals from Angola, Guinea-Bissau and S. Tomé & Príncipe comprised 66% of the applications submitted. If one includes Brazil then these nations comprised about 73% of the total applications (as compared to 86% in the 1992 process). Apart from these contingents from PALOP nations and Brazil the main states of the Indian subcontinent (India, Pakistan and Bangladesh) and China also emerged as sources for irregular immigrants to Portugal. The extraordinary regularisation of 1996 was politically legitimised by the need to legalise immigrants who had not been encompassed by the previous regularisation of 1992/93 or who were once again in an irregular situation owing to the lapsing (non-renewal) of their residence documents. It is important to note that of the more than 39,000 applications received in 1992/1993 only 16,000 had resulted in the issuing of a residence document. In 1996, of the approximately 35,000 applications, 95% resulted in the issuing of a temporary residence permit.

A statistical analysis of immigrants who were legalised in the meanwhile reveals that the pace at which foreigners settled in Portugal, which had slowed during the 1980s, accelerated again over the course of the 1990s. Apart from a substantial increase in the number of immigrants, even the nationalities of origin and the respective socio-demographic profiles changed significantly, indicating a growing complexity in the composition of the foreign population in Portugal (Baganha & Góis 1998/1999).

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<sup>73</sup> Law No. 17/96, of 24 May, accessed on 25 August 2010 at the following website: [http://www.igf.min-financas.pt/inflegal/bd\\_igf/bd\\_legis\\_geral/Leg\\_geral\\_docs/LEI\\_017\\_96.htm](http://www.igf.min-financas.pt/inflegal/bd_igf/bd_legis_geral/Leg_geral_docs/LEI_017_96.htm).

On 25 June 1991 Portugal signed the Schengen Convention, which had a substantial impact on Portuguese migratory policies and realities, namely with regard to sharing sovereignty in terms of border controls on national frontiers and, consequently, on the fluxes of individuals who crossed these borders. With the entry into effect of the Schengen Agreement, in 1995, systematic border controls were abolished along internal boundaries between signatory states and a single and harmonised control was promoted on the respective external borders, within a framework of promoting the free circulation of individuals amongst signatory states. More specifically with regard to a common policy for visas, the issuing of short-term visas,<sup>74</sup> without distinction, by any of the signatory states put an end to a given signatory nation's exclusivity in terms of issuing entry visas, which had been an important tool for controlling and regulating migratory fluxes at a national level.

The need to incorporate EU normative developments into the national juridical order induced the XIII Constitutional Government to approve a new Immigration law, [Decree-Law No. 244/98, of 8 August](#),<sup>75</sup> later altered by Law No. 97/99, of 26 July.<sup>76</sup> These diplomas introduced some important aspects regarding the regulation of fluxes of labour immigration, more specifically in terms of changes in the typology of entry visas<sup>77</sup> and the creation of a specific section dedicated to issuing visas for professional purposes.<sup>78</sup> Decree-Law No. 244/98 also introduced the principle of labour subsidiarity into the Portuguese legal framework, which was to govern the issuing of visas to engage in a professional activity. As can be seen in Art. 41, "Access by non-EU citizens to engaging in salaried professional activities in Portuguese territory can be authorised, however, it is essential to consider that the offers of employment should preferably be satisfied by EU workers as well as non-EU workers who are legally resident in the country".<sup>79</sup> The principle of subsidiarity was ensured in the law by means of two mechanisms: 1) a prior communication to the IEFPP of offers of employment in Portuguese territory and 2) the need for a favourable opinion issued at the time by the Institute for

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<sup>74</sup> According to the rules of the Schengen agreement, in principle, the holder of a short-term visa issued by a signatory state can enter and circulate throughout the Schengen space during the period of validity of the said visa.

<sup>75</sup> Decree-Law No. 244/98, of 8 August, accessed on 25 August 2010 at the following website:

[http://www.cidadevirtual.pt/cpr/legis/244\\_98.html](http://www.cidadevirtual.pt/cpr/legis/244_98.html).

<sup>76</sup> Law No. 97/99, of 26 July, accessed on 25 August 2010 at the following website:

[http://www.cidadevirtual.pt/cpr/legis/97\\_99.html](http://www.cidadevirtual.pt/cpr/legis/97_99.html).

<sup>77</sup> This article reproduces, with certain adaptations, Art. 5(b) of (EC) Regulation No. 562/2006, of the European Parliament and of the Council, of 15 March 2006, which establishes the EU code regarding the regime by which individuals cross borders (Schengen Border Code). Accessible at the following website:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0001:0032:PT:PDF>.

<sup>78</sup> According to this legal text, the visa must be suitable for the purpose of the sojourn, a fact that conditions its temporal and territorial validity, as well as the requirements for obtaining such a visa, and hence the various types of visas mentioned in this article.

<sup>79</sup> Decree-Law No. 244/98, of 8 August, accessed on 25 August 2010 at the following website:

[http://www.cidadevirtual.pt/cpr/legis/244\\_98.html](http://www.cidadevirtual.pt/cpr/legis/244_98.html).

Development and Inspection of Working Conditions (IDICT) for granting residence visas to engage in salaried activities. In practice, what Decree-Law No. 244/98 proposed was to integrate the management of fluxes of labour migration with the national employment market in Portugal, expanding the range of institutions involved in this management to the IEFP and the IDICT, entities that played a role in the area of labour in Portugal. However, the same diploma would maintain the mechanism of exceptions for stays by foreign citizens in the national territory, consecrated in Art. 88, which envisaged the granting of residence permits to third country nationals who did not fulfil the requirements envisaged by the law, for humanitarian reasons or when the national interest was at stake.<sup>80</sup> The MAI was responsible for applying this regime, as per Art. 88 of the said legal diploma.

In 2001, the XIV Constitutional Government approved [Decree-Law No. 4/2001, of 10 January](#)<sup>81</sup>, which altered Decree-Law No. 244/98.<sup>82</sup> This diploma was issued just three years after the previous law had come into effect and less than two years after the changes that had been introduced in the previous law. It was, above all, a response to the evolution of the migratory situation in Portugal towards the end of the 1990s and the early years of the new millennium. In fact, the accentuated growth in the demand for labour, caused by a boom in the construction sector and public works that took place in the late 1990s and the beginning of the new millennium, was not satisfied by traditional sources of labour supplies, i.e. immigrants from PALOP nations and Brazil but rather by new and unexpected fluxes, namely by immigrants from Eastern European nations and particularly from Ukraine (Baganha *et al.* 2002). This situation was characterised by a growth in the number of foreigners in Portugal working illegally since the extraordinary regularisation campaign of 1996 as well as profound qualitative transformations in the composition of this immigrant population.

The immigrants who remained in Portugal in an irregular situation and engaged in a professional activity now no longer came primarily from PALOP nations but rather from Eastern European countries. These immigrants entered the country by means of the opportunities for circulation afforded by the Schengen agreement, the majority of them on short-term visas, and stayed on in Portugal, working in the secondary segment of the labour market, especially in the informal economy.

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<sup>80</sup> Cf. *Idem*.

