

*Portugal*

**REPORT**  
**on the Free Movement of Workers**  
**in Portugal in 2005**

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## **General remarks**

1. Concerning the free movement of persons (EU citizens), there is a Act being drafted in the Home Affairs Ministry for the purpose of transposing the Directive 2004/38/CE. There is no more legislation or circular being drafted which specifically refers to free movement of persons (EU citizens).

2. The entry into force of the Adhesion Treaties of the 10 new Member States has had a very limited impact in Portugal concerning the free movement of workers, due to the fact that migratory flows from these Member States are insignificant. Only 0,6% of the applicants for residence permits came from them. Anyway, during a period of two years from 1 May 2004, Portugal applies transitional measures to 8 new Member States: Czech Republic, Slovakia, Estonia, Latvia, Lithuania, Hungary, Poland and Slovenia, but not to Cyprus and Malta.

It means that employees coming from these 8 countries after the 1 May 2004 and till 1 May 2006 will be subject to Decree-Law 244/98, as amended lately by Decree-Law n° 34/2003, establishing the general rules for entry, stay and exit of foreign citizens in and from Portuguese territory (Immigration Act), and not to Decree-Law 60/93. Till 1 May 2006, they will be subject to the general conditions of entry for foreign citizens, especially in terms of visa requirements. In this context, the Portuguese authorities require not only documents proving the purpose of the stay, housing conditions and means of subsistence, but also not having been sentenced to more than six months' imprisonment and a medical certificate or health insurance, before issuing a visa.

Only the citizens of these eight new Member States who (1) come to Portugal as self-employed or economically inactive persons or (2) stayed already here as employees before 1 May 2004 are subject to Decree-Law 60/93, establishing the conditions of entry and residence in Portugal of EU citizens.

However, the Portuguese state authorities reiterate the intention of renouncing to the additional period of transition from the 1<sup>st</sup> of May 2006.

## Chapter I

### Entry, residence and departure

#### Entry

##### *Legislation in force*

*Decree-Law n.º 60/93, as amended by Decree-Law n.º 250/98*

According to articles 3(1)(a) and 4(1)(a) of Decree-Law n.º 60/93, community workers (like all Union citizens) are allowed to enter Portuguese territory merely upon presentation of an identity card or a valid passport.

The entry can only be refused on grounds of public policy, national security or public health [Article 12(1) of Decree-Law 60/93].

Only the diseases or disabilities listed in article 12(2) of Decree-Law 60/93 may justify refusal of entry into a territory, such as tuberculosis, syphilis, drug addiction, psychotic disorders (also listed in the Annex of Directive 64/221).

The refusal of entry on grounds of public order or public security must be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions do not in themselves constitute grounds for automatically taking such a measure [Article 13(1) and (2) of Decree-Law 60/93].

##### *Draft legislation, circulars*

There is an Act being drafted in the Home Affairs Ministry for the purpose of transposing the Directive 2004/38/CE.

##### *Judicial practice*

An examination of the case-law databases of the Supreme Administrative Court and the Central Administrative Court (2<sup>nd</sup> instance) revealed that in 2005 there is no case-law pertaining to the entry or refusal of entry to Community workers.

##### *Administrative practices*

Administrative practices are limited to implementing current legislation on the entry of EU citizens. There is no special control of Community workers when they enter the country, which accounts for there being no known case of refusal.

##### *Literature*

The entry of Community workers is not a subject which arouses a great deal of interest amongst Portuguese jurists. Hence, there is no legal literature specifically devoted to the entry of Community workers. This subject is covered in general terms by some textbooks on Community Law and certain monographs, referred to in Chapter XI of the Portuguese report of 2002/2003. In 2004 the subject was treated by the textbook of *Ana Guerra MARTINS, Curso de Direito Constitucional da União Europeia* (Course of Constitutional Law of the European Union), Coimbra, p. 547.

## Residence

### *Legislation in force*

*Decree-Law n.º 60/93, as amended by Decree-Law n.º 250/98.*

On the issue of residence permits for Community workers, we must distinguish between seasonal workers and others.

Under the terms of article 2 of Decree-Law 60/93, seasonal workers are defined as “workers hired to take up employment in Portuguese territory, in a sector of activity which depends on the changing seasons, for not more than 8 months”. No residence document is required for seasonal workers to lawfully stay in Portuguese territory. They merely need to hold a contract of employment registered at the General Labour Inspectorate and inform the Borders and Immigration Service of their presence in Portuguese territory within 10 days of entry [Article 19(2) and (3) of Decree-Law 60/93]. All other categories of workers must apply for a residence permit, which refers to their capacity as paid workers [Article 15(2)(a) of Decree-Law 60/93].

Article 15(1) of Decree-Law 60/93 foresees three categories of residence permits which may be granted to Community workers:

- Residence permit for a national of a Member State of the European Union;
- Temporary residence permit;
- Residence permit.

A “*residence permit for a national of a Member State of the European Union*” is issued to workers who are employed for:

- Over 1 year or indefinitely – Article 16(a) of Decree-Law 60/93;
- Less than 1 year, should renewal of the contract result in the total length of employment being 1 year or more – Article 16(b) of Decree-Law 60/93;
- Such a residence permit must be requested by the worker within 3 months of entry, according to Article 23(1) of Decree-Law 60/93. Portuguese legislation does not foresee any penalty for not fulfilling this requirement.

This permit is *valid for 5 years*, is renewable upon the holder’s request for further periods of 10 years. Absence for up to 6 months or for the purposes of compulsory military service does not affect the validity of this residence permit issued to Community workers (Article 17 of Decree-Law 60/93).

A residence permit cannot be withdrawn from a employee who is a citizen of an EU member-state when “temporarily, he does not hold a position of employment, on grounds of illness or accident, or through involuntary unemployment, duly ascertained by the competent public authorities”. However, when renewing the residence permit for the first time, the period of validity may be reduced, but never to less than 12 months, should the worker have been involuntarily unemployed for more than the previous 12 months [Article 18(1) (a) of Decree-Law 60/93].

A *temporary residence permit* is issued to those workers who wish to hold a position, for not less than three months and not more than one year, in the employ of a Portuguese entity or a service provider. This residence permit is valid for the expected period of employment, and may be renewed for up to one year, should the Community worker be in the employ of a Portuguese entity (Article 20 of Decree-Law 60/93).

A *residence permit* is issued to Community workers who exercised their right to remain in Portuguese territory indefinitely. Article 5 of the Decree-Law 60/93 recognizes the right of any Community worker to remain permanently in the Portuguese territory if:

- at the moment of termination of his activity, he has reached the age laid down by the law for entitlement to an old-age pension and has pursued his activity in Portugal for at least the previous twelve months and resided there continuously for more than three years; periods of activity completed in the territory of a member-state are considered as having been completed in Portugal, should the Community worker keep his residence in Portugal, and return there at least once a week (Article 5 of Decree-Law 60/93); or
- having resided continuously in the Portuguese territory for more than two years, he ceases to pursue his activity there as a result of permanent incapacity to work. There is no requirement for

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minimum residence should incapacity result from a work accident or professional injury which entitles the worker to a full or partial state pension; the periods of activity undertaken in the territory of a Member State are considered as having been completed in Portugal, should the Community worker keep his residence in Portugal, and return there at least once a week [Article 5(3) of Decree-Law 60/93]; or

- after three years' continuous activity and residence in Portugal, he pursues his activity in the territory of another Member State, while retaining his residence in the Portuguese territory, to which he returns, as a rule, each day or at least once a week.

