

# Immigration Policies in Portugal: Limits and Compromise in the Quest for Regulation

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## Abstract

The main objective of this article is to describe the key elements of the making of immigration control policies in Portugal until 2007. First, the main policy initiatives and measures concerning the admission of foreigners are presented. Second, the mechanisms and difficulties surrounding the issue of immigration control are discussed, and a tension is identified between the structural demand for foreign labour and the measures taken for control. Third, the positions of the main political parties and of the most relevant stakeholders are highlighted. The evidence indicates that despite continued attempts to control immigration, the stated policy objectives are at odds with the outcome, characterised by endemic irregular migration. The factors hindering regulation are both internal and external, encompassing the economic, social, institutional and legal domains. Given the limits to control, policy-makers have sought to achieve a compromise by enacting frequent regularization programmes while seeking to improve admission and control. In this process, the main political parties have exhibited a significant degree of consensus, which may be partially accounted for by the convergence among the other stakeholders (employers, trade unions, Catholic organisations and immigrants' associations) and by the increasing, albeit contradictory, acceptance of immigration by public opinion.

## Keywords

immigration; immigration policy; immigration control; political parties; Portugal

## 1. Introduction

When considered in the framework of contemporary international migration, immigration history in Portugal is very recent. Only after the mid-1970s, with the political change and the de-colonisation process, did it become significant. It increased its volume after entry into the European Union (EU) in 1986 and accelerated after the late 1990s. Having started mainly as an exchange between Portuguese-speaking countries, namely the African ex-colonies and Brazil, it became progressively diversified. Today, there is still a majority of Portuguese-speaking immigrants, mainly from Cape Verde and Brazil, but other national groups became numerous, such as Eastern European immigrants, particularly from the Ukraine.

Most immigrant inflows have been linked with the labour market. In comparative terms, Portugal is distinct from other European host countries – although not the Southern European ones – given the high proportion of labour-related immigration (immigrant activity rates are higher than the ones of natives). Most of the recent inflows were directly aimed at low-skilled jobs in sectors such as construction, accommodation and food service activities, services to companies and domestic service. Immigrants are also over-exposed to flexible arrangements. It is not also surprising that the informal economy has been a privileged route for immigrants' incorporation.<sup>1</sup> Although data are hard to find in this domain, a large part of the immigrants have entered the country irregularly or overstayed, easily finding a job, often in the irregular labour market. Only with time did their legal and social condition improve.

Since the 1980s, the Portuguese governments have launched several policy initiatives in order to regulate immigration and to promote immigrants' integration. This process has been tentative and sometimes problematic. Immigrant inflows varied in frequency and characteristics and many contextual factors changed, including the entry of the country to the EU. During this period policy steps have been numerous, leading to the rapid obsolescence of research.

The main objective of this paper is to describe the main elements about the making of policies of immigration control in Portugal until 2007. The organization of the paper is as follows. In the next section, the main policy initiatives will be presented, taking into account the chronology of measures concerning the admission of foreigners. Next, the main difficulties and mechanisms of immigration control will be discussed, mentioning the tension between the structural demand for foreign labour and the measures taken for control. In order to understand the factors underlying the making of immigration policies, a further section highlights the positions of the political parties and the most relevant stakeholders. Finally, some conclusive remarks will be made.

## **2. The Evolution of Immigration Policies**

Four main periods characterize the short history of immigration to the country. The first phase occurred between 1975 and the mid-1980s. The revolution of 1974 was a turning point for immigration. The collapse of the Portuguese empire brought Portuguese returnees and other immigrants from the former colonies. The majority of flows were from Cape Verde, which had already started this movement in the late 1960s; other significant flows came from Angola and Guinea Bissau. The second phase, which started in 1986 with the entry of Portugal into the European Economic Community (EEC) – currently EU – and continued

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<sup>1</sup> OECD, *Jobs for Immigrants* (Vol. 2), Labour Market Integration in Belgium, France, the Netherlands and Portugal, Paris: OECD, 2008; J. Peixoto, *Imigração e mercado de trabalho em Portugal: investigação e tendências recentes*, 2 *Migrações*, OI/ACIDI (2008) 19–46.

until the end of the 1990s, was marked by an increase in immigration based on historical, linguistic, cultural and colonial links (PALOP<sup>2</sup> and Brazil) and by the persistence of Western European immigration.