<sup>81</sup> Decree-Law No. 4/2001, of 10 January, accessed on 25 August 2010 at the following website: <http://dre.pt/pdf1sdip/2001/01/008A00/00990127.pdf>.

<sup>82</sup> The new legislation implicitly incorporated the perspective of the European Commission regarding an “EU Policy regarding Immigration”, of 22 November 2000, in which the Commission opted for a controlled reopening of channels for legal immigration in accordance with various parameters and the diverse categories of migrants in question. Cf (COM (2000) 757), accessible at the following website: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004DC0178:PT:HTML>.

An analysis of the statistics pertaining to the early 21<sup>st</sup> century confirms the as yet limited numbers and largely irregular nature of immigration from Eastern Europe in the total immigrant population in Portugal. Thus, as on 31 December 2000 a total of 1,066 individual immigrants from Ukraine, Moldavia, Romania and Russia had a residence permit.<sup>83</sup> A comparison of the statistical information from the SEF and that of the INE confirms the residual value of immigrants from Eastern Europe in a regular situation. If these statistics are cross-referenced with the data from the 2001 census (note that the data was compiled in March 2001), which recorded 18,527 individuals,<sup>84</sup> significant discrepancies emerge for all the Eastern European nationalities. This indicates the presence of a population residing illegally in the country<sup>85</sup> and provides a glimpse of the early stages of an intense migratory influx.

The change in the Immigration Law and, more specifically, the creation of a new legal framework for foreigners who worked in Portugal, the so-called Stay Permits (*Autorizações de Permanência* or AP for short), granted within the scope of Decree-Law No. 4/2001, of 10 January, made it possible to regularise a substantial number of immigrant workers.<sup>86</sup> The APs corresponded, in practice and in essence, to a work visa, exceptionally granted in the national territory and they revealed the emergence of immigrant communities in Portugal that had not been very significant in the past: for the first time, Ukrainian, Romanian, Moldavian and Russian immigrants appeared at the top of immigration statistics in Portugal. This process also demonstrated that immigration in Portugal was no longer confined just to traditional host regions, particularly the main cities in Portugal, but rather was dispersed throughout the national territory, causing a shift that had a real impact on the forms of social integration for immigrants.

The said Decree-Law No. 4/2001 introduced a new mechanism to regulate the entry of labour immigrants, which has been maintained ever since in the national legal framework. This was the report about employment opportunities, a non-binding document that would determine the number of residence documents to be issued for engaging in professional activities to be attributed in each sector of the economy after assessing the demand for labour that would not be satisfied by national and EU workers or third country nationals who were already residing in Portugal. The attribution of work visas now also entailed presenting a promise of a work contract, signed by both parties, as well as informing the IEFPP beforehand about the offer of employment and obtaining approval from

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<sup>83</sup> In 1997, according to the SEF, a total of 82 individual immigrants from Eastern Europe held residence permits. In 1998 this figure was 1,090 and 1,077 such individuals held residence permits in 1999.

<sup>84</sup> See the annexed table.

<sup>85</sup> It is important to note that for the purpose of the census the INE deemed residents to be foreign nationals who had been in Portugal for over one year at the time of the census (INE, Census 2001).

<sup>86</sup> See the annexed table with overall data regarding residence permits.

the General Labour Inspectorate (IGT). This system, commonly known as immigration quotas, was a static system when compared to the dynamics of the economy and the labour market and, in the first year of its existence, the lack of alignment between the forecast demand and the real demand for labour would be tested. The divergences between the statistics regarding the number of APs issued and the report regarding labour needs is a clear sign of this.

Between 2001 and 2003, under the terms of Art. 55 of the said Decree-Law No. 4/2001, 183,655 APs were granted to immigrant workers who were in Portugal in an irregular situation,<sup>87</sup> subject to the existence of a work contract. More than half these APs were issued to citizens from Eastern Europe (55%), the vast majority of them from Ukraine (35%). In a single year, between 2000 and 2001, the number of immigrants residing in Portugal legally<sup>88</sup> rose from 208,198 to 350,503 individuals, i.e. there was a 68% growth in the volume of the foreign population legally resident in the country. As a result of the granting of these APs, the ranking of the main nationalities of immigrants from third countries underwent a profound change and immigrants from Ukraine now constituted the most numerous group (Baganha, Marques & Góis, 2006: 282).

Thus, Decree-Law No. 4/2001 responded to the dual objective of regularising the situation of tens of thousands of foreigners who were working illegally in Portugal and likewise guaranteed the existence of available labour for the less skilled sectors of the economy, at a time when there was a high demand for employment. Achieving these objectives entailed the introduction of a new legal mechanism: the stay permit, valid for one year and renewable for a maximum period of five years. The attribution of a stay permit document was subject to the presentation of a valid work contract.

In practical terms, this extraordinary regularisation regime introduced a strategy in Portuguese migration policies that was based on the temporary nature of migration, as a response to the different junctures and phases of the labour market in Portugal, i.e. which made it possible to open borders during periods when labour was scarce and close them when jobs were scarce. This strategy implied issuing visas with a limited duration, initially for one year and renewable up to a maximum of five years, which only afforded the possibility of engaging in subordinate professional activities.

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<sup>87</sup> Art. 55 of Decree-Law No. 4/2001, of 10 January, established that until the report containing the annual forecast for employment opportunities and the sectors of activity in which these opportunities existed was approved [a report that was approved on 30 November 2001] “and in duly justified cases, foreign citizens who do not hold a suitable visa can be allowed to stay” as long as they fulfilled diverse conditions, namely, having an offer of a work contract and having informed the General Labour Inspectorate (IGT). Immigrants covered by this provision were granted a stay permit.

<sup>88</sup> When Decree-Law No. 4/2001 came into effect the foreign population legally resident in Portugal was now constituted by holders of residence permits and holders of stay permits.

In practice, it followed a model of individual regularisation of immigrant workers present in the national territory, based on the presupposition that if they were already inserted into the labour market then they were part of the real demand for labour. Over the course of time it became evident that many of the newly arrived workers who had been granted stay permits did not intend to return to their countries of origin. However, it is important to note that this legal regime ended up by playing a relevant role in satisfying a demand for labour in the Portuguese economy at certain junctures. In fact, a good part of these immigrant workers reacted very quickly to economic changes and/or changes in the Portuguese labour market and left the country either temporarily or permanently, even while they still held valid APs or after these APs had been converted into residence permits. Unfortunately, the statistics pertaining to migratory stocks only provide an approximate idea of the dimensions of this phenomenon since they only record the number of immigrants legally resident and not the exits from the national territory.

In 2003, [Decree-Law No. 34/2003, of 25 February](#)<sup>89</sup> modified Decree-Law No. 4/2001, altering some of its fundamental principles. The new Law discarded the legal mechanism of the Stay Permit (AP) and maintained the establishment of a maximum annual limit for entries, in which the quotas were calculated not just for each sector of the economy but also for each district in the country (Art. 36(4)). This thus introduced the dimension of promoting the regional dispersion of labour needs and employment opportunities available for third country nationals.

