1. Immigration to Portugal

Within an EU context, Portugal shares with other Member States the experience of an increase in the immigration of Third Country Nationals in recent years. However, the onset of positive net migration dates back only to the early 1990s, and Portugal, in common with a number of other EU Member States, continues to experience significant emigration, as well as inward migration.

During the seventeenth century, Brazil was one of the main countries of destination, but in subsequent centuries, Portuguese emigrants left their home country for other destinations, scattering themselves all over the world. Presently, it is estimated that around one third of the population is living abroad\(^53\).

Large-scale immigration flows began much later. The end of the Portuguese dictatorship in 1974 and concomitant changes in political, economic and social structures were responsible for the shift in Portuguese migration patterns.\(^54\) Emigration decreased during the 1970s, and the independence of the former African colonies resulted in the arrival of repatriates, asylum seekers and return migrants.

More recently, during the last decade, in the context of the construction boom linked to several major infrastructural projects, and other openings in the labour market, immigration flows have diversified to include Eastern European countries as countries of origin.

Although the increase in the foreign population in Portugal has not yet reached the proportions observed in other Western European countries, the settlement of immigrants has presented new challenges. During the past thirty years Portugal has gradually had to deal with increasing cultural and ethnic diversity at its “metropolitan” boundaries. The country has had to adapt – and continues to have to do so – to this new reality. At the level of public policy – with regard to the management of immigration - several changes are easily identifiable at a normative level. There is a sufficient body of legislation, whether resulting from national initiative or from the ratification of international treaties and European Union directives.

Legal migration has the potential to make a significant contribution to the growth of the Portuguese economy, and to the country’s competitiveness within the European Union. In order for this to occur, migration and labour market integration policies must target all categories of migrants, and adequately respond to an increasingly knowledge-based economy.

\(^53\) These emigrants live in Europe (1,336,700), Africa (540,391), North America (1,015,300), South America (1,617,837), Central America (6,523), Asia (29,271) and Oceania (55,459). Cf. Arroteia (2001)

\(^54\) Esteves et al. (1991)
In Portugal, as in other Member States, the capacity of migration policy and the labour market to provide such a response is hampered by the phenomenon of illegal migration, which, as well as being detrimental to the economy as a whole, also places migrants in a vulnerable situation with regard to employment rights.

2. Immigrants access to the Portuguese Labour Market

In the past decades the presence of immigrants in the labour market of Portugal has mainly reflected the demand and transformations of the Portuguese economy. Research undertaken has characterised the immigrant population as a labour force quite flexible and inexpensive that has been substituting the native population in unqualified sectors (e.g. civil construction, domestic labour) and complementing them in high qualified sectors (e.g. health sector with doctors and nurses; marketing; design). Furthermore immigrants also prove to have higher propensity for entrepreneurship.55

While approximately 5% of the Portuguese population is immigrants, they represent a full 10% of the Portuguese labour market. As Portugal has the lowest annual number of asylum seekers in the European Union (less than 300 per year), the overwhelming majority of immigration is related to the labour market. Employment rates among immigrants in Portugal are higher than those of nationals and the employment and labour market participation of immigrant women is higher in Portugal than in any other OECD country.

Hence, in the past decades immigrants become a fundamental necessity of the Portuguese labour market. However, the labour market has been characterized by several disfunctionalities that affect the immigrant population. Being more precise, although the Portuguese labour market needs immigrant labour force, there are immigrants experiencing unemployment or in precarious labour conditions. Moreover, although Portugal presents lack of high qualified professionals in certain sectors, immigrants still face difficulties in the recognition of their diplomas, or some of them work below their skilled level. In other words there is a human capital available in Portugal that is not totally brought into play.

Consequently in the past years several measures have been implemented by the Portuguese Government with the aim of increasing the integration of immigrants into the labour market:56

1. In relation to security of employment and workers’ rights for immigrants, Portugal fully meets international best practice, as set out in the MIPEX Index – Migrant Integration Policy Index. Immigrants in Portugal are eligible to accept most jobs and may start a business, contributing to the achievement of 83% in the Index by Portugal in the area of eligibility. Similarly, 83% was achieved in relation to labour market integration measures, which are a priority in terms of Portuguese integration policy. Immigrants’ working rights are enshrined in article 59 of the Portuguese constitution, which establishes that workers enjoy economic

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56 Those policies have been reflecting several recommendations of the European Commission, namely CE n.º 741/2004 of the Council (available at http://europa.eu.int/scadplus/printversion/pt/cha/c11320.htm).
rights, without distinction as to “age, sex, race, citizenship, country of origin, religion, or political or ideological convictions.” Undocumented migrants have specific rights in terms of access to health, education and redress for victims of trafficking.