The third period started in the late 1990s, when there was a massive influx from Eastern European countries, with no previous cultural, historic or linguistic relations with Portugal, as well as a stronger and renewed immigration from Brazil and a continued diversification of origins (particularly from Asia). This phase has largely exceeded, in volume, the former ones. Finally, a fourth phase, which began with the economic recession in Portugal since the first years of the 21st century, has continued until the present day. Currently, a drop in Eastern European and a stabilization of African immigration can be noticed, and only Brazilian immigration continues.

In 2006 there were about 437,126 foreigners living in Portugal with a legal status, representing circa 4% of the total population. It can be estimated that they represented around 5% of the labour force (not including irregular workers). Taking all legal conditions into account, Brazilians (16.9%) and Cape Verdeans (15.6%) were the most numerous groups, followed by Ukrainians (9.8%). This represented a drastic change from the situation in the last decades. In 1990, the total number of foreigners was only 107,767, having increased to 207,587 in 2000. The ranking by nationalities is also quite different from earlier immigration phases: Africans lost their predominance, whilst Brazilians and Eastern Europeans became more numerous (see [www.ine.pt](http://www.ine.pt) and [www.sef.pt](http://www.sef.pt)).

The development of immigration policies has been intrinsically related with the evolution of inflows. Since significant foreign immigration only occurred after the mid-1970s, it is not surprising that the major policy measures were only established after that moment. During the 1980s the immigration policy was mainly centred on the regulation of flows, through the Aliens and Borders Service (SEF), a service belonging to the Ministry of Internal Administration and created in 1976. Only in the early 1990s did immigration appear on the social and political agenda, covering not only mechanisms to regulate migratory flows, but also issues related to the integration of immigrants.

The first immigration law in Portugal dates back to 1981 (Law-Decree n° 264-B/81, September 3), then under the rule of a right-wing government, led by the Social Democratic Party (PSD). This law may be considered relatively ‘benevolent’, since the number of irregular immigrants was always on the rise. In fact, to enter legally in Portugal, many immigrants opted for a short-term visa (tourism, health reasons, assistance to sick relatives, study, etc.) as the fastest and easiest mechanism. As a result, an increasing number of immigrants from the PALOP, without resident permits, settled in Portugal and, particularly, in the metropolitan area of Lisbon. Despite the public and governmental perception of this reality, until the beginning of the 1990s no specific measures were taken to regulate

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<sup>2)</sup> Portuguese Speaking African Countries.

immigration flows or the growing number of irregular migrants.<sup>3</sup> The fact that inflows came from the ex-colonies, that they were usually fuelled by social networks and that immigrants found a job easily, often in the informal economy, eased their integration.

The continuous pressure of irregular migration, together with the country's membership of the Schengen Agreement, forced the right-wing government, in power between 1985–1995 – again under the rule of PSD – to adopt a new immigration law in 1993 (Law n° 59/93, March 3) and launch the first wave of extraordinary regularization, in 1992–93 (Law-Decree n° 212/92, October 12). Within this framework, around 39,000 individuals legalised their status. The law of 1993 revised the 1981 one: the main differences are the number of types of visas (four in 1981 and nine in 1993), as well as the reinforcement of expulsions. Both laws reflected the idea of immigration as a transitory situation, with no explicit references to family reunification as a right (although it was possible in practice). According to Baganha,<sup>4</sup> with this new law the government wanted to avoid the permanent stay of new immigrants; in other words, 'zero immigration' was the objective of national authorities.<sup>5</sup> The fact that the country was not used to dealing with immigration and persistent economic problems may explain this reality.