The Portuguese government now began to define, every two years (Art. 36 of Decree-Law No. 34/2003), the maximum number of third country workers to be admitted to engage in a professional activity in Portugal. Based on an opinion issued by the IEFP and after hearing the Autonomous Regions, the IGT, the National Association of Portuguese Municipalities (ANMP), confederations of employers and trade unions as well as the then ACIME, a report is prepared every two years forecasting employment opportunities and the sectors of activity in which these opportunities exist. Apart from this, the report fixes an imperative maximum annual limit for the entry of third country nationals to engage in a professional activity. This report is prepared in accordance with four criteria: a) the demand for labour in the labour market in general; b) the demand for labour in sectors that are of fundamental importance for the national economy; c) the demand for labour for seasonal activities; d) a geographic dispersal of employment opportunities for foreign citizens in accordance with the capacity of each district to host such workers. This report now became the main periodical document that served to define Portugal's policy of issuing work visas.

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<sup>89</sup> Decree-Law No. 34/2003, of 25 February, accessed on 30 August 2010 at the following website: [http://www.sef.pt/portal/v10/PT/asp/legislacao/legislacao\\_detalhe.aspx?id\\_linha=4198#0](http://www.sef.pt/portal/v10/PT/asp/legislacao/legislacao_detalhe.aspx?id_linha=4198#0).

Amongst the main changes introduced by Decree-Law No. 34/2003 it is important to note the introduction of a principle of selectivity, according to individual qualifications, in attributing visas to workers from third countries. Art. 37 created a new kind of work visa for engaging in scientific research activities or activities that presupposed highly-skilled technical knowledge, with a view to attracting scientists and senior technical personnel to Portugal. In this regard, Art. 41 envisages an exception to the limits established by the report regarding employment opportunities, in cases where the offer of employment is essential for the national economy, is of a highly-skilled nature or of relevant scientific, artistic or social interest for the country and has not been envisaged in the report mentioned in Art. 36, or, on the other hand, exceeds the number of jobs deemed to be necessary in the said report. In such cases issuing a work visa to engage in scientific research activities or an activity that presupposes highly-skilled technical knowledge can be considered, as long as it is preceded by an obligatory favourable opinion on the part of the IEFP.

The Law defined which entities are involved in the process of filling offers of employment – Art. 41 –, entrusting the task of coordination to the IEFP, which, in articulation with the DGACCP, the MNE and the SEF, was to develop the necessary mechanisms – by means of protocols and bilateral agreements – to fill offers of employment that have not been filled by national or EU workers, as long as the employer manifests an interest in recruiting workers from third countries. By means of this precept, it is possible to compare the demand for labour and whether the quotas are being filled, ascertained on a quarterly basis, which enables a better management of the issuing of visas.

The IEFP is also responsible for preparing a quarterly report that identifies, according to professional activities, the number of jobs that have already been filled, proceeding to assess the implementation of the report and its conformance with existing work opportunities as well as verifying whether the citizens who were the subject of offers of employment about which opinions were issued effectively filled the said jobs. In other words, the law provides for a continuous assessment of whether quotas are being filled and which vacancies are still available, making it possible to issue visas to engage in professional activities in the national territory up to the limit that has been established beforehand. On the other hand, the process of granting residence visas to engage in salaried work was changed substantially and was streamlined.<sup>90</sup>

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<sup>90</sup> Applications for work visas submitted at consular posts are processed only with a promise of a work contract signed by both parties, with proof that the offer of employment has been submitted to the Institute for Employment and Vocational Training (IEFP) and with proof that the said offer was submitted to the IGT, as per Art. 43(1) of Decree-Law No. 244/98, with the text provided by Decree-Law No. 34/2003, i.e. the requirement for a favourable opinion. In

From the perspective of developing a policy that enables an effective integration of immigrants who are in the national territory under the regime of family accompaniment, it is important to note that Art. 38 legally consecrates the possibility of allowing holders of temporary stay visas to engage in a professional activity on terms similar to those of the work visa, in duly justified cases.<sup>91</sup> The legislative text affirms the perspective of meeting the real demand for labour with foreign nationals who, by means of family reunification and reunion, already have a social and affective link to Portuguese territory, being given preference while satisfying the demand envisaged in the report regarding employment opportunities. In short, while Decree-Law No. 34/2003 reinforced a migratory policy by means of quotas for entry it also simultaneously created opportunities so that family reunification could likewise serve as a source for labour and streamlined access to the labour market by different types of visas and processes to obtain or renew such visas, reinforcing the role of the family unit in the process of integrating immigrants into the host society.

***Law No. 23/2007, of 4 July, and its importance for circular and temporary migration***

The current juridical regime governing foreigners in Portugal is contained in [Law No. 23/2007, of 4 July](#),<sup>92</sup> which governs the entry, stay, exit and removal of foreign citizens from the national territory,<sup>93</sup> complemented by a legal corpus that regulates this area, namely, [Regulative Decree No. 84/2007, of 5 November](#).<sup>94</sup> Thus, this is the Law that provides the legal framework and reflects Portuguese migration policies in the area of migratory circulation and temporary migration. In fact, this law is the main instrument for regulating economic migration and it defines the provisions regarding measures to deal with a scarcity of labour in Portugal, by means of immigration from third countries.

Law No. 23/2007 was derived from a Legislative Proposal that the XVII Constitutional Government presented to the national parliament and it transposed a set of EU directives to the national juridical order, namely Directive No. 2004/114/EC, of the Council, of 13 December, regarding the

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order to assess whether to grant a visa, the Directorate-General for Consular Services requests opinions from the SEF and the IEFPP, in order to evaluate the migratory risk, internal security and conformance with the report regarding work opportunities, respectively, and likewise requests information from the IGT about whether or not to issue a favourable opinion.

<sup>91</sup> Regulative Decree No. 6/2004, of 26 April, accessed on 30 August 2010 at the following website:

<http://dre.pt/pdf1sdip/2004/04/098B00/25712586.pdf>.

<sup>92</sup> Law No. 23/2007, of 4 July, accessed on 30 August 2010 at the following website:

<http://www.sef.pt/documentos/56/NOVA%20LEI%20ESTRANGEIROS.pdf>.

<sup>93</sup> For an updated compilation of this legislation see: <http://sites.google.com/site/leximigratoria/legispedia-sef/links>.

<sup>94</sup> Regulative Decree No. 84/2007, of 5 November, accessed on 30 August 2010 at the following website:

[http://www.sef.pt/documentos/35/DR84\\_2007.pdf](http://www.sef.pt/documentos/35/DR84_2007.pdf).

conditions for admitting third country nationals for the purposes of studies, student exchanges, non-remunerated training or voluntary activities and Directive No. 2005/71/EC, of the Council, of 12 October, regarding a specific procedure for admitting third country nationals for the purposes of scientific research, which is directly related to the subject of this report.

The current foreigners law does not formally conceive circular migration and temporary migration as autonomous typologies of immigration, as defined for this study. Instead, it opts to consecrate, in an innovative manner as compared to preceding legal regimes, mechanisms that have the potential to dynamise these forms of migration.