Breaks in residence not exceeding three months per year and absence on military service do not affect the residence conditions for the purposes of recognising permanent residence rights.

For the purposes of establishing the continuous duration of an activity, the duly proven periods of involuntary unemployment, as well as periods of inactivity, as a result of accident or illness, are considered (Article 7).

Residence permits are valid for 5 years and are renewed automatically at the holder's request, for periods of 10 years. Leaving Portuguese territory for periods of not more than 6 consecutive months or for compulsory military service does not affect the validity of the residence permit (Article 22 of Decree-Law 60/93).

Workers must apply for any of these three permits using the specific form which is provided free of charge by the Borders and Immigration Service (BIS). The decision concerning the granting or refusal of the first residence permit must be made as swiftly as possible, and, in any case, within 6 months. The applicant may stay in Portuguese territory until such a decision is taken. Should there be grounds, information concerning the applicant's criminal record may be requested from other Member States (Articles 24 and 25 of Decree-Law 60/93).

In any case, the formalities for obtaining a residence permit do not pose an obstacle to applicants immediately signing employment contracts (Article 30 of Decree-Law 60/93).

The only grounds for refusing to issue a residence permit are public policy, public security and public health. Refusal to issue a first residence permit may be based on the applicant suffering from one of the illnesses or afflictions explicitly listed in Article 12(2) of Decree-Law 60/93 (which are the same as those which can be the grounds for refusing entry). Nevertheless, their development after a first residence permit has been issued cannot justify refusal to renew or expulsion from Portuguese territory.

Grounds of public policy and public security must be based exclusively on the applicant's behaviour. Criminal convictions are not sufficient grounds for automatic refusal to issue a residence permit (Article 13 of Decree-Law 60/93). Expiry of an identity card cannot be used as grounds for refusing to issue a Community citizen with a residence permit, for the authorities must identify him ex-officio by some other means (see point B.3 of the Portuguese Report 2002/2003).

According to the provisions of Article 14 of Decree-Law 60/93, the interested party must be informed of the grounds for refusal to issue a residence permit, unless it goes against the interests of national security.

An appeal can be lodged before the administrative courts against the decision to refuse issue of a residence permit. The appeal has suspensive effect, except in emergency cases (Article 28 of Decree-Law 60/93).

### *Draft legislation, circulars*

There is an Act being drafted in the Home Affairs Ministry for the purpose of transposing the Directive 2004/38/CE.

### *Judicial practice*

An examination of the case-law databases of the Supreme Administrative Court and the Central Administrative Court (2<sup>nd</sup> instance) revealed that in 2005 there is no case-law pertaining to residence in Portugal of Community workers.

*Administrative practices*

There are no administrative practices concerning the issue of residence permits to EU citizens which diverge from the legal norms. According to information obtained from the Borders and Immigration Services, no medical exams are carried out nor is a doctor's certificate required to possibly restrict the right of entry on the grounds of public health.

EU workers must apply for a residence permit using the appropriate form addressed to the Regional Directorate or Office of the BIS of his area of residence. Proof of identity, as well as the original and a photocopy of a statement of employment, referring to the beginning and end of his contract of employment, must be submitted. Issue of the residence permit is subject to payment of a fee of 2,54 Euros.

*Literature*

There is no recent legal literature devoted specifically to EU workers' residence. Besides the works mentioned in the 2002/2003 report, the following work of 2004 contains some references to that subject: *MARTINS, Ana Maria Guerra, Curso de Direito Constitucional da União Europeia* (Course of Constitutional Law of the European Union), Coimbra, p. 547.

**Departure**

*Legislation in force*

*Decree-Law 60/93 as amended by Decree-Law 250/98.*

According to 12 of Decree-Law 60/93, restrictions placed on EU workers' right to reside in Portugal can only be justified on the grounds of public policy, public security and public health. With regard to the latter, should the diseases listed in article 12(2) appear at a latter date, this does not constitute grounds for the EU citizen to be expelled from Portugal. Any restriction of the right of entry or residence that is motivated on grounds of public policy or public security should be based exclusively on the personal conduct of the individual concerned, and previous criminal convictions cannot in themselves constitute grounds for automatically taking such a measure. Whatever the case, lapsing of the community citizen's identity card or passport cannot justify him being deported from national territory.

Decree-Law 60/93 does not mention which entity is competent for determining expulsion of an EU citizen, but refers to general legislation on the entry, stay and departure of foreign citizens from national territory (Decree-Law 244/98, of 8 August, as amended by Decree-Law 34/2003 of 25 February). Pursuant to these Acts, either a judicial or an administrative authority may determine deportation. Administrative deportation is only possible when the foreign citizen has entered and stayed in Portugal unlawfully. According to article 33(2) of the Portuguese Constitution "Deportation of persons who have legally entered or are staying in the national territory, who have obtained a residence permit, or who have lodged an application for asylum that has not been refused, shall be determined by a judicial authority only." Article 111(a) of Decree-Law 244/98 stipulates that deportation shall be determined by judicial authority when the foreign citizen in question has lawfully entered or stayed in Portuguese territory.

In view of the right to free movement of EU citizens, one can conclude that it is legally impossible to administratively deport them from Portuguese territory; their forced departure only being determined by a court of law, "whenever their presence or behaviour, considered on an individual basis, pose a real and sufficiently serious threat to public policy or public security. The measures adopted must be proportionate to this threat. Thus, merely possessing a criminal record or failing to complete administrative formalities is not sufficient grounds for deporting the person in question." (Legal Opinion no.7/2002 of the Advisory Committee to the Public Prosecution Service)

Thus, according to this legal opinion, the unlawful stay of an EU citizen – unlike the case of a non-EU citizen – does not lead to deportation. His right to free movement can only be jeopardised

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“when their presence or behaviour considered on an individual basis, pose a real and sufficiently serious threat to public policy or public security.”

### *Draft legislation, circulars*

There is an Act being drafted in the Home Affairs Ministry for the purpose of transposing the Directive 2004/38/CE.

### *Judicial practice*

In some rulings, the Supreme Court of Justice, on the basis of Community Law and the case-law of the European Court of Justice, has defended that EU citizens convicted of a crime, should not be sentenced to the additional penalty of deportation, since it is incompatible with Community Law.<sup>1</sup> When seized on other occasions, the Supreme Court of Justice clearly admits the possibility of deporting EU citizens, provided the EU citizen in question poses a real and serious threat to public policy or public security.<sup>2</sup>

This understanding was reiterated in the ruling of the Supreme Court of Justice of 19<sup>th</sup> April 2005, where the Supreme Court revoked the expulsion decision of a European Union citizen, as an additional penalty, declaring that the expulsion only is legally allowable after considering public order, public security and public health reasons that justify its application.

The Portuguese courts have never used the preliminary reference to the Court of Justice of the European Communities in this context.

### *Administrative practices*

Administrative practices are limited to implementing current legislation.

### *Literature*

In 2005 no legal literature on deportation of EU citizens was produced. Besides the works mentioned in the 2002/2003 report, some references on the subject can be found in

- MARTINS, Ana Maria Guerra, *Curso de Direito Constitucional da União Europeia* (Course of Constitutional Law of the European Union), Coimbra, p. 547.

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1 Ruling of the Supreme Court of Justice of 19 December 1991, published in the Bulletin of the Ministry of Justice no.412 p.229, and in the Collection of Case-Law, year XVI, t.5, p.31; Ruling of the Supreme Court of Justice of 23 November 1995, published in the Bulletin of the Ministry of Justice no.451, p.130.