In 1995, the election of a left-wing government, led by the Socialist Party (PS), that would remain in power between 1995–2002, led to an important progress on immigration issues. One of its first initiatives consisted of launching a second wave of extraordinary regularization. With the 1993 law, in practice, there were no considerable changes concerning the issuing of short-term visas, and immigrants, mainly from PALOP, continued to enter and to settle irregularly in the country. In 1996, a second regularization process (Law n° 17/96, 24 May) targeted the immigrants who had either missed the first one, lost their legal status or entered the country afterwards. About 35,000 individuals obtained resident permits with this new process. As in the first regularization campaign, the large majority of applicants was from Portuguese-speaking countries and there was an apparent positive discrimination towards them: the proportion of negative answers concerning applications was very small.<sup>6</sup>

More generally, with the new government, immigration policy increased its scope. Until then, immigration had a peripheral position in the governmental action. In 1995, for the first time, the Government Program contained specific measures with regard to immigration, in the areas of internal administration and

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<sup>3</sup> M.I. Baganha, *Política de imigração: a regulação dos fluxos*, 73 *Revista Crítica de Ciências Sociais* (2005) 29–44.

<sup>4</sup> *Ibid.*, p. 32.

<sup>5</sup> The precarious and 'non-definitive' notion of immigration portrayed by the new law is also referred to by R.P. Pires, *Migrações e Integração*, Oeiras: Celta Editora 2003, 158.

<sup>6</sup> *Ibid.*, pp. 146, 158–159.

social policy. There was a shift from an immigration policy based only on the regulation of flows, to a policy also focused on integration issues. The immigration law of 1998 (Law-Decree n° 244/98, 8 August) adopted a less restrictive approach, by reducing the required period of residence from twenty to ten years for the issue of a permanent resident visa. Family reunification is also then, for the first time, referred to as a right.<sup>7</sup>

Regarding institutional aspects, a decisive step was the creation, in 1996, of the High Commissioner for Immigration and Ethnic Minorities, the first governmental post especially focused on the immigrant population. Later, it was expanded with the creation of the High Commissariat for Immigration and Ethnic Minorities (ACIME), currently designated as High Commissariat for Immigration and Intercultural Dialogue (ACIDI).<sup>8</sup>

At the beginning of 2001, the left-wing government considered that the existing legal framework was too restrictive and inadequate to deal with immigration flows and labour shortages in the Portuguese labour market. In fact, labour demand was so great that foreigners were encouraged to come to Portugal and stay irregularly in the country. As mentioned before, in the late 1990s there was a sharp increase in immigration, mainly reflected in the inflows of Eastern European immigrants and the ‘second wave’ of Brazilians. As a result, a new development in the Portuguese immigration policy was introduced, with the creation of the ‘stay permit’ (*autorização de permanência*) (Law-Decree n° 4/2001, 10 January), which was in practice a temporary work stay visa granted in Portugal, based on the possession of a work contract. The stay permit was issued for one year and could be renewed for a maximum of five years. This permit made it possible for immigrants to sponsor the immigration of relatives (a long-term visa was conceded for this purpose) and, at the end of the five years period, immigrants could apply for a resident permit.

In practice, this mechanism of the new law corresponded to a new regularization process. As a result, between January and November 2001 there was another regularization campaign, this time based on employment status. Previous regularizations were not directly concerned with the immigrants’ participation in the labour market; but in 2001 active participation in the labour market participation has been a key precondition for regularisation and only foreign workers with valid work contracts could apply. This criterion would be maintained in subsequent regularisations, except for 2007. The rationale for it was both the economic justification of immigration and legalizing informal labour arrangements. Following the 2001 law, almost 184,000 foreign individuals regularized their status and obtained the so-called stay permits.

<sup>7</sup> *Ibid.*, p. 165.

<sup>8</sup> The High Commissioner for Immigration and Ethnic Minorities was appointed in 1996. The ACIME as a formal body, with a larger dimension and several activities, was created in 2002. The public administration reform carried out in 2007 created the new designation of ACIDI.

Besides this mechanism, the new 2001 law presented other novelties, designed to regulate future immigration, opening possibilities for legal recruitment and avoiding the need of further regularizations. For the first time, a system of quotas for immigrant recruitment according to a report on domestic labour shortages was envisaged. To work legally in Portugal, immigrants would have to apply for a work visa in their country of origin, at the Portuguese consulate. The number of visas was limited by the number of job vacancies detected in various economic sectors (the quotas). These quotas were to be set by a report produced annually by the Institute of Employment and Vocational Training (IEFP), a department of the Ministry of Labour. The first report was published in November 2001, marking the end of the concession of stay permits.