In this context, Art. 54 defines the objectives of the “temporary stay visa”. For the purposes of this study it is important to note that these include engaging in a temporary subordinate or independent professional activity, whose duration as a rule does not exceed six months; and engaging in scientific research activities in research centres, teaching activities in an establishment for higher learning or a highly-qualified activity for a period of time that is less than one year. The current option is expeditious, envisaging engaging in professional activities as the basis for obtaining this type of visa, which, as a general rule, does not exceed six months.<sup>95</sup>

Art. 56 of the Immigration Law defines the conditions for issuing a “temporary stay visa to engage in temporary subordinate professional activities”,<sup>96</sup> in favour of third country nationals who have a work contract or the promise of a work contract. This visa is granted for a period that is equal to the duration of the work contract, but should not exceed six months, except if the activity in question is part of an investment contract. In the case of the latter, the temporary stay visa should be issued for a validity that is similar to the respective implementation. As the entity managing offers of employment, the IIEFP proceeds to publicise these vacancies in the national territory and abroad through different means (e.g.

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<sup>95</sup> The origin of stay permits for short periods – which did not entitle the holder to the right to residence – dates back to the temporal limitations of the work visa implemented by the norms of Art. 18(4) and Art. 32 of [Decree-Law No. 59/93](#), of 3 March, determining that such visas could be granted for a maximum of 90 days, extendable once for a period of up to 60 days, i.e. a maximum stay of 150 days in the national territory. The temporal limitations of stay for the purposes of work was maintained in [Decree-Law No. 244/98](#), of 8 August, in Art. 36(1) combined with the provisions of Art. 42, in similar terms as specified in Art. 54(1)(c) of the current law. This type of visa was envisaged by [Decree-Law No. 34/2003](#), of 25 February, for engaging in a temporary professional activity, whose duration does not as a rule exceed six months. The possibility of holders of a temporary stay visa engaging in professional activities was already envisaged in Decree-Law No. 244/98, but only for duly justified situations that, under the terms of Art. 36(1) of [Regulative Decree No. 6/2004](#), of 8 August, depended on the occurrence of circumstances that occurred after the entry of the applicant in the national territory, which justified this intent.

<sup>96</sup> The first reference to the designation “temporary stay visa” appears in the initial text of Decree-Law No. 244/98, whose regime corresponds to the provision currently contained in (a), the first part of (f), (g) and part of the provision of Art. 54(2) of the 2007 Immigration Law.

Internet, publicity etc.). The ways in which the IEFP disseminates employment opportunities (which enable access to the Portuguese labour market) have been outlined in Art. 20(2) and following paragraphs of Regulative Decree No. 84/2007 but currently comprise publicising these vacancies on the IEFP website<sup>97</sup>, from where they are subsequently replicated by the other entities that participate in the process. It is important to note that the offers of employment published on the IEFP website – aimed at foreign workers – have been divided on the homepage itself into “offers of employment for temporary or seasonal activities” and “offers of employment for permanent activities”.

With regard to granting this visa for purposes of scientific research, teaching in establishments of higher learning or highly qualified activities, the law defines broader temporal limits. In such cases the period of activity can be of up to one year. The scope of these activities does not raise any doubts, except for the concept of “highly-skilled activity”. This is an as yet imprecise juridical concept, explained in Art. 3(a) of Law No. 23/2007 as being, “*An activity that requires specialised or exceptional technical competences and, consequently, a suitable qualification for engaging in the respective activity, namely a higher education qualification*”. This legal regime, which preceded the adoption of Directive No. 2009/50/EC, of the Council, of 25 May 2009, regarding the conditions for the entry and residence of third country nationals for the purposes of highly-skilled employment, aims to streamline the admission and the mobility of these highly skilled workers.

The definitions of “research centre” and “researcher” have been provided in Art. 3(d) and (n). The concept of “research” can be found in Art. 2(b) of [Directive No. 2005/71/EC](#), of the Council, of 12 October, which states “...*creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this stock of knowledge to devise new applications*”. Researchers must have suitable higher education training and the research project should normally require this qualification. This directive aims, on the one hand, to facilitate access by researchers to the EU space, considering the European strategy to become an area of excellence in the field of research at a global level, and, on the other hand, to avoid a brain drain from emerging or developing nations. The most effective way of reconciling these objectives is to admit researchers for limited periods, trying to maintain their link with their country of origin. The granting of a temporary stay visa for research or highly-skilled activities promoted by the Immigration Law seems to be, in this case, a suitable solution. It is also necessary to carry out an assessment in this regard to ascertain the pertinence of the legal measures adopted.

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<sup>97</sup> Accessible at the following website: <http://www.netemprego.imigrante.gov.pt/IEFP/estrangeiros/index.jsp>.

With regard to incentives for a form of circular migration, the current Foreigners' Law (Art. 85(4)) specifically envisages being able to maintain the right to residence in Portugal, beyond periods for absences that are legally allowed,<sup>98</sup> when an individual goes to their country of origin to develop a professional, corporate, cultural or social activity. Third country nationals who can prove that they are engaging in one of the aforesaid activities can benefit from this flexible residence regime. This is a legal mechanism aimed at stimulating migratory circulation from Portugal that is doubly favourable, namely, from the quantitative perspective, by allowing absences from the country for broad spans of time, as well as from a qualitative perspective, since it encompasses a broad range of activities that have the potential to promote development in the countries of origin, including activities of a cultural and social nature. This approach to circular migration in the sense of host nation/ country of origin consecrates a broad vision, which is an innovative solution at the level of EU Member States.

### **2.2.2 Conditions and criteria for individual processes of circular or temporary migration in Portugal**

At an individual level, temporary labour migration to Portugal is greatly limited by prevailing legislation. The possibilities for accessing this type of migration largely depend on the dearth of labour for professions and regions defined beforehand in the form of quotas for new arrivals. When in 2007 Law No. 23/2007 defined the new juridical regime for the entry, stay, exit and removal of foreigners from the national territory relevant changes were introduced with regard to the regulation of migratory fluxes to be inserted into the national labour market, namely whether the work is being done on a subordinate basis or services are being provided as an independent professional, with an impact on entry into Portugal by migrants within the scope of temporary migration.