2 Ruling of the Supreme Court of Justice of 7 January 1993, published in the Bulletin of the Ministry of Justice no.423 p.172, and in the Collection of Case-Law – Rulings of the Supreme Court of Justice, year I, t.1 p.160. (note 25). Cf Ruling of the Supreme Court of Justice of 10 July 1996, published in Rulings of the Supreme Court of Justice, year IV, t.2, p.229.



## Chapter II

### Access to employment

#### *Texts in force*

#### *Legislative*

Several acts governing a particular profession open it implicitly or explicitly to EU citizens. One case is that of private notaries, which according to Article 25 of Decree-Law 24/2004 is open to individuals, regardless of nationality, who hold a degree in Law or an equivalent qualification (for example, an equivalent qualification in legal studies in another EU member-state).

Private security is an example of explicit openness to EU workers. According to Article 8(1a) of Decree-Law 231/98, emended by Decree-Law 35/2004, one of the requirements for access to this profession is to hold Portuguese nationality or to be a national of one of the EU member-states or the European economic area, or, on a reciprocal basis, of a Portuguese-speaking country.

In November 2005, the Decree-Law 198/2005 modified the Decree-Law 35/2004, with the purpose of clarifying the applicable system to the national citizens of other member states of the European Union. According to the new wording of the article 10 (2), the professional card can be acquired by all citizens of the European Union that have the admission requisites to the profession (article 8) or that prove to have this requisites in accordance with the verification made in their country of origin. The same applies to being a solicitor. According to Article 75(1) of Decree-Law 88/2003, enrolment in the Chamber of Solicitors is compulsory for exercising this profession. Not only Portuguese citizens, but also EU citizens may apply to enrol, in accordance with article 77(1)(a).

According to Article 4 of Decree-Law 104/89 establishing the new regulation on Maritime Inscription, demanded to those wishing to exercise the seaman profession, this inscription may only be required by individuals over 16 years and having the Portuguese nationality, “under safeguard of the obligations resulting of the accession of Portugal to the European Communities” (see *infra* Chapter IV, n° 2).

The general Directives on mutual recognition of diplomas and professional qualifications (Directives 89/48/CEE, 92/51/CEE e 1999/42/CE) are transposed into the Portuguese legal order through Decree-Laws 289/91, 242/96, 48/2003 and 71/2003, respectively.

Sectorial directives concerning the recognition of professional qualifications for certain professions (nurse; dentist; veterinarian; doctor; midwife; pharmacist; architect, barrister) are also transposed into the Portuguese legal order. For example, the Directive on recognition of Diplomas for medical professions, as amended most recently by Directive 2001/19/CE is transposed by Decree-Law 177/2003, amending Decree Law n.º 326/87 (amended by Decree-Laws nos. 35/92, 186/93, 48/2000 and 18/2001).

Therefore, enrolment in the professional order, which is a requirement for performing regulated professions in both the public and private sectors, for example, the medical, nursing and architect’s professions, depends on obtaining the corresponding diploma. Thus, EU nationals do not need to go through formal recognition or equivalence of diplomas. Hence, for example, article 6(4) of Decree-Law 104/98 states that EU nationals may enrol in the Order of Nurses, for the purposes of working in the nursing profession in Portugal, and that the academic and vocational qualifications required are those which are legally required for working in the profession in their country of origin.

Article 2 of Decree-law 326/87 states that diplomas awarded in any EU member-state to EU citizens have the same validity in Portugal as Portuguese diplomas providing access to the medical profession.

Working as a lawyer/barrister in Portugal also depends on enrolling beforehand in the Order of Lawyers/Barristers. EU national who wish to set up their own law practice in Portugal with only their qualification from their country of origin, must register with the Order, submitting a certificate which would enable them to practice as a lawyer in their country of origin. Should they wish to practice using the title of “advogado” or “advocate”, a Portuguese title, then in accordance with article 2 of the Regulation for the enrolment and registration of lawyers from other EU member-states, they must sit an oral and written aptitude test – these exams must be answered in Portuguese.

Regarding the architect’s profession, Decree-Law 14/90 establishes *ex-lege* recognition of diplomas awarded in other EU member-states, and gives them the same value as Portuguese qualificati-

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ons. According to article 5(2) of the Statutes (approved by Decree-Law 176/98), EU citizens may enrol in the Order, for the purposes of practising as an architect, provided they have obtained the academic and vocational requirements for entry to the profession in their own country.

Engineers must enrol in the Order of Engineers. According to article 4 of Decree-Law 289/91, EU citizens may enrol, provided they hold qualifications required for entry to the profession in their own country.

Furthermore, in a bid to facilitate the free movement of EU workers, the Portuguese legislator has set up a system for automatic recognition of doctorates awarded by an EU university. In fact, according to Decree-Law 216/97, a doctorate awarded by a university in another EU Member State is recognised by merely registering it at a Portuguese university, with there being no need to assess equivalence.

### *Draft legislation, circulars*

Concerning the recognition of the diplomas, in accordance with the assumed compromises of The Bologna Process, the Decree-Law 42/2005 of 22<sup>nd</sup> February establish the rules and the formal documents in order to create a European higher education area, facilitating students and teachers mobility.

During 2005 there is no legislation or circular being drafted which specifically refers to equal treatment and access to employment of Community workers.

### *Judicial practice*

Our examination of case-law databases and collections revealed that there is no case-law pertaining specifically to equal treatment and access to employment of Community workers.

## Chapter III Equality of treatment

### *Texts in force*

#### *Constitutional*

According to article 13 (“Principle of equality”) of the Constitution of the Portuguese Republic (CPR), “(1) All citizens have the same social rank and are equal before the law. (2) No one shall be privileged or favoured, or discriminated against, or deprived of any right or exempted from any duty, by reason of his or her ancestry, sex, race, language, territory of origin, religion, political or ideological convictions, education, economic situation or social circumstances.”

According to article 15 (“Aliens, stateless persons, European citizens”) of the CPR, “(1) Aliens and stateless persons temporarily or habitually resident in Portugal shall enjoy the same rights and be subject to the same duties as Portuguese citizens.” In principle, equality extends to all rights, and not just those guaranteed by the Constitution, but also those enshrined in ordinary legislation.

The principle of equality is not absolute, since Article 15(2) of the CPR provides exceptions and allows the law to establish others: “*Paragraph 1 does not apply to political rights, to the performance of public functions that are not predominantly technical or to rights and duties that, under this Constitution or the law, are restricted to Portuguese citizens.*”

The Constitution itself exclusively reserves certain rights which are expressly mentioned as the domain of the “Portuguese” or “Portuguese citizens” [Article 15(3)], in particular:

- The right to become members of the organs with supreme authority;
- The right to become members of the organs of self-government of the autonomous regions;
- The right to serve in the armed forces;
- The right to appointment to the diplomatic service.

With exception of these rights expressly reserved to Portuguese citizen, the CPR in Article 15(4) foresees that, provided that there is reciprocity, the law may confer upon aliens who reside in the national territory the right to vote for, and to stand for election as, members of the organs of local authorities. According to Article 15(5), the law may also confer upon citizens of the Member States of the European Union, who reside in Portugal, the right to vote for, and to stand for election as, Members of the European Parliament.