Other measures directly targeted irregular immigration and the employment of irregular immigrants. A new provision of the law concerned the fight against supporting irregular immigration, particularly immigrant smuggling. According to the law, whoever favoured or facilitated irregular migration, founded and led a group or organization and profited from the entry of foreign nationals was punishable with a prison sentence. Furthermore, employers of irregular labourers as well as self-employed irregular migrants were also punishable. Legal responsibility under this law applied to employers at all levels of contracting chains, in order to prevent the use of subcontracting, one of the main modes of irregular employment. The criminalization of employers was considered crucial for the fight against irregular migration.<sup>9</sup> Although the fight against smuggling organizations would produce important results, the enforcement of measures towards employers cannot be said to have been effective.

In 2002, new national elections brought a change in government. The Socialist Party was replaced by a right-wing coalition that included the Social Democratic Party – a coalition that would be in power until 2005 – and some changes were introduced in the immigration policy. A new immigration law was adopted in 2003 (Law-Decree n° 34/2003, 25 February), which abolished definitively the stay permits for new arrivals/requests (in practice, they had not been issued since 2001), although the conditions remained the same for those immigrants already having a stay permit or waiting for a prorogation. The main control mechanism envisaged by the law was still a system of quotas according to a report on domestic labour shortages, improving the one set in 2001.<sup>10</sup>

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<sup>9</sup> This was particularly true in the case of the construction sector, where most of the irregular immigrants were employed.

<sup>10</sup> With respect to the maintenance of the quota system this law was in marked continuity with the former. One of the explanations was the presence in the coalition of the Party of the Social Democratic Centre-Popular Party (CDS-PP), a right-wing party that was vital for the approval of the 2001 law. Since the Socialist Party had no majority in the Parliament in 2001, the CDS-PP defended the inclusion of the quota mechanism as a necessary condition for its approval.

Despite the new attempt, the Portuguese system of quotas for labour market recruitment continued to be hardly effective. In fact, formal quotas were not fulfilled and foreign workers continued to enter irregularly in the Portuguese labour market.<sup>11</sup> According to researchers and many public officers, the process was too complex, bureaucratic and ineffective. On the one hand, there was probably a mismatch between the real and the predicted needs of the labour market, given its dynamic and many short-term needs. Besides, some sectors were not considered, such as the domestic service, since it was not covered by the employers' survey, a central piece of the labour shortages report. On the other hand, the bureaucracy involved was too cumbersome for the needs of employers and immigrants. As a result, the number of immigrants who entered the country under this process was very low. In some cases, the quota system has not been used to recruit new foreign workforce, but to regularize settled immigrants.<sup>12</sup>

During 2003 and 2004, two other regularization opportunities were opened to immigrants. A special bilateral agreement was signed on the 11th of July 2003 between Portugal and Brazil, allowing the regularization of irregular Brazilian workers in Portugal as well as irregular Portuguese workers in Brazil. This process allowed the granting of long-term work visas to Brazilians who could prove the possession of a labour contract. In 2004, the Regulatory-Decree n° 6/2004 of 26 April, Article 71, allowed the regularization of immigrants already active in the labour market who could prove that they had paid social security or taxes for a minimum period of 90 days prior to the law coming into force.

In 2005 a new left-wing socialist government was elected. Under its rule, a new immigration law (Law n° 23/2007, July 4) was approved, whose regulatory dispositions were fully laid out in November 2007 (Regulatory-Decree n° 84/2007, November 5). This new law introduced several changes, including further regularization opportunities. As regards the typology of admission mechanisms – visas and residence permits – the new law represented an important change in relation to former ones, since the number of legal titles was diminished and simplified. In order to regulate future immigration, the new law introduced a new system, called 'global contingent', which reports the total labour needs. The Portuguese government must approve every year a 'global contingent' representing the total labour needs and job opportunities existing in the country. At the same time, the IEFP selects the employment offers presented by employers and announces them on its website. The embassies and consulates abroad also disseminate these job offers. After receiving an application, if the employer is interested in recruiting, the foreign worker should ask for the visa in the Portuguese consulate of the country where he/she is staying. The early stage of this process makes it difficult to know whether its efficacy will be superior to the one based on the former

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<sup>11</sup> M.L. Fonseca, J.M. Malheiros and S. Silva, Portugal, in J. Niessen et al. (Eds.), *Current Immigration Debates in Europe*, Brussels: Migration Policy Group, 2005, p. 3.