Art. 54 of the said law emphasises that one of the principles governing the admission of third country nationals for the purpose of subordinate work is respecting the situation in the national labour market: "*The main criteria for admitting third country nationals to be able to engage in economic activities as salaried workers must consist of verifying that a given job cannot be filled by the national labour market*". While implementing this policy, Art. 56(2) determined that the IEFPP was to maintain an [information system that was accessible to the public](#), comprising all the offers of

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<sup>98</sup> Six consecutive months or eight interspersed months during the total period of validity of the permit for holders of a temporary residence permit and 24 consecutive months or 30 interspersed months during a period of 3 years in the case of holders of a permanent residence permit (Art. 85(2) of Law No. 23/2007).

employment for temporary subordinate work that are not satisfied by nationals of EU Member States, the European Economic Space or third country nationals legally resident in the national territory and that it was to disseminate these offers on its own initiative or at the request of employers or associations represented in the [Advisory Council](#), at Portuguese [embassies](#) and [consular posts](#). In other words, on the one hand access to the employment market by third country nationals who do not reside legally in Portugal is limited while this provision specifies preferred candidates. However, on the other hand, these employment opportunities are publicised amongst these same third country nationals in areas in which the national labour market is experiencing shortages owing to a lack of preferred candidates. This is why these offers of employment are circulated by the set of entities mentioned in the said provision. It is also important to note that the terms of Art. 59(8) of Law No. 23/2007 stipulate that the IEFP will prepare a half-yearly report about the implementation of the overall contingent, based on the information transmitted by the DGACCP, under the terms of Art. 30(3) of Regulative Decree No. 84/2007.

In order to engage in professional activities in the national territory immigrants can be granted one of the following documents:

- (i) Temporary stay visa for subordinate work of a seasonal nature, aimed at activities for which the work contract does not exceed a duration of six months and which cumulatively are of an intrinsically temporary/seasonal nature, to be proved by the employing entity;
- (ii) Residence visa for subordinate work, aimed at all activities that, by exclusion, do not fulfil the prior requirements both in terms of work contracts with a fixed or unspecified duration or for an indeterminate period of time.

Under the terms of the current Immigration Law, third country nationals can only work in Portugal if they are contracted by employers located within the national territory and only if there are no national citizens, nationals of EU Member States or third country nationals legally resident in the national territory who could carry out the intended activities, keeping in mind the principle of priority stipulated by national legislation.

In this sense, the priority granted to the workers mentioned in the previous paragraph is considered to have been verified when, after the respective employer interested in international recruitment communicates the offer of employment to the IEFP, the vacancy is not filled by citizens who have priority within a maximum period of 30 days, counted from the date the offer of employment was

submitted. To prove that the principle of priority has been fulfilled and in order to formulate the application for granting a temporary stay visa or residence visa, both to engage in a subordinate professional activity, the IEFP issues a specific declaration for the effect and, subsequently, proceeds to block a place in the Overall Quota for Employment Opportunities. This vacancy is only deemed to have been filled when the respective temporary stay visa is actually issued by the competent services of the Ministry for Foreign Affairs. Temporary stay visas for seasonal subordinate work do not block vacancies from the annual quota since these jobs are of a temporary nature and these visas cannot be converted into residence permits.

In the context of a differentiation between engaging in a highly-skilled activity<sup>99</sup> and engaging in a subordinate activity with other characteristics, Law No. 23/2007 introduced a relevant distinction. With regard to granting a temporary stay visa for the purposes of scientific research,<sup>100</sup> teaching in an institution for higher education or highly-skilled activities, Art. 54(1)(d) allows for the possibility of expanding the period of stay. In such cases the period of activity can be superior to six months, as long as it is less than one year.<sup>101</sup> This specific kind of migration is also regulated by Art. 57.

It is important to note that under the terms of Art. 54(3) the maximum period for decisions regarding applications for temporary stay visas is 30 days, counted from the date the application is received, which aims to be sufficient time for supply to adjust to demand in the national labour market. This period is perforce augmented by at least 30 days, counting from the date the offer of employment is submitted by the employer interested in recruiting international candidates until the IEFP ascertains that there are no suitable priority candidates (national citizens, nationals from an EU Member State or third country nationals legally resident in the national territory).

With regard to the possibility of extending these visas, the Immigration Law – in Art. 71(4) and (5) – determines that a temporary stay visa for engaging in a subordinate professional activity can only be extended if the applicant has a work contract in conformance with the terms of the law and is

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<sup>99</sup> With regard to questions regarding conditions for entry and residence by third country nationals for the purpose of highly-skilled employment, see Directive No. 2009/50/EC, of the Council, of 25 May 2009. Accessible at the following website: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:155:0017:0029:PT:PDF>.

<sup>100</sup> Irrespective of the duration, engaging in scientific research activities was earlier framed as a short-term stay (derived from the residual nature of short-term visas) or as stays for the purposes of study or work – Art. 33, 35 and 37 of Decree-Law No. 244/98, the latter article having subsequently been modified by the text of Decree-Law No. 34/2003.

<sup>101</sup> For the purposes of the present Law, Art. 3 defines “highly-skilled” activities as those that require specialised or exceptional technical skills and, consequently, a suitable qualification for engaging in the respective activity, namely a higher education qualification.

covered by the [National Health Service](#) or has health insurance. In cases involving the extension of temporary stay visas for research activities or highly-skilled activities, the applicant must have a work contract, a contract for providing services or a [scholarship for scientific research](#) and be covered by the National Health Service or have health insurance. Art. 72 defines the limits of such extensions as being: up to one year, extendible for a similar period, thus resulting in a maximum period of two years for the validity of this temporary stay visa.

Likewise within the scope of the conditions and criteria for individuals to engage in circular or temporary migration in Portugal it is important to note the way in which, in the Portuguese case and within the scope of the current Immigration Law, institutional practices have functioned to attribute residence permits to workers and students who were already present in the national territory.<sup>102</sup> In our view, this fact can be seen as an obstacle to a greater use of temporary stay visas for engaging in temporary subordinate professional activities, since the humanist generosity contained in institutional practices has made it possible to expand the labour market to individuals who began their professional activities without holding a suitable visa. The use of the said regimes, even though provisional, tends to be attributed whenever the requirements for granting a permit have been fulfilled and, in this sense, detracts from the exceptional nature of this legal regime.

### **2.2.3 Implementing and monitoring the rules for circular and temporary migration**

Diverse entities involved in managing and monitoring migration are responsible for implementing and monitoring the rules related to circular migration and temporary migration while the entities involved in managing the employment system in Portugal have been entrusted with this task with regard to labour migration. The implementation and monitoring of rules related to circular migration and temporary migration depend, namely, on the SEF, the IEFPP and the DGACCP. Portuguese embassies, consular posts or consular sections are responsible for issuing visas and these are the entities that must request the necessary opinions, information and other elements for processing visa applications.

With regard to regulating migratory fluxes, under the terms of the Immigration Law the SEF is the competent authority for granting visas at the borders and extending consular visas within

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<sup>102</sup> Namely by means of Art. 88(2) (granting residence permits for engaging in a subordinate professional activity to third country nationals), Art. 89(2) (granting residence permits for engaging in independent professional activities to third country nationals), Art. 90(2) (granting residence permits to third country nationals for the purposes of engaging in research activities, teaching activities in establishments of higher education or highly-skilled activities) and Art. 91(3) (granting residence permits to students enrolled in institutions of higher education).

Portuguese territory and likewise has the necessary authority to annul visas within the national territory or at border posts, under the terms of Art. 10(4). The SEF is also responsible for issuing opinions about applications for consular visas. Under the terms of Art. 56(2) the IEFEP is responsible for maintaining an information system that is accessible to the public, which contains all the offers of temporary subordinate employment that have not been filled by nationals of EU Member States, the European Economic Space or third country nationals legally resident in the national territory.