Finally, the CPR itself defines the conditions under which legislative acts may exclude foreign citizens from enjoying certain rights and thus establish legal exceptions to the principle of equality: Such exceptions may only be set by a formal law passed by Parliament (and not by Government). They do not cover the rights which cannot be suspended even in a curfew or state of emergency (Article 19 of the CPR);

Any legal clause which reserves a certain right for the Portuguese must be objectively justified by the safeguard of an interest or right which is constitutionally protected, and be necessary for such a purpose<sup>3</sup>.

Any restriction must be explicitly foreseen in the CPR and be limited to what is necessary for pursuing a constitutionally-relevant interest, leaving the basic nucleus of the right in question untouched.

#### *Legislative*

Pursuant to Article 15(3) to (5), several legislative acts allow the foreign citizens resident in Portugal to exercise some political rights, namely:

- The right to petition to defend their rights and legally-protected interests (Article 4, Law 43/90, amended by Laws 6/93 and 15/2003);
- The right to form associations to represent their interests (Law 115/99);
- The right to take part in a local referendum, on a reciprocal basis (Article 35, Framework Law 4/2000).

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3 In this sense see Order 72/2002 of the Constitutional Court, dated 20th February, 2002 (case n° 769/99), Official Journal I Series-A, n° 62, dated 14th March, 2002, p. 2318 and jurisprudence quoted therein.

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Concerning the equality of treatment at the legislative level, a special mention should be made to Law 20/98 of 12 May, governing the work of foreign citizens in Portugal, which is partly applicable to EU citizens. According to article 2, EU workers (in addition to other foreign workers lawfully in Portugal) “in undertaking their professional activity, shall benefit from the same working conditions as workers of Portuguese nationality.”

Pursuant to the principle of equality between Portuguese workers and EU workers, several provisions of Law 20/98 apply only to workers of third countries, namely those foreseeing the requirement of a written contract of employment (article 3), the obligation to lodge the contract of employment at the Institute for the Development and Inspection of Working Conditions, in addition to informing it of the signing and rescission of a contract of employment (articles 4 and 5).

The new Labour Code (Law 99/2003), in force since the end of 2003, ensures equal treatment regarding access to employment, vocational training, promotion and working conditions, and prohibits discriminations on the grounds of nationality (article 22). Employers are expressly prohibited from any form of discrimination (article 23 of the Labour Code), and the worker or applicant who is the subject of a discriminatory act is entitled to compensation for material and moral damages (article 26 of the Labour Code). Like in Law 20/98, some special clauses of the new Code on the work of foreign citizens in Portugal, such as the ones foreseeing the written form for the labour contract (article 88) or the obligation to inform the authorities of an employment contract signed with a foreign citizen (article 89), are not applicable to EU workers.

Finally, a mention to the Law 18/2004, of 11<sup>th</sup> May, which transposes the Directive 2004/43/CE implementing the principle of equal treatment between persons irrespective of racial or ethnic origins, and establishes a legal framework for combating direct or indirect discrimination on the grounds of racial or ethnic origin. This Act completes and strengthens Law 134/99 of 28<sup>th</sup> August, which bans and punishes namely with fines discriminatory practices, such as refusing to hire a worker solely for reasons of race, colour, family background, ethnic origin or nationality, or refusing or restricting access or exercising basic rights and economic and social rights (access to housing, health, education) for the same reasons.

Law 18/2004 applies to the public and private sectors in relation to social protection, including social security and health care, social advantages, education and access to and supply of goods and services available to the public, including housing.

### *Draft legislation, circulars*

There is no legislation or circular being drafted which specifically refers to equal treatment of Community workers.

### *Judicial practice*

Our examination of case-law databases and collections revealed that there is no case-law pertaining specifically to equal treatment of Community workers.

### *Administrative practices*

Administrative practice follows equal treatment of EU citizens.

### *Literature*

No legal literature specifically regarding equal treatment of EU workers was published in 2005.

## Chapter IV Employment in the public sector

### *Nationality condition for access to the public sector*

Article 15(2) of the Constitution of the Portuguese Republic (CPR) restricts the performance of public functions that are not predominantly technical to Portuguese citizens. This is the case of (1) Judicial Magistrates and Public Prosecutors (article 33 of Law 16/98), (2) Diplomatic Corps (Article 10 of Decree-Law n° 40-A/98), Armed Forces and Police (article 11 of Decree-Law 122/2000) and Tax Administration. In the literature, Article 15 of the CPR is generally considered as compatible with article 39 of the EC Treaty.

Thus, EU workers' and foreign citizens' access to public sector employment, as a public official or an employee, is restricted to predominantly technical posts that exclude the exercise of public authority or sovereignty powers.

Pursuant to article 47(2) of the CPR, "All citizens have the right, equally and without restriction, to become a public official, by means of general public competition."

Decree-Law n° 204/98 of 11<sup>th</sup> July establishes the general regime of public competition. Article 29(2) sets out general requirements for admission to open competitions and recruitment to public sector posts, such as: (1) the legally-required qualifications for the post (the recognition of diplomas and professional qualifications obtained in the member states is guaranteed by the national acts transposing the EU Directives on this matter); (2) a minimum age of 18 years; (3) completion of military or civic service, when compulsory; (4) physical capability and absence of any impediment or ban from carrying out such an activity; (5) Portuguese nationality of the applicants, *except in those cases exempted by specific legislation or international convention*.

In the literature, the nationality requirement foreseen by article 29(2)(a) is deemed to be incompatible with article 15(1) of the CPR and with article 39 of the EC Treaty because it is equivalent to a generic prohibition of access of foreigners, including EU citizens, to the Portuguese public service. Or such a prohibition should be restricted to posts implying the exercise of authority powers. The conformity of article 29(2)(a) with the CPR and the EC Treaty will only be assured if it is interpreted in the sense that the nationality requirement applies exclusively to a public competition related to posts implying the exercise of authority or sovereignty powers<sup>4</sup>.

Posts implying the direct exercise of authority powers and sovereignty powers are in principle reserved to Portuguese citizens. These posts are namely: judges, public prosecutors, members of the diplomatic career (ambassadors, consuls and other members of such career), members of the armed forces, jobs at the Ministry of Defense in general. High state offices, as members of government, deputies of central and regional parliaments, ombudsman, etc., are in principle reserved to Portuguese citizens.

However, according to article 15(3) of the Constitution, as amended in 2001, the only posts and high state offices strictly reserved to Portuguese citizens are the following: President of the Republic, President of the Parliament, Prime Minister, Presidents of the Supreme Courts and the posts in the armed forces or in the diplomatic career. In fact, this article allows the Portuguese legislator to open the remaining posts implying the direct exercise of authority powers and sovereignty powers, under reciprocity, to citizens of Portuguese-speaking countries with permanent residence in Portugal. Till now, the legislator has not implemented such a constitutional provision.

Anyway, acts governing access to certain public sector careers or announcements of open competitions frequently mention that applicants may be nationals of a Member State of the EU. This is the case, for example, of Article 22(1)(a) of Decree-Law 139-A/90 (Career Statutes for nursery school, teachers for primary and secondary school levels), which expressly foresees EU citizens' access to the teaching profession in state schools.

In cases where Portuguese legislation foreseeing specific public competitions does not mention the requirement of nationality of the applicants, it should be interpreted as opening the competition to both Portuguese and EU citizens.

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4 See Mário Torres, "O Estatuto Constitucional dos Estrangeiros", in *Scientia Iuridica*, 2001, p. 18 and Paulo Veiga e Moura, *A Privatização da Função Pública*, Coimbra, 2004, p. 136.