<sup>12</sup> *Ibid.*, pp. 3–4.

quotas – although there are reasons to believe that the process is far from being an optimal response.

Finally, as regards regularization mechanisms, important changes were introduced. The new law has some provisions allowing the ‘ordinary’ legalization of formerly irregular situations – what we may also designate as a ‘soft’ regularization. This is mainly the case of Article 88, nº 2, which allows for certain irregular immigrants to regularize their status. Requirements for benefiting from this procedure include: having an employment contract or proving to be in a labour relation (certified either by labour unions, NGOs sitting on the Consultative Council for Immigration Affairs or the Labour Inspection); having entered and staying legally in Portugal; and being registered with the social security. Those who fulfil these requirements may not be obliged to hold a residence visa, which would normally be required for the issuing of a residence permit. The decision is taken after an interview with SEF.<sup>13</sup>

The inclusion of this specific article in the new law led to some controversy. This explained the provisions inserted in the Regulatory-Decree (the law was published in July 2007 and its regulation dates from November 2007), which introduced a more stringent criterion for regularization, namely the interview with SEF. In fact, the announcement of this mechanism had a large impact among immigrants and would-be immigrants. According to the newspapers, in August 2007, after the publication of the new law, the SEF was faced with hundreds of thousands of demands for information about this new possibility, many coming from foreign countries.<sup>14</sup>

Besides Art. 88, which is focused on the labour market, the new law foresees other forms of specific ‘regularizations’ that allow specific groups of irregular foreigners to regularize their status. According to Article 109, a residence permit, without prior residence visa, may be granted to a foreign national victim of trafficking or smuggling. Under Article 122, a visa for the issuing of a residence permit is not necessary under several conditions, including, for example, the case of third country minors born in Portugal who attended a pre-school education or the basic, secondary or professional education. Also, Article 123 provides a special framework under which a temporary residence permit may be granted for humanitarian reasons or national interest. Former laws had already some similar and exceptional mechanisms of this kind; however, they seem to be much more extended and effective in the new law.

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<sup>13</sup> It must be noted that, although the law specifies the need for entering and staying in Portugal legally, many migrants who potentially may benefit from Article 88 are irregular at the time of application. They entered with a short-term visa (for tourism, for example) but remained in Portugal after the visa expired. In order to apply under Article 88, they will have to pay a fine for having remained in the country in those conditions.

<sup>14</sup> C. Aguiar, *Chegamam da Índia e Paquistão a sonhar com papéis*, *Diário de Notícias*, 31 August 2007, accessed online at <http://dn.sapo.pt>; R. Felner, *Governo trava legalização de imigrantes após avalanche de candidaturas*, *Público*, 30 August 2007, accessed online at <http://ultimahora.publico.clix.pt>.



### 3. The Limits to Immigration Control

A widely discussed topic in the literature on immigration policy is the efficacy of control mechanisms. After the work of Cornelius and colleagues<sup>15</sup> this became known as the ‘crisis of control’. As highlighted by these authors, the difficulties for control are geographically vast, embracing the large majority of the developed immigration host countries. The case of Southern Europe has often been highlighted. The fact that countries such as Portugal, Spain, Italy and Greece have been faced with large irregular migration inflows, leading them to implement one regularization programme after another, has been attributed to their less efficient control mechanisms, or, alternatively, to the harsher context in which immigration now takes place. In the case of Portugal, we would argue that even though the government has tried to exert control over irregular migration flows, the power to do so does not always lie ultimately within it.