Under the terms of the Immigration Law the SEF is responsible for verifying the reasons for absences from the national territory for the purpose of cancelling residence permits, under the terms of Art. 85. In this sense the residence permits of individuals who have been absent for periods greater than the period stipulated in Art. 85(2),<sup>103</sup> when they can prove that during their absence from the national territory they were in their country of origin and that they developed a professional, entrepreneurial, cultural or social activity, will not be cancelled as holders are entitled to longer absences as long as the foreign citizens in question prove that this absence contributed towards the development of their country of origin. This justification should be presented to the SEF before leaving the country but in exceptional cases can also be presented subsequently, which reveals a relative flexibility for establishing criteria for absences. “Acceptable reasons” are understood to be all reasons that, being assessed on the basis of reasonability, do not indicate the intention to change residence to another country and which are based on valid reasons of a family, personal or professional nature. By thus consecrating a possible avenue for circular migration the Immigration Law creates a potential space for the circulation of immigrants between Portugal and the countries of origin, as part of a strategy that seeks to establish more dynamic relations between the countries of origin and destination for migratory fluxes.

#### **2.2.4 Other administrative, legislative or political measures that influence temporary or circular migration**

By means of Art. 97(2) the current law will also expand this possibility by allowing holders of residence permits issued for studies to engage in a subordinate professional activity outside the normal period of the study programme, thus enabling many temporary or seasonal jobs to be filled,

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<sup>103</sup> Art. 83(2) encompasses cases in which the resident has ceased to reside in the country, not because the said resident has declared this, but by means of indications to this effect, based on prolonged absences without reasonable cause from the national territory. This is the case if the holder of a temporary residence permit is absent for six consecutive months or eight interspersed months during the total validity period of the residence permit. In the case of permanent residents, this is applicable if such individuals are absent for 24 consecutive months or 30 interspersed months during a 3 year period.

especially those linked to areas such as tourism, obviating a greater need for resorting to temporary immigration. By allowing inactive migrants present in the national territory the opportunity to access the labour market, albeit in a temporary manner, the Immigration Law reduces the need for new entries to engage in temporary or seasonal activities. In this sense, complementing what has been stated above regarding the practice of applying Art. 88 of the current Immigration Law, the periodical demand for temporary or seasonal labour tends to be filled by immigrant workers who are already present in the national territory.

The presence of SEF liaison officials in different Portuguese embassies abroad must likewise be viewed as a measure aimed at facilitating the processes of circular migration and temporary migration since these officials are responsible for organising the recruitment process, within the scope of partnerships and agreements for mobility (e.g. in the case of the agreement signed between the Portuguese Republic and Ukraine about temporary migration by Ukrainian citizens to work in the Portuguese Republic).<sup>104</sup>

### **2.3 Cooperation with third countries**

Portugal has promoted an expansion of the concepts of circular migration and temporary migration by establishing contracts for temporary migration by means of bilateral or multilateral agreements with the countries of origin. Examples of this include the cooperation agreements and programmes signed with Cape Verde, Ukraine, Romania, Bulgaria and Moldavia, described in point 2.1.3.

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<sup>104</sup> In 2009 the SEF maintained eight immigration liaison officials stationed in Angola, Brazil, Cape Verde and Senegal/Guinea-Bissau, Mozambique, S. Tomé & Príncipe (Equatorial Guinea, Gabon and the Democratic Republic of the Congo), Russia and Ukraine.

### **3. Statistics pertaining to circular migration and temporary migration**

The lack of synchronicity between migratory “policies” and “realities” is a fact that has long been acknowledged by migration theories (Convey & Kupiszewski 1995). A good example of this can be seen by means of a comparison between the strength and importance of discourses regarding temporary migration or circular migration on the part of political decision makers in Portugal and an analysis of the numbers of immigrants that can be classified in these categories.

The first observation with regard to available statistics has to do with the absence of consolidated statistical data in the field of temporary and circular migration, especially with the required level of detail requested for this study. Similarly, there is no statistical information regarding the return of foreign citizens resident in Portugal and there is only partial data available regarding the issuing of temporary stay visas, as the statistical series have been reformulated twice during the past decade, which hinders a comparison of data. Thus, without prejudice to the tables presented below, the statistical approach to circular and temporary migration in Portugal has been largely compromised and is an area that can be improved in the future, in terms of improving statistical data or providing a greater level of detail in order to compare data for different countries.

However, it is important to note that this difficulty is not exclusively related to this present study although this was acutely felt while preparing this document. The variety and nature of the available statistical sources, on the one hand, and a lack of records for the types of migration being analysed herein, on the other hand, both contribute towards ensuring that it is not possible to prepare a statistical map regarding circular migration and temporary migration in Portugal with the desired level of detail and accuracy.

In fact, migratory circulation or circular migration is a phenomenon that is statistically invisible in Portugal, which does not mean that it does not occur but simply signifies that the necessary tools to record its presence are unavailable. With regard to temporary migration, the only statistical record available pertains to the issuing of temporary stay visas, issued at Portuguese diplomatic missions or consular posts in third countries and there is insufficient data available to accurately portray this specific type of migration in statistical terms.

With regard to the issuing of temporary stay visas, until the entry into effect of the current Immigration Law, the statistics did allow a distinction based on the purpose for which this kind of visa was issued, which could be sub-divided into 4 categories: professional activities in the fields of sports or the arts; research or highly-skilled activities; study; and temporary stay (see table 3.1).

**Table 3.1 – Temporary Stay Visas issued between 2002-2007 (selected types)**

<b>Year</b>	<b>Professional activities in the fields of sports or the arts</b>	<b>Research or highly-skilled activities</b>	<b>Study</b>	<b>Temporary Stay</b>
<b>2002</b>	693	0	3955	3922
<b>2003</b>	570	9	3658	4273
<b>2004</b>	740	91	3280	3897
<b>2005</b>	912	171	4051	4300
<b>2006</b>	729	175	4504	5598
<b>2007</b>	419	120	1836	3936

Source: MNE/DGACCP

Currently, according the prevailing Immigration Law the following types of visas can be issued at Portuguese diplomatic missions or consular posts: stopover visas, transit visas, short-term visas, temporary stay visas and residence visas. Under the legislation in effect the mechanisms of study visas and work visas have been eliminated, which have now been incorporated into the category of residence visas<sup>105</sup> and hence part of the data necessary to profile this aspect has now been omitted.

With regard to temporary stay visas, Portuguese diplomatic missions or consular posts can issue temporary stay visas that, according to the purpose for which they were issued, can be classified as E2 – Temporary stay visa for transfers of nationals of countries that are members of the WTO (for providing services or professional training); E3 – Temporary stay visa for engaging in a temporary subordinate or independent professional activity; and E4 – Temporary stay visa for engaging in research or highly-skilled activities. The temporary stay visas (types E2, E3 and E4) issued at Portuguese diplomatic missions or consular posts can be extended within the national territory but presuppose short sojourns that do not exceed a period of one year (cf. Art. 54(1) (b), (c) and (d) of Law No. 23/2007, of 4 July).