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Law 23/2004 of 22 June establishing the legal regime of the individual labour contract of the Public Service prohibits “activities implying the direct exercise of authority powers or the exercise of sovereignty powers” from being the subject of a labour contract in the ambit of the direct Administration of the State.

### *Nationality condition for access to the posts of captains and first officers of ships flying that Member State's flag*

According to Decree-Law 104/89, the access to posts in the maritime sector is subject to an inscription. Article 4 opens such an inscription also to EU citizens, without excluding the posts of master, chief mate and master of vessels of merchant ships flying Portuguese flag.

Independently of the question of determining if, according to Portuguese law, the rights under powers conferred on masters, chief mates of merchant ships and on masters of vessels flying Portuguese flag are actually exercised on a regular basis and do not represent a very minor part of their activities, no measures were taken or are planned to reserve to Portuguese nationals such posts.

### *Recognition of diplomas for access to the public sector*

The general Directives on mutual recognition of diplomas and professional qualifications (Directives 89/48/CEE, 92/51/CEE e 1999/42/CE) are transposed into the Portuguese legal order through Decree-Laws 289/91, 242/96, 48/2003 and 71/2003, respectively.

Sectorial directives concerning the recognition of professional qualifications for certain professions (nurse; dentist; veterinarian; doctor; midwife; pharmacist; architect, barrister) are also transposed into the Portuguese legal order. For example, the Directive on recognition of Diplomas for medical professions, as amended most recently by Directive 2001/19/CE is transposed by Decree-Law 177/2003, amending Decree Law n.º 326/87.

Therefore, enrolment in the professional order, which is a requirement for performing regulated professions in both the public and private sectors, for example, the medical, nursing and architect's professions, depends on obtaining the corresponding diploma. Thus, EU citizens do not need to go through formal recognition or equivalence of diplomas. Hence, for example, article 6(4) of Decree-Law 104/98 states that EU citizens may enrol in the Order of Nurses, for the purposes of working in the nursing profession in Portugal, and that the academic and vocational qualifications required are those which are legally required for working in the profession in their country of origin.

Article 2 of Decree-Law 326/87 states that diplomas awarded in any EU Member State to EU citizens have the same validity in Portugal as Portuguese diplomas providing access to the medical profession.

Engineers must enrol in the Order of Engineers. According to article 4 of Decree-Law 289/91, EU citizens may enrol, provided they hold qualifications required for entry to the profession in their own country.

Furthermore, the Portuguese legislator has set up a system for automatic recognition of doctorates awarded by an EU university. In fact, according to Decree-Law 216/97, a doctorate awarded by a university in another EU member-state is recognised by merely registering it at a Portuguese university, with there being no need to assess equivalence. This is very important to allow the access of EU Professors to Public Universities.

For the access to the profession of school teachers, the EU citizen must be qualified by his/her State of origin and have an authorisation issued by the Educational Ministry.

### *Obligation to participate in a competition which gives access to a training and afterwards to a post in the public sector*

The competition which gives access to a training and afterwards to a post in the public sector is a very common procedure in the fields that are not open to the EU citizens: police forces and judicial bodies. In the fields of activity of the public sector opened to EU citizens because they are predominantly technical (mainly, teachers for primary and secondary school levels), Portuguese authorities have to take in consideration the principle of judgment Burbaud, according to which a EU worker who is al-

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ready fully qualified in the field of activity concerned does not have to participate in a competition procedure which gives access to a training and afterwards to a post in the public sector.

Till now, no measures have been taken or planned to bring the Portuguese law in line with the *Burbaud* judgment.

### *Recognition of professional experience and seniority in another Member State*

The Portuguese legal system does include general rules on the tacking into account of professional experience and seniority for the purposes of access to public sector and for the purposes of progression in the Civil Service career.

These rules can be found in the several acts regulating the Civil Service and mainly in Decree-Law n.º 204/98 establishing the general regime of public competition [article 22(2)(c)]

None of such rules considers specifically the case of professional experience and seniority obtained *in another Member State*.

However the interpretation of such rules according to Community Law imposes the tacking into account of the professional experience and seniority achieved in another Member State for those purposes. And the administrative practice goes in that sense.

Till recently, the number of citizens of another Member States working in the Portuguese public sector was very tiny, and no real questions on this subject arose. In the late years things have changed. Nowadays, there is a large number of Spanish doctors and nurses working in the public hospitals and centres of the National Health Service. In the absence of specific legislation on the taking into account professional experience and seniority acquired in another Member State, it is plausible that the number of administrative and judicial controversies on this subject become significant.

In any case, the absence of specific legislation on that matter does not release the Portuguese administration from the obligation of taking into account the professional experience and seniority acquired in another Member State, as imposed by Community law. Without prejudice of the adoption of legislation on this specific point, the use of administrative circulars and instructions could contribute to achieve such a result.

### *Draft legislation, circulars*

There is no legislation or circular being drafted which specifically refers to employment of EU workers in the public sector.

### *Judicial practice*

The examination of case-law databases and collections revealed that in 2005 there is no new case-law pertaining specifically to employment of EU workers in the public sector.

### *Administrative practices*

Administrative practice has fostered large-scale admission of EU citizens to predominately technical posts in the public sector, especially in public hospitals and centres of the National Health Service.

### *Literature*

- MOURA, Paulo Veiga e, *A Privatização da Função Pública*, Coimbra, 2004, p. 135
- MOURA, Paulo Veiga e, *Função Pública*, 1º vol., 2ª ed., Coimbra, 2001, p. 129
- NEVES, Ana Fernanda, *Relação Jurídica de Emprego Público*, Coimbra, 1999, p. 184
- TORRES, Mário, “O Estatuto Constitucional dos Estrangeiros”, in *Scientia Iuridica*, n.º 280, 2001, p. 7

## Chapter V

### Members of the Family

#### *Legislation in force*

Decree-Law n° 60/93, amended by Decree-Law n° 250/98 and Decree-Law 244/98 (Immigration Act), and most recently amended by Decree-Law 34/2003, sets out the conditions of entry and stay for the citizens of the EU Member States and their family members. It means that the members of the family of a EU citizen staying in Portugal who are third-country nationals are under the scope of this Act and not of the Immigration Act (Decree-Law n.º 244/98), except in the cases where the former expressly refers to the latter (ex. Residence visa).

Therefore, only some provisions of the Immigration Act apply to members of the family of a EU citizen residing in Portugal who are third-country nationals.

*The members of the family who have the nationality of a Member State* are allowed to enter Portuguese territory merely on production of an identity card or passport. An equivalent residence permit is always issued to the family members who hold EU nationality: a residence permit for a national of a Member State, if the worker has a contract of one or year or more or a permanent contract. This residence permit is valid for 5 years from date of issue, and will be automatically renewed upon request, for further periods of ten years.

A temporary residence permit is issued, if the worker has an employment contract lasting less than one year. This residence permit is valid for the foreseeable period of employment

*The members of the family who do not have the nationality of a Member State* are allowed to enter Portuguese territory according to the general rules on entry and residence of aliens, but they enjoy every facility for obtaining a residence visa, that will be issued free of charge. Thus, those family members, who do not hold an EU passport, must apply for a residence visa in a Portuguese consulate for the purposes of family reunification, in order to enter Portuguese territory. They must prove their means of subsistence and living conditions for this purpose. Such a visa can only be issued after consulting the BIS, which will turn down the application, whenever the applicant has been convicted to 6 months' imprisonment or longer. The BIS opinion must be issued within 30 days, or the application shall be tacitly approved. A visa will also be refused whenever the SIS advises non-admission. Once allowed to enter Portugal, the family members of the EU worker must apply to the BIS for a residence permit.