Difficulties in this respect may result from both external and internal factors. Regarding the Portuguese case, the external factors are the multiple push mechanisms arising in sending countries and the new territorial context to which the country belongs. The accession to the European Union (EU) has been of paramount importance. At the policy level, the influence exerted by the EU on the Portuguese immigration policies may be regarded as consisting of pressure towards greater border control on the one hand, and the transposition of EC Directives (mostly done in 2007), on the other. At an operational level, its influence was mostly expressed on the impacts caused by the adherence to the Schengen Agreement, which led to the abolition of physical control over the land border with Spain, one of the most relevant means of immigration control.<sup>16</sup> Indeed, it is often admitted that many of the inflows targeting Portugal since the mid-1990s have taken advantage of this reduced control. Studies on Eastern European immigration to Portugal confirmed that most immigrants entering between the late 1990s and early 2000s had a visa for other Schengen country, most often Germany, and then overstayed.<sup>17</sup>

There are also internal factors that account for the difficulties of immigration control. Part of these was gradually overcome by the successive policy initiatives, the improvement of public administration and the better cooperation with other EU, transit and sending countries. However, other factors remain deeply entrenched in the Portuguese case. This is mostly the case of the informal economy, where irregular immigrants easily find a job – together with regular

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<sup>15</sup> W. Cornelius et al. (Eds.), *Controlling Immigration – A Global Perspective*, 2nd ed., Stanford: Stanford University Press, 2004.

<sup>16</sup> As regards Schengen, Portugal, along with Spain, joined the founding group by means of accession protocols signed in Bonn on June 25th 1991 (Schengen Acquis). The Convention came into force in 1995, when border controls were abolished between the five original countries, Italy, Spain and Portugal.

<sup>17</sup> M.I. Baganha, P. Góis and J.C. Marques, ‘Novas migrações, novos desafios: a imigração do Leste’, 69 *Revista Crítica de Ciências Sociais* (2004) 95–115.

immigrants and natives. The size of the informal economy in Portugal has been estimated by Schneider and Klinglmair<sup>18</sup> as amounting to 22.3% of GDP in 2002/2003. The figures presented by these authors are relatively similar to those found in Spain or Italy and below those in Greece, but significantly above those in all the Northern and Western European countries. As discussed by Reyneri and Baganha,<sup>19</sup> a strong demand for labour by the informal sector is an essential part of the explanation for the increase of irregular migration in Portugal and other Southern European countries.

Given the above, it is not surprising that the number of irregular immigrants was always considerable. As said in the previous section, between 1992 and 2004 five extraordinary regularization programmes took place, followed by an ordinary provision in 2007. The numbers achieved are displayed in Table 1. The point most important to stress is that, out of the 437,000 foreigners living legally in Portugal in 2006, maybe more than half have benefited from regularization procedures. Although some double counting may exist in successive regularizations (the same individual may have applied more than once) and some regularized foreigners may have left the country, around 250,000 immigrants were regularized between 1992 and 2004. The numbers are also telling in that they represent the high percentages of irregular migrants at successive stages. In 1992, the volume of regularizations represented circa 24% of all foreigners (regular and irregular) at the time. In 2001, the equivalent percentage reached 45%.

Another point worth mentioning is that most irregular immigrants were overstayers and not clandestine migrants. The distribution of regularized immigrants by nationality shows that the majority in the 1990s were PALOP citizens, whilst from 2001 Eastern Europeans and Brazilians predominated. As several studies show, most of these immigrants entered legally in the territory. The PALOP citizens used several types of visas, then finding work and overstaying. Eastern Europeans come mostly on a tourist visa. Brazilians do not need a visa to enter the EU,

**Table 1** Regularization processes, 1992–2007

Year	1992–1993	1996	2001	2003	2004	2007
Successful Applicants	39,166	35,082	183,833	16,173	N.A.	N.A.
Legal title	Resident Permits	Resident Permits	Stay Permits	Work Visas	Work Visas	Resident Permits

Source: SEF (Aliens and Borders Service).

<sup>18)</sup> F. Schneider and R. Klinglmair, *Shadow economies around the world: what do we know?*, *IZA Discussion Paper* 1043, Bonn, Institute for the Study of Labour, 2004.

<sup>19)</sup> E. Reyneri and M. Baganha, *Migration and the labour market in Southern Europe*, 17 *IMIS-Beiträge* (Osnabrück) (2001) 33–53.

they only have to prove the ‘touristic’ purpose of the journey. Air travel was the usual means of arrival for the PALOP nationals and the Brazilians, while most Eastern Europeans entered the country through its land borders (sea arrivals are negligible in the Portuguese case). In sum, the critical areas for control seem to concern visa issuance – by all Schengen partners – and internal controls, not so much border control. The operation of well organized smuggling networks, mainly in the case of Eastern European immigrants, has added to the problems of control.<sup>20</sup>

Despite the difficulties, it cannot be said that the successive Portuguese governments have not improved the control mechanisms. The control exerted by the Portuguese authorities over the entry and stay of foreign nationals is carried out by SEF, whose activities are undertaken at two levels: at the border and within the national territory. In both areas the available data indicate a significant improvement, although it may be argued that the control has been far from effective.