2. In addition labour market integration is considered one of the central focuses of integration policy. Recognising that more still needs to be done in this area, in terms of labour market integration the Portuguese Government’s included in its action Plan for Immigrant Integration\(^5\) nine measures related to employment and professional training (but several other measures under other areas are also related to this aim):

- specific vocational training for immigrants;
- an awareness-raising campaign on health and safety at work;
- increased inspections of illegal employment;
- incentivising the payment of taxes and social security;
- promoting social responsibility for immigrant integration among employers and co-workers;
- pro-integration training measures;
- promoting trade union membership among immigrants;
- and promoting immigrant entrepreneurship.

This action plan is based on a holistic approach and on the participation of the different entities that are responsible for the implementation of the corresponding policies. Comprising 122 measures, it involves 13 ministries, with an implementation deadline of two years. It considers sector-based areas (e.g. Employment, Health, Housing, Solidarity and Social Security, Education), and cross-cutting themes (e.g. welcoming immigrants, descendants of immigrants, family reunification, and racism and discrimination). This plan adopts for the first time a holistic approach to integration, and serves as a reference point for both the state and for civil society. This substantial political investment, within the framework of political and social consensus, represents another structural step forward.

Portugal has seen an increase in the numbers of international students studying at its universities, and graduating with valuable skills. Providing the mechanisms for these graduates to remain in Portugal to work in high-skilled jobs is a priority for labour market integration policy.

Furthermore in the Portuguese Government’s Plan for Immigrant Integration, agreed in May 2007, the Ministry for Employment and Social Security has committed to providing intercultural and anti-discrimination training for the staff of the job centres of the Institute of Employment and Professional Training, as well as to raise awareness among the business community of the need to welcome and integrate immigrant workers. The Ministry has also

created training and job creation schemes to facilitate immigrant integration into the labour market.

3. Inspired by the Common Agenda for Integration, several Member States have been defining concrete integration programmes for immigrants that mainly refer to the ‘one-stop-shop’ (OSS) model. In Portugal, the National Immigration Support Centres (Centros Nacionais de Apoio ao Imigrante - CNAI\(^{58}\)) were set up in 2004. Their establishment, in Lisbon and Porto, seeks to provide an integrated, efficient and humane response to the integration issues of immigrants who have chosen Portugal as their host country. Within this innovative model, the participation of Socio-cultural mediators is fundamental. Mediators guarantee not only a cultural and linguistic proximity to each immigrant who uses the services of these centres, but also a fundamental proximity between public administration and immigrant citizens. Furthermore, the participation of civil society institutions, as partners in the management of this project, can bring important outcomes. This results in the development of immigrant integration policy becoming a shared responsibility.

The National Immigrant Support Centres runs an Employment Support Office for immigrants. This is part of the national network of job centres, and has seen an increase in the use of its services in recent years. In addition, in 2007, as part of a commitment in the Government’s Plan for Immigrant Integration, ACIDI, IP and the Institute for Employment and Professional Training (IEFP) established a network of twenty-five job centres specifically for immigrants, formed through partnerships with local organisations – principally immigrant associations. IEFP in partnership with ACIDI provides a budget to the immigrant job centres network of 275,000 Euros. Many of the immigrant job centres are located in districts with high numbers of immigrants.

The National Immigrant Support Centre also supports immigrant entrepreneurship through a partnership with the National Association for the Right to Credit.

3. Dissuasive sanctions for illegal immigration

The impositions of sanctions and the enforcement of labour laws regulating illegal working are essential elements in combating illegal employment. The need for an increase in labour inspections in Portugal is continually underlined. However, this must be combined with more effective management of migration flows and control of the admission of irregular migrants.

Since 2003, under Portuguese law, companies that employ illegal immigrants are fined (as provided for in section 2 of Article 144 of Decree-Law no. 34/2003, dated 25 February). Companies that have illegal workers are also obliged to cover all necessary expenses for the residence and removal of the foreign citizens (as provided for in section 8 of Article 144 of the same Decree-law). Employers that do not pay wages to foreign workers (legal or illegal) or that

\(^{58}\) The two Portuguese National Immigrant Support Centres (CNAI) were recognized as an example of best practices in the Handbook on Integration for policy-makers and practitioners (Available for download at: http://ec.europa.eu/justice_home/doc_centre/immigration/integration/doc/handbook_en.pdf). The integration and cooperation of different public services, previously with different locations and schedules, and new services that cater for the concrete needs of immigrants, which were not until then offered to immigrants, became a fundamental service for newcomers and permanent immigrants.
do not make their welfare and tax contributions regarding the amounts withheld of the worker’s wages, are also fined (as provided for in sections 2 and 8 of Article 144 of Decree-Law no. 34/2003, dated 25 February).