Family members who do not hold EU nationality will be issued with a temporary residence permit, even if the worker holds a residence permit for a national of a EU Member State, although it has the same period of validity as the residence permit issued to the worker.

Whenever the EU worker has obtained a definitive residence right, family members living with him on Portuguese territory enjoy the same right. This right is represented by a residence permit issued to the family members of an EU worker with permanent residence rights, regardless of nationality. The death of the EU worker does not lead to annulment of the permanent residence rights of family members.

Should the worker die during his working life, but before obtaining permanent residence rights, family members may still obtain this right in one of the following situations:

- The worker had lived for two consecutive years in Portugal, immediately prior to death; or
- The worker dies in a work accident or due to professional illness, in which case a minimum period of residence is not required.

#### *Draft legislation, circulars*

There is a legislative act being drafted in the Home Affairs Ministry for the purpose of transposing the Directive 2004/38/CE.

#### *Judicial practice*

We are unaware of any judicial decisions pertaining to family reunification of EU workers in Portugal.



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### *Administrative practices*

The family members of an EU worker who wish to reside with him in Portugal must address an application for a residence permit to their local Regional Directorate or Office of the Borders and Immigration Service, and provide documentary proof of their family tie (e.g. marriage certificate), as well as a document guaranteeing medical assistance in Portugal (health insurance or Social Security beneficiary card).

The family member of an EU worker who does not hold an EU passport must have a residence visa issued by the Portuguese consulate in their country of origin. This visa is issued free of charge. The granting of this visa also depends on the EU worker's family member not being registered in the Schengen Information System as a non-admissible person, as the Portuguese authorities systematically consult the System for such persons.

## **Chapter VI**

### **Relevance/influence/follow-up of recent Court of Justice judgments**

Courts normally follow the case-law of the European Court of Justice on the subject of free movement of EU workers. Recently, the Supreme Administrative Court's decision to annul a BIS' decision to refuse a residence permit to an EU citizen because he did not hold either a valid identity card or passport, respects the case-law of the Court of Justice, in particular, the ruling handed down in the Giagounidis case of 5 March 1991.

There is an administrative practice according to which a EU citizen is only eligible for Social Security benefits if he possesses a residence permit passed by the competent Portuguese authorities.

That systematic practice is problematic especially after the judgment Collins (C-138/02) stated that articles 6 and 8 of the EC Treaty preclude eligibility for a benefit of a financial nature intended to facilitate access to employment in the labour market of a Member State from being subject to conditions which are liable to constitute discrimination on grounds of nationality. But no measures have been taken or are planned to bring Portuguese legal order into line with that judgement.

The examination of case-law databases and collections revealed that in 2005 there is no new case-law which specifically refers to this matter.

## **Chapter VII**

### **Policies of a general nature within repercussions on the free movement of Union citizens**

#### *Immigration policy*

Preferential access of EU workers to employment in Portugal is guaranteed by article 41(1) of Decree-Law 244/98, as amended by Decree-Law 24/2003 (Immigration Act). According to this provision, the granting of work visas or residence permits to foreign workers (non EU workers) is subject to first option having been given to EU workers. Only when a given vacancy is not filled by an EU worker, will the Portuguese authorities authorise that it be filled by a non-EU national.

Article 1(3) of Decree-Law 244/98 excludes the category of Member State nationals from its scope of application. Nevertheless, some of the provisions on granting residence visas to family members of EU workers who do not hold an EU passport, may have negative effects on the freedom of movement. In fact, the amendments made to the Immigration Act by Decree-Law 34/2003 resulted in greater restrictions on the entry of foreign citizens in Portugal, which could affect the entry of these family members. In particular, article 40(4) of Decree-Law 244/98, in its amended version, obliges the BIS to refuse the residence visa they need to enter Portugal lawfully and apply for a residence permit here, should they have been sentenced to more than 6 months' imprisonment, even if the sentence was suspended. This means that a mechanism of automatic refusal has been introduced, even if the person in question does not pose a threat to Portuguese public policy and public security.

It appears that the systematic refusal of entry of family members of an EU worker, as a result of the automatic application of these provisions may constitute a restriction on the free movement of EU workers contrary to EC Law.

During 2005, there is no legislation or circular being drafted which specifically refers to immigration policy.

#### *Sports sector*

##### *Legislation in force*

In 2004 was approved the Law nr 30/2004 of 21<sup>st</sup> July, Basis Law of Sport, that defines the general basis of the sportive system and the conditions to practise the sportive activity. In this Law, although not exist an explicit reference concerning the free movement of community workers or concerning the principle of non-discrimination, it does not contain any discriminative disposition.

The Basis Law of Sport, in the article 50<sup>th</sup>, classifies the professional and non-professional sportive activity and in the article 60<sup>th</sup> defines the professional sportive activity.

According to the article 34<sup>th</sup> (4), in what workers concerns, it forward to the contractual juridical system of the professional sportive practitioners, foreseen on the Law nr 28/98 of 26<sup>th</sup> June, amended by the Law nr 114/99 of 3rd August, and once more does not exist any reference to the community workers, but there is not any discriminative situation either.

Concerning the Regulation and specifically the non-professional sport, it is needed to proceed to some modifications to the regulations of the sportive federations in order to eliminate discriminative situations concerning the community citizens' access to the federate sport.

For example, in what concerns the inscription rates value, the Volleyball Association of Porto, makes a differentiation if it is a national athlete or an athlete coming from a foreign federation, even if communitarian.

Another example of discrimination occurs in the participation of community citizens in the national proves of sailing, because the legislation that is in force is not clear and the Portuguese Federation of Sailing deliberated that only the citizens from the Schengen area can participate, but do not appear in the final classifications.

Concerning the professional sport, with regard to the foreigners' inscription, the Basketball Clubs League limits the foreigners' inscription, including community citizens, to five athletes by team, what is a limitation to the free movement of workers in the community area.

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In 2005, the Sport Institute of Portugal organized a seminary, where was discussed the subject of the free movement of athletes and was communicated that the European Commission had received complaints against the sportive national Federations due to the existence of some obstacles to the free participation of the community citizens in national competitions.

In the same year took place the Sport Congress and in the opening speech the Presidency Minister remarked the existence of regulations of some national sportive federations that create “bureaucratic obstacles to the sportive practice to some immigrants...”.

In the sequence of an informal meeting of the European Union Sports ministers, occurred at September 2005, the Sport State Secretary emitted a dispatch that admits the existence of illegalities in some sportive federations and determinate that the Sport Institute of Portugal notifies all the sportive federations, with the purpose of withdraw from their regulations “all the norms that establish distinct rules if there is Portuguese citizens in cause, community citizens or citizens with whom the Portuguese State or the European Union have reciprocity agreements” (this dispatch was not published, but it is mentioned in the article of José Manuel Meirim “Bosman was in the Convention? The Europe searching for the Sport, Reprint of the Review “Law I”, Almedina).

In conclusion, at the legislative level we do not verify restrictions to the free movement of sportive workers, but there still existing some federative regulations that are incompatible with the Community Law.