<sup>105</sup> Cf. Art. 62 of the Immigration Law, pertaining to the erstwhile study visa as well as Art. 59 and Art. 60 of the said diploma, with regard to the mechanism of the work visa, both to engage in subordinate professional activities as well as to engage in independent professional activities (it is necessary to note that in the case of temporary subordinate professional activities a temporary stay visa could be granted – Art. 56).

**Table 3.2 – Temporary Stay Visas issued in 2008-2009**

<b>Year</b>	<b>E2 – Transfers of citizens of WTO signatory nations</b>	<b>E3 – Temporary subordinate or independent professional activities</b>	<b>E4 – Research or highly-skilled activities</b>
<b>2008</b>	494	666	740
<b>2009</b>	369	278	465

Source: MNE/DGACCP 1

E2 - Temporary stay visa for transfers of nationals of countries that are members of the WTO (for providing services or professional training)

E3 – Temporary stay visa for engaging in a temporary subordinate or independent professional activity

E4 – Temporary stay visa for engaging in research or highly-skilled activities

## 4. Conclusions

### 4.1 Best practices related to the management of circular and temporary migration

It is necessary to deconstruct the idea that circular/temporary migration only assumes such forms while migrants are unable to achieve a more durable stay in a host nation. Circular migration should be viewed as a type of migration that is an alternative to long-term or permanent migration, while temporary migration is a seasonal form, a repetitive migration or a migration with objectives that have been defined beforehand (e.g. for studies, training or engaging in a civic activity), a complementary option to permanent or long-term migration.

Portuguese legislation pertaining to immigration already contains a set of provisions aimed at promoting the circular character of migration, namely, by allowing that all categories of third country nationals who have the status of resident can leave the country for given periods of time without losing this status but does not promote active policies to support this migratory circularity. However, although the existence of a migratory circulation of immigrants present in the national territory does occur and can be detected, the absence of statistical records about this migratory circularity hinders an assessment of the real impact of this regime in the national migratory context. The scarcity of data about this reality effectively limits any such assessment in the Portuguese case. Nevertheless, the existing data about trans-nationalism and trans-national practices by some groups of immigrants in Portugal makes it possible to formulate the hypothesis that the use of this mechanism by third country nationals in Portugal has been, to date, quite limited, which is likewise confirmed by the Aliens and Borders Service.<sup>106</sup>

Conceiving specific programmes for circular migration (such as the bilateral or multilateral agreements signed with Cape Verde and Ukraine described in this study), according to the needs of the involved nations, appears to be an example of an existing best practice, which could be disseminated further. These programmes, which should be designed on a case-by-case basis would allow migrants to enter Portugal to work, study or engage in other activities for a specific period of time, through privileged channels, conceived in accordance with the concrete procedures and presuppositions defined by the signatory states. However, all such programmes should be subject to periodical assessments that make it possible to progressively hone best practices. Excellent

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<sup>106</sup> See, for example, Marques, J. C.; Góis, P. (2008), "[Peut-on mesurer les pratiques transnationales? Les raisons de la faiblesse des pratiques transnationales des Cap-Verdiens au Portugal et des Portugais en Suisse](#)", *Revue Européenne des Migrations Internationales*.

experiences in this area can be derived from the pilot programme established with Ukraine, which will make it possible to ascertain (after a final evaluation) the advantages and disadvantages of the system that is currently being implemented in real conditions.

In terms of the legal framework, the Immigration Law (Art. 3 of Law No. 23/2007) defines “temporary professional activities” as those that are of a seasonal or non-permanent nature, which do not exceed a period of six months.<sup>107</sup> Under the current Immigration Law the entry and stay of foreign nationals to engage in temporary professional activities is subject to a temporary stay visa to engage in a subordinate or independent professional activity. With regard to engaging in temporary research or highly-skilled activities these visas are granted for a period of time that is “less than one year”. In our view, given the relatively recent implementation of this law, which also came into effect during an economic and financial crisis in Portugal, with an obvious impact on the demand for labour, some time will be necessary for the necessary conditions to emerge for employers to routinely seek workers. The conclusion is that, in the context of the current employment crisis, the existence of national and (legal or illegal) foreign labour available in the national territory will, in many cases, hinder the admission of third country nationals who seek to engage in a temporary subordinate professional activity in the national territory, using a temporary stay visa, under the terms of Art. 56 of Law No. 23/2007.

With regard to the implementation and routine of contracting processes an analysis of the pilot projects or cooperation agreements that have already been implemented (e.g. with Ukraine or Cape Verde) reveals that along with the Portuguese labour market the labour markets in the countries of origin likewise need to create corporate mediation structures. Currently, there are no mediation companies liaising between the labour markets in the countries of origin and destination and only public institutions and structures carry out such mediation activities. With regard to the involvement of the different structures that exist in Portugal, it is necessary for the practical communities that are linked to the process of recruiting foreign workers to also hone the collaboration routines (e.g. the IEFP, SEF, DGACCP).

It is also important to note that Portuguese legislation is humanist with regard to foreigner citizens resident in or present in the national territory, since a set of universally recognised rights has been implemented, more specifically the right to education or professional training, the right to healthcare and the right to access justice, manifested in Art. 15(1) of the Constitution of the

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<sup>107</sup> Except when this activity is carried out within the scope of an investment contract.

Portuguese Republic, which affirms that: "*Foreigners and stateless individuals who are in or reside in Portugal enjoy the same rights and are subject to the same duties as Portuguese citizens*". Art. 83 of Law No. 23/2007 explicitly grants these rights to foreign citizens holding a residence permit, which is an example of the best practices highlighted herein. At the same time, one can also note that the Labour Code (Law No. 7/2009, of 12 February) also ensures equal treatment for foreign or stateless workers. Art 4 of this Code stipulates that, "Foreign or stateless workers who are authorised to engage in a subordinate professional activity in Portuguese territory enjoy the same rights and are subject to the same duties as workers with Portuguese citizenship".

#### **4.2 Positive policy options for circular and temporary migration**

In the Portuguese case, it is important to note the legislative trajectory for the construction of consistent migratory policies over the course of recent decades, which essentially favour the entry into the country and insertion into Portuguese society of permanent or long-term immigrants. Notwithstanding this preference, Portuguese legislation contemplates both short-term migration as well as temporary migration, as has been described above. The establishment of temporary migration agreements with the countries of origin of immigrants in Portugal, more specifically with Ukraine and Cape Verde, reveal the strategy that the Portuguese state has opted to pursue in these areas, basing temporary migration on joint responsibility amongst the various actors involved.