Aiming to counteract illegal immigration, the Law makes employers responsible for complying with the law regarding the payment of wages, tax and welfare contributions by immigrant workers. This corresponds to the intention set out in the European Commission’s Policy Plan to place the responsibility for illegal employment on the employers, and in the Commission’s Proposal for a Directive providing for sanctions against employers of illegally staying third-country nationals (COM(2007) 249 final).

The Government’s Plan for Immigrant Integration provides for collaboration between the Authority for Working Conditions and the Foreigners and Borders Service in order to combat illegal employment, particularly with regard to exploitation. This should facilitate greater cooperation between authorities exercising the complementary roles of labour inspection and border control.

4. Measures to stimulate the integration of immigrants into the Portuguese labour market

Employment generates income and social status and is thus considered by the Portuguese Government, in agreement with the European Commission, to be one of the most important aspects of immigrants’ integration.

As a feature of the recent immigration history of Portugal, and the country’s ageing population employment rates among immigrants in Portugal are higher than those of nationals, and the employment and labour market participation of immigrant women is higher in Portugal than in any other OECD country. There is however, as outlined above, cause for concern in relation to unemployment and high-skilled workers in low-skilled jobs. Among Eastern and Southeast European migrants particularly, 80% of highly skilled workers are overqualified for their jobs.

Another worrying issue is that immigrants earn on average 20% less than Portuguese workers, and this figure remains above 10% even if one controls for other socio-economic factors. Migrants from Portuguese-speaking African countries earn significantly less than other migrant groups; work predominantly in low-skilled sectors and present low educational attainment.

Therefore in addition to active inclusion policies already in place, there is a pressing need to involve immigrants in training and certification programmes, and processes to validate their skills, in order to integrate them into the labour market.

The following initiatives are therefore considered of significance:

1. The recognition of the qualifications of skilled migrants is essential to the process of integration into the labour market of the receiving country. On 17 October 2007 a new legal regime for the recognition of foreign qualifications came into force in Portugal. This comprises a package of measures to attract highly qualified people to live in Portugal and to promote mobility among Portuguese higher education institutes. The process does however
need to be further simplified, and bureaucratic procedures need to be harmonised. This regulation applies to degrees at the levels of Bachelor (licenciado), Masters and Doctorate as defined in the Portuguese system.

According to an OECD report on the labour market integration of immigrants in Portugal, good practice established on the recognition of the qualifications of foreign doctors and nurses should be mainstreamed, particularly in view of the higher skills profile of recent migrants to Portugal.

2. A further good practice has been developed in Portugal in relation to equipping job centres to facilitate the labour market integration of immigrants. The National Immigrant Support Centre, under the auspices of the Government’s High Commission for Immigration and Intercultural Dialogue (ACIDI, IP), runs an Employment Support Office for immigrants. This is part of the network of UNIVA (Unidades de Inserção na Vida Activa) job centres, and has seen an increase in the use of its services in recent years. The Support Centre also supports immigrant entrepreneurship through a partnership with the National Association for the Right to Credit and will in the future collaborate with the General Board of Economic Practice, and the Institute for the Support of Small and Medium Enterprises and Innovation. In addition, in 2007, ACIDI, IP and the Institute for Employment and Professional Training established a network of twenty-five UNIVA job centres specifically for immigrants, formed through partnerships with local organisations – principally immigrant associations.

3. The provision of language courses and vocational training to migrants facilitates their insertion into the labour market, together with providing for an increased likelihood that they will work at the appropriate skill level. This should be a priority in policy-making, in terms of providing the optimum levels of access to language courses, where the migrant is not fluent in the language of the receiving country. Vocationally-orientated introductory courses may also contribute to migrant workers converting skills acquired in their country of origin, so that they may use these skills in the context of the receiving country. Portugal has a programme of language and civic training, providing 50 hours of tuition. One of the recommendations of the OECD report was to provide a higher number of hours of targeted language training, particularly to unemployed migrants.

4. Assured access to effective social welfare entitlements represents an incentive for labour market integration and legal working. Immigrants residing legally in Portugal for a minimum period, and their family members, are entitled to the same rights in this area as national citizens. The employer is responsible for registering employees for social welfare, and for paying social welfare contributions.