### *Judicial practices*

Our examination of case-law databases and collections revealed that there is a case-law, the North Administrative Central Court, in the ruling of 17th November 2005, concerning an “intern measure” that declared: “There seems not exist a reasonable justification to the refusal of the emission of recreation navigator charts for the benefit of the European Union Member States citizens non-residents in Portugal, according to the article 29<sup>th</sup>(1) of the Recreation Navigation Regulation, approved by the Decree-Law 124/04 of 25<sup>th</sup> May”.

In fact, the article 29th of the Decree-Law 124/04 of 25th May regulate that the charts of recreation navigator are emitted to the persons that have residence in the national territory. So, the Portuguese Institute of the Maritime Transports has refusing the admission of community citizens to the exam for the recreation navigator chart, arguing the absence of proves of having a residence in the national territory, from these citizens.

The Court declared that the exigency of the residence in the national territory as a requisite to the exam admission and emission of the recreation navigator chart, if applicable to community citizens represents a clear violation of the non-discrimination principle consecrated in the EC Treaty. Accordingly, and having in mind the principle *Fumus boni iuris*, the court decreed an intern measure making possible in this way the admission to the exam of Spanish citizens non-residents in Portugal.

The Sport Law annotated was published.

In 2004, the subject appeared in several publications, between of which we point out... “Law and Sport Themes”.

### *Literature*

In 2004, the subject appeared in several publications, between of which we point out:

- André Dinis de Carvalho , “The Free Movements off Desportistas in the European Union”;
- Coimbra Editora, José Meirim, ““Law and Sport Themes””, and
- Coimbra Editora, “The sport Law annotated”.

## Chapter VIII EU Enlargement

### *Transitional arrangements and measures*

In the Treaty of Accession Portugal negotiated a transitional period of two years starting from 1 May 2004 with eight new Member States: Czech Republic, Slovakia, Estonia, Latvia, Lithuania, Hungary, Poland and Slovenia. There is no transitional period for Cyprus and Malta.

The Portuguese government did not change its position, renouncing to the 2<sup>nd</sup> phase of the period of transition.

### *The employees as addressees of the transitional arrangements*

During such a period of at least two years starting from 1 May 2004, the entry and residence of *employees* coming from the eight accession States are regulated under the Immigration Act, Decree-Law n° 244/98, as amended by Decree-Law n° 34/2003, that establishes the legal framework on entry and residence of aliens, and not under Decree-Law n° 60/90, setting out the conditions of entry and stay for the citizens of the EU Member States and their family members.

It means that, in the absence of a bilateral agreement between Portugal and one of these new Member States establishing specific provisions on this matter, a citizen of these Member States may only exercise a subordinated professional activity in Portugal if he has a work visa or a residence permit. Such a citizen must accept an offer of employment and obtain a work visa in a Portuguese consular post in his country of origin. Nevertheless, after 1 May 2004, preferential access for EU citizens to subordinated work activities in the Portuguese territory assured by article 41(1) of the Immigration Act also applies to employees of those eight new Member States.

The acquisition of a resident status by an employee of one of those eight Member States depends on the previous acquisition of a residence visa issued by the consular authorities in his country of origin. The applicant must indicate the purpose of the stay and to prove that he has means of subsistence and housing conditions. During the period of validity of such a residence visa (six months), the applicant must obtain a residence permit issued by the Regional Direction of the BIS competent for the area where he intends to reside. If he possesses a work visa for a period of three months, he may obtain a residence permit without obtaining previously a residence visa.

The workers of those eight Member States exercising legally a subordinated activity in Portugal will benefit from the principle of equal treatment vis-à-vis the national workers, concerning namely working conditions, salaries and social security, since no derogation to Regulation n° 1408/71 was negotiated.

The members of the family who join these workers from 1 May 2004 – spouse, descendants under the age of 21 years or over 21 dependent on them – will have access to the working market after a stay of six months in Portugal.

### *The situation of the employees from the ten new Member States residing legally in Portugal before 1 May 2004*

The employees of all the new Member States residing legally in Portugal before 1 May 2004 are not affected by the transitional measures. Thus, they became subject to Decree-Law 60/93 and not to Decree-Law 244/98.

This means e. g. that the members of the family of such workers who reside with them before 1 May 2004 have an automatic access to the Portuguese working market.

### *The situation of self-employed and economically inactive citizens*

No transitional period and measures were negotiated for these citizens of the ten new Member States. It means that from 1 May 2004 Decree-Law n° 60/93 became applicable to them.

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Thus, from that date self-employed and economically inactive persons of the ten new Member States do not need any longer a work visa or a residence visa in Portugal, contrarily to the employees of eight new Member States till at least 1 May 2006.

## Chapter IX

### Statistics

All statistics presented in this chapter were supplied by the BIS (www.sef.pt), in Statistical Report for 2005.

The BIS statistical reports do not allow us to draw a distinction between EU workers and EU citizens who are living in Portugal for reasons other than employment or self-employment (family reunification; right to settle; studies, etc.).

There is no accurate data on the flow of EU workers and their respective family members either, which would allow us to draw a comparison to non-EU citizens.

#### *Foreign residents in Portugal*

	<b>2004</b>	<b>2005</b>
Union Citizens	73.784	77.504
Third Country nationals	198.121	198.956
<b>Total</b>	<b>271.905</b>	<b>276.460</b>

#### *EU citizens residing in Portugal*

	<b>2004</b>	<b>2005</b>
United Kingdom	17.937	18.942
Spain	15.717	16.350
Germany	13.039	13.529
France	9.177	9.617
Netherlands	5.335	5.637
Italy	4.472	4.820
Belgium	2.624	2.730
Luxemburg	126	129
Austria	700	727
Greece	196	209
Ireland	645	680
Denmark	963	990
Finland	602	618
Sweden	1454	1.492
Czech Republic	73	118
Estonia	24	41
Latvia	37	46
Lithuania	50	77
Slovenia	21	33
Slovakia	28	47
Hungary	196	225
Poland	357	434
Cyprus	3	4
Malta	8	9

Portugal

*Repartition of resident EU citizens by region*

	<b>2004</b>	<b>2005</b>
Braga	1.366	1.520
Viana do Castelo	1.090	1.260
Porto	5.465	5.496
Aveiro	1.845	1.962
Bragança	242	246
Vila Real	261	306
Viseu	499	534
Guarda	403	437
Coimbra	3.798	4.287
Castelo Branco	341	388
Leiria	1.472	1.542
Santarém	882	927
Lisboa	27.342	28.256
Setúbal	3.168	3.277
Portalegre	581	614
Évora	728	768
Beja	1.104	1.121
Faro	20.644	21.820
Madeira	1.847	2.016
Açores	728	735



## Chapter X Social Security

In the field of social security, Article 8 of Law 32/2002 (Framework Law of Social Security), of 20 December 2002, establishes the principle of non-discrimination on the grounds of nationality of the beneficiaries of the systems of social protection, subject to residence and reciprocity requirements.

### *Relationship between Regulation 1408/71 and Regulation 1612/68*

EU workers residing in Portugal have the same social security rights as Portuguese citizens. The public social security system covers the benefits of the contributory and non-contributory schemes.

EU nationals working and living in Portugal are entitled to the following contributory scheme benefits:

- Sickness;
- Maternity, paternity and adoption;
- Unemployment;
- Accidents at work and occupational diseases;
- Invalidity;
- Old-age;
- Death.

The granting of those benefits depends on the affiliation of workers to the Social Security system and on completing a minimum period of contributions. This period may be completed by cumulating periods of contribution registered in another Member State.