#### **4.3 Recommendations regarding the compilation of data**

One of the ways of obtaining dynamic information about changes in the situations of migrants over the course of time, such as in the specific case of migratory circulation, is by means of creating panels of immigrants (or families of immigrants) and a longitudinal research that accompanies them over the course of more or less long periods of time.<sup>108</sup>

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<sup>108</sup> Such panels are a powerful research method to track migratory circulation and its characteristics but do have some limitations. Compiling data through panels entails significant expenditure per individual observed, especially when it is important to obtain observations for a prolonged period of time. On the other hand, all the errors in compiling panel data can contaminate the real changes experienced by the group being studied (e.g. it is necessary to define from the outset the dimensions to be considered). Apart from this, the data from panels regarding migration face an insurmountable hurdle insofar as a repetition of an interview in the same house does not guarantee the existence of a panel. Immigrants, by definition, move and it can be very difficult to accompany such movements and hence being a part of these panels has to be remunerated in some way in order to ensure the continued participation of immigrants (or families) over a long period of time. An easier alternative, albeit one that has different characteristics, could include compiling retrospective biographical stories regarding migration, employment and the quest for employment, for example, in an attempt to identify common typologies amongst migrants.

At the level of compiling more quantitative information, it will only be possible to record entries into and exits from the territories in question (e.g. national territory, EU or Schengen space) by creating a common database and uniform data records although this is clearly a long-term strategy. The Regulations of the European Parliament and the Council regarding EU statistics about migration and international protection<sup>109</sup> are a decisive element for clarifying the type of information requested and the harmonisation of data, representing a stimulus for improving the quality of the statistical information in question,<sup>110</sup> however, they need to be expanded to current and updated concepts pertaining to international migrations in order to be fully functional. It is essential to proceed in a consistent manner to promote common rules for a desegregation of statistics. The examples of the concepts described in this study are a good example of the necessary expansion within the scope of the current Regulations of the European Parliament and the Council regarding EU statistics about migration and international protection.

#### **4.4 Recommendations regarding cooperation with countries of origin and managing circular and temporary migration**

The current Immigration Law established that decisions regarding applications for a temporary stay visa must be made within a period of 30 days, counted from the processing of the file, not the date on which the application is submitted. However, the law does not stipulate any consequence should this deadline not be complied with, more specifically, it does not stipulate a solution of tacit approval. We would recommend that a rule be established, within the scope of bilateral or multilateral agreements regarding temporary migration, that once this period has concluded and if all the legal requirements have been fulfilled that the solution be one of tacit approval, as a means of streamlining one of the phases of the process.

So that a system of circular migration for temporary employment functions effectively it is necessary that temporary stays be permitted, ranging from between three to twelve months, renewable various times until a maximum period has elapsed, after the issue of the first temporary stay visa (e.g. 5 or 10 years). Simultaneously, successive absences from the national territory should be allowed, with multiple entries, without this affecting the status granted to the immigrant. These

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<sup>109</sup> EU Regulation No. 351/2010, of the Commission, of 23 April, which implemented EC Regulation No. 862/2007, of the European Parliament and of the Council regarding EU statistics about migration and international protection, in terms of defining the categories for groups of countries of birth, groups of countries of habitual prior residence, groups of countries of future habitual residence and groups of nationalities.

<sup>110</sup> Accessed on 30 August 2010, at the following website:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:104:0037:0039:PT:PDF>.

temporary stay permits should be linked to a specific purpose and should lapse when this purpose is no longer applicable (e.g. subordinate work, study, research, independent work...). With regard to the admission of seasonal migrants, the main measure to promote circular migration should consist of creating a pluriannual work/residence permit specifically for such migrants, which would enable them to return during various successive years to engage in seasonal work. This would make it possible to distinguish what is different, i.e. the model for seasonal migration should contain mechanisms and authorisations (including temporary stay documents) that are different from the other kinds of migration that have already been consolidated.

The Directive regarding the status of long-term residents already affords interesting possibilities such as that of Member States allowing migrants who return to maintain their status. Art. 85 of the current Immigration Law envisages that individuals holding a temporary residence permit can be absent from the national territory for six consecutive months or eight interspersed months during the total period of validity of the permit while individuals holding a permanent residence permit can be absent from the national territory for 24 consecutive months or 30 interspersed months during a period of three years.

Viability studies have been scheduled regarding eventual new measures, which could include multi-entry long-term visas for immigrants who return<sup>111</sup> or the possibility of erstwhile migrants having priority and obtaining new residence permits for another temporary job in the former host country within the scope of simplified procedures.<sup>112</sup> To this end, responding to the Action Plan announced in 2005, in the context of creating or developing instruments to support circular and return migration, an EU database could be created concerning third country nationals who have left the space of the European Union at the end of their temporary residence/work permit (cf. COM(2005) 669 final)<sup>113</sup>. An analysis of the viability/opportunity for such a database could, for example, be integrated into an impact study that should be carried out with regard to the regime for entries and exits. Moreover, the EU should actively pursue its initiatives to conceive temporary immigration regimes that are likely to contribute towards optimising the advantages for all parties, i.e. which correspond to the labour needs of the Member States and simultaneously contribute, by means of a

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<sup>111</sup> Accessed on 30 August 2010 at the following website:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005DC0669:PT:NOT>.

<sup>112</sup> *Green Paper on Confronting Demographic Change: A New Solidarity between the Generations*, COM(2005)94 final. Accessed on 30 August 2010 at the following website:

[http://eur-lex.europa.eu/LexUriServ/site/en/com/2005\\_0094en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/0094en01.pdf).

<sup>113</sup> Accessed on 30 August 2010 at the following website:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005DC0669:PT:NOT>.

possible return, towards the development of countries of origin and the acquisition of skills and other advantages by participating migrants.

Access to new temporary jobs by workers who have already worked in EU nations and who have returned to their countries of origin should be facilitated to encourage this circular migration. In the Portuguese case, the measures aimed at promoting this circular nature should, in our view, focus on simplifying the admission procedures for individuals who have already resided legally in Portugal (or in an EU nation) during a given period of time, giving them priority in terms of access to temporary migration programmes (e.g. for the purposes of seasonal work, highly-skilled work, studies or training). This implies developing an updated database that, containing information related to the migratory process, would dispense with an entire set of administrative stages for submitting and analysing documentation, thus simplifying procedures. The most productive option could be to maximise the existing administrative databases (from where statistical information should be extracted), making the most of the information that the state already possesses. In the Portuguese case, this option would translate, more specifically, into upgrading the national database regarding foreign citizens (which include the individual “migratory” files of foreign nationals), thus avoiding the creation of new databases.

## Annexes

### 1. Bibliography

#### *Webgraphy:*

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## 2. Statistics

**Table 1 - Immigrants from Eastern Europe in Portugal, 2000 and 2001: Comparison of sources**

Country of origin	Residence permits in 2000 (SEF) (1)	2001 Census (2)	Difference between (2) and (1)
<b>Ukraine</b>	163	10, 793	10, 630
<b>Moldavia</b>	15	2, 984	2, 969
<b>Romania</b>	369	2, 661	2, 292
<b>Russia</b>	519	2, 089	1, 570
<b>Total</b>	1,066	18,527	17,461

Sources: INE, XIV General Population Census, 2001 and SEF, Statistics regarding Foreign Nationals, 2000

([http://www.sef.pt/estatisticas/por\\_sexo\\_00.pdf](http://www.sef.pt/estatisticas/por_sexo_00.pdf))