In relation to the portability of social welfare benefits accrued by migrants in Portugal, universal application of this principle may pose some problems in the Portuguese legal context. International instruments provide for certain specific social security rights for migrants who are nationals of EEA countries, Switzerland, and other countries that have bilateral conventions with Portugal, and it has been proposed that further bilateral

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59 The draft version of the OECD report was submitted to the Delegates of the ELSA Committee on 5 November 2007.
60 These are: Andorra, Argentina, Australia, Brazil, Cape Verde, Canada (Quebec), Chile, USA, Morocco, UK (Channel Islands), Uruguay and Venezuela.
agreements be concluded with Ukraine, Moldova and Romania. However, these provisions
do not currently apply to migrants not covered by these conventions and instruments.

Pension entitlements for people with limited means are granted to those over the age of 65,
who have lived in Portugal for at least six years. They must also be beneficiaries of an old-
age pension or a monthly annuity subsidy. The right to benefits acquired, or in the course of
being acquired, is transferred to Portugal, taking into account contributions made both in
Portugal and other States.

5. The OECD draft report referred to above recommends a greater involvement of the social
partners, particularly to improve working conditions and raise awareness of the problems of
illegal migration. Training programmes for employed migrants and traineeships for
unemployed migrants, provided by employers, are also considered to be particularly
required.

The social partners do participate in labour migration and integration policy in Portugal
through the Consultative Council for Immigration Affairs (COCAI) within the structure of the
High Commission for Immigration and Intercultural Dialogue. The Consultative Council is a
forum for political discussion and policy-making for social partners, immigrant associations
and charitable associations. This is in line with the concerns of the Council of Europe
regarding the necessity for States to ensure the implementation of mechanisms of
consultation and participation for immigrants in initiatives undertaken to promote integration
and inter-community relations. During 2006, the Council met seven times, and discussed
issues such as the recognition and support of immigrant associations, indicators of
integration, the draft for the proposed new Immigration Law, the new Nationality Law, and
the draft for the Government’s Plan for Immigrant Integration.

Labour market shortages are currently identified by the social partners, in order to determine
the granting of residence permits, through the mechanism of the Permanent Commission for
Social Partnership. In the Plan for Immigrant Integration, the Ministry of Employment and
Social Security also commits to encouraging trade union membership among migrants.

5. Other policies that can reduce the illegal employment of
migrants

1. The implementation of information campaigns in relation to the problems and difficulties of
illegal employment can be effective in the fight against work exploitation and the protection
of the employment rights of migrants. The Government’s Plan for Immigrant Integration
foresees greater support for information campaigns on integration in the workplace, together
with strengthening structures for inspecting employers and applying legal penalties.

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63 Presidency of the Council of Ministers and ACIDI, IP. Plan for Immigrant Integration. Lisbon. This plan followed
2. In certain exceptional cases, where a migrant is considered to have integrated fully into Portuguese society and has resided in the country for a considerable period of time, there is a mechanism by which migrants in an irregular situation can be granted residence permits. Legal status granted to a migrant is a strong incentive to enter into legal employment.

3. The protection provided by the social welfare system should also provide an incentive for workers to enter into legal employment contracts. Employers in Portugal are responsible for making social services payments in respect of all employees. Services provided include financial support for family responsibilities, illness, parenting and adoption, unemployment, accidents at work and occupational illnesses, invalids, old age and death, as well as economic and social deficiencies and dependence. Law 20/98, dated 12 May 1998, regulated the work undertaken by foreigners in Portuguese territory. It grants foreign workers who are legally residing or staying in Portugal working conditions that are strictly equivalent to those of Portuguese nationals, providing a significant incentive to undocumented migrants to regularise their status. In the Plan for Immigrant Integration, the Government also plans to engage in a cross-departmental awareness-raising campaign to encourage immigrants to register within the social welfare system and to highlight the importance of employers undertaking this task.

4. The new Immigration Law provides an incentive to illegal migrants to opt for voluntary return, rather than be deported. The Law therefore aims to promote legal channels of immigration and discourage the use of illegal channels, combined with a coherent integration policy. The new Immigration Law has gone some way towards improving the transparency and accessibility of the legal migration process, but continued work is needed in this area, particularly in relation to the reinforcement of labour inspection.

5. The establishment of information centres in the countries of origin of migrants provides for the provision of accurate information to potential migrants on legal channels of migration and job-seeking. These centres can also provide information on the risks inherent in irregular migration and illegal employment, by informing potential migrants of their employment rights as regards conditions, social welfare, remuneration, and so on. The Portuguese Government is currently in the process of establishing such a centre in the Cape Verde islands, one of the major countries of origin of migrants in Portugal.