EU citizens residing in Portugal are also entitled to the benefits of the non-contributory scheme which covers solidarity benefits and family benefits.

*Solidarity benefits* cover namely the following contingencies:

- Lack or inadequacy of economic resources of the persons or of their households for the fulfilment of their basic needs and for the promotion of their progressive social and occupational insertion;
- Invalidity;

*Family benefits* aim to compensate for increased family burdens. They cover namely the following contingencies:

- Burdens due to handicaps;
- Burdens due to dependence.

### *Supplementary pension schemes*

Law 32/2002 (Article 94) establishes the complementary social security system, subject to specific implementation. This system covers the following schemes:

- The *legal supplementary scheme* aims to cover contingencies or the provision of benefits in conjunction with the public social security scheme;
- The *contractual supplementary scheme* aims to provide supplementary social insurance benefits for the area not covered by the former, namely the part of the salary on which compulsory contributions shall not be levied, as established in law, as well as protection against contingencies not covered by the compulsory scheme.
- The *optional supplementary schemes* aim to strengthen voluntary self-protection of the persons concerned. They may take the shape of a pension plan, life insurance, insurance funds and mutual modalities, among others.

The supplementary schemes (legal and contractual) may be the initiative of the State; companies, trade unions, employers, and occupational associations, and may be administered by public, co-operative, mutual or private institutions legally created for that purpose.

## Chapter XI

### Freedom of Establishment, Provisions of Services, Students

#### *Establishment*

According to article 3 of Decree-Law 60/93, as amended by Decree-Law 250/98, all nationals of a Member State who are entitled to the right of establishment are allowed to enter and reside in Portugal. The following family members of the established EU citizen, irrespective of their nationality, may reside with him: spouse, descendants under the age of 21 or over 21 but dependent; dependent parents or grand-parents; any other member of the family who is dependent on him or lives with him in the country of origin.

A residence permit for a national of a Member State of the European Union is granted to the nationals of a Member State, who are entitled to the right of establishment, or to the members of his family who are nationals of a Member State [Article 16(c) and (e) of Decree-Law 60/93]. It is valid for the period of 5 years from the date of issue and shall be automatically renewable, at the request of the interested party [Article 17(1)(a)].

A temporary residence document is issued to the members of the family who are not nationals of a Member State. It has the same period of validity as that issued to the holder of the right to establishment [Articles 19(1)(d) and 20(1)(b)]. The holder of the right to establishment should apply for a residence permit to the Head Office or Regional Delegation of the Borders and Immigration Services and, apart from presenting his identification document, a document that proves he has established himself or set up a company or that he has a holding in an undertaking or, a statement attesting to the beginning of his activity, as well as a document that proves that he has medical care in Portugal (voluntary medical insurance or that he has a Social Security card).

The regime applicable to EU workers, regarding restrictions to the right of entry and residence in Portugal, also applies to the holders of the right to establishment and of the members of their family.

#### *Provision of services*

According to article 3 of Decree-Law 60/93, EU citizens who wish to provide services in Portugal are allowed to enter and are granted the temporary right to reside in Portugal. The same applies to the following family members of the EU citizen, irrespective of their nationality: spouse, descendants under the age of 21 or over 21 but dependent; dependent parents/grand-parents; any other member of the family who is dependent on him or lives with him in the country of origin.

The nationals of a Member State, who are providers of services or recipients of services in Portugal for a period of over three months and the members of their family are entitled to temporary residence permits. The temporary residence permit is valid for the expected duration of the services being provided.

Restrictions on their right to enter and stay are governed by the same system as that which is applicable to EU workers.

#### *Students*

The Portuguese law on free movement of EU citizens recognizes the right of residence to any student who is a national of a Member State and who does not enjoy this right under other provisions of Community law, provided that the student fulfils three conditions:

- He or she must assure, by means of a declaration or by alternative means of his/her choice, that he or she has sufficient resources to avoid becoming a burden on the social security system of the host Member State during the period of residence; The BIS requires that students prove that their means of subsistence are at least equivalent to the minimum national salary.
- He or she must be enrolled in a recognised educational establishment and pursue vocational training as his/her main activity.
- He or she must have taken out a comprehensive health insurance policy for the whole family.

According to article 3(h) and 9(c) of Decree-Law 60/93, the right of residence is extended to the student's spouse and dependent children.

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The student and family members who are EU citizens are issued with a “residence permit for a national of a Member State of the European Communities”, which is valid for the period of study and is renewable on an annual basis [article 17(c) of Decree-Law 60/93]. If the student’s spouse and dependent children are not EU citizens, they are issued with a “temporary residence permit” [article 19(1)(d) of Decree-Law 60/93], which is valid for the same period of time as the residence permit of the EU student [article 20(1)(b) of Decree-Law 60/93].

Applications for residence permits are submitted to the Head Office or Regional Delegation of the Borders and Immigration Services of the area in which the student lives. Apart from his identification document, he must also present other documents that prove he has adequate resources, that he has enrolled at a Portuguese teaching establishment as well as a document that proves that he has medical care in Portugal (voluntary medical insurance or a Social Security card).

The regime applicable to EU workers, regarding restrictions on the right of entry and residence in Portugal, also applies to students and the members of their family.

### *Draft legislation, circulars*

There is a legislative act being drafted in the Home Affairs Ministry for the purpose of transposing the Directive 2004/38/CE.

### *Literature*

This subject is covered in general terms by *António Menezes Cordeiro, Direito Europeu das Sociedades*, Almedina, 2005.

There is no literature published in the year 2005 that deals specifically with this matter. However, the following works should be added to the list provided in the Report of 2002/2003:

- *LEITÃO*, Augusto Rogério, *Comunidade Europeia – Estudos de Direito e de Sociologia Política*, Coimbra Editora, 2005
- *MARTINS*, Ana Maria Guerra, *Curso de Direito Constitucional da União Europeia*, Coimbra, 2004, p.
- *MONIZ*, Carlos Botelho, VIII Congresso da União dos Advogados Europeus. O Direito de Estabelecimento e a Liberdade de Prestação de Serviços dos Advogados (*VIII Congress of the Union of European Lawyers. The Right of Establishment and the Freedom of Providing Services of the Lawyers*), *Revista da Ordem dos Advogados*, Lisboa, Ano 55-I, 1995, p. 311-340;
- *PIRES*, Francisco Lucas, *Os Novos Direitos dos Portugueses. Explicação e Súmula dos Nossos Direitos de Cidadania Europeia (The New Rights of the Portuguese. Explanation and Summary of Our Rights of European Citizenship)*, Lisboa, 1994;
- *OLIVEIRA*, V. Cunha, *Estudo de Direito Comparado das Profissões Jurídicas, em Regime de Profissão Liberal, na União Europeia (Study of Comparative Law on Legal Professions as Liberal Professions in the European Union)*, Porto, 2002.

### *List of internet sites off legislation and court judgments*

- [www.sef.pt](http://www.sef.pt)
- [www.seg-social.pt](http://www.seg-social.pt)
- [www.inac.pt](http://www.inac.pt)
- [www.dgsi.pt](http://www.dgsi.pt)
- [www.pgr.pt](http://www.pgr.pt)
- [www.oa.pt](http://www.oa.pt)
- [www.cnj.pt](http://www.cnj.pt)
- [www.idesporto.pt](http://www.idesporto.pt)
- [www.cdp.pt](http://www.cdp.pt)