Regarding activities carried during border controls, reference should be made to entry refusals. A foreign citizen can be subjected to a non-admission decision by SEF if he or she does not meet the legal criteria for entry in Portugal. In 2006 – the most recent information available – 3,598 entry refusals were applied. This represented a slight decrease in relation to 2005, when the number of foreigners not admitted in Portugal was 4,146. Approximately 93% of all entry refusals in 2006 occurred in the Lisbon international airport; Brazilian nationals accounted for almost half (48.6%), and were followed by the Venezuelans, the Senegalese and the nationals from Guinea-Bissau.<sup>21</sup> Information gathered during the interviews indicate that the entry refusals applied to Brazilians are among the highest in the EU – a situation partly explained by the intense daily air travel between Portugal and Brazil.

With respect to actions undertaken within the national territory, the expulsion of a foreign citizen may be the result of an irregular entry or stay in Portugal or consist of an accessory penalty for committing a crime. With the exception of the latter case, initiating a removal procedure against a third country national is a reserved competence of the SEF. Compared with the previous laws, the main novelty of the recent 2007 law is the fact that it does not allow preventive imprisonment of foreign citizens who irregularly entered or stayed in the national territory, but only their detention in temporary lodging centres or similar facilities.

According to the immigration law of 2007, the foreign citizen who irregularly enters or stays in national territory may be arrested by a police authority and must

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<sup>20</sup> J. Peixoto et al., *O Tráfico de Migrantes em Portugal: Perspectivas Sociológicas, Jurídicas e Políticas*, Lisboa: OI/ACIME, 2005.

<sup>21</sup> Serviço de Estrangeiros e Fronteiras (SEF), *Relatório de Actividades – Imigração, Fronteiras e Asilo*, Lisboa, SEF, annual editions from 2000 until 2006, accessed online at <http://www.sef.pt>. The fact that the land border with Spain is not controlled also removes some of the efficacy of this control mechanism. It is known that some intercontinental immigrants, particularly Brazilians, have used other European airports, such as Madrid, in order to get to Portugal. See Peixoto et al., 2005.

be taken to court within a maximum of 48 hours, so that coercion measures may be determined and enforced. By means of an administrative procedure of expulsion, the foreign citizen can be put in a temporary lodging centre or a matching facility for not more than 60 days, or wait at liberty pending a judicial decision. Irregular foreigners may also be notified by SEF to voluntarily abandon national territory within a determined period, usually from 10 to 20 days. According to the law, this may occur in ‘duly grounded cases’. Scattered evidence and available data indicate that these notifications occur in the majority of cases and arrestment is infrequent. In practice, it is generally admitted that many foreigners ignore those notifications and remain in the country.

Available data indicate that the number of notifications for voluntary return is on the increase, reflecting a stricter control within the territory. In 2006 there were 8,076 notifications, four times more than in 2003. The main nationalities involved were Brazil (61.6%), followed by Romania, Ukraine, Bulgaria and Cape Verde. The number of procedures for administrative expulsions and the number of judicial expulsions are lower than notifications. The main nationalities involved in these last removal procedures were again Brazilians (45.7%), followed by Romanians, Ukrainians and Venezuelans.<sup>22</sup>

Another set of data pertains to inspection activities carried out by SEF, autonomously or jointly with other agencies, such as the Labour Inspection. According to official reports, in 2006 SEF autonomously conducted 1,678 inspective activities and performed 2,010 in cooperation with other public agencies. The majority of these activities consisted of random controls in public places, controls in food and beverage establishments and in construction sites. Inspections for the year 2006 resulted in the identification of 48,251 third country nationals, of whom 3,890 (8.1%) were found to be irregularly staying in the country. Brazilian and Ukrainian nationals topped the group of aliens that was the object of identification procedures. The group in which irregularity was most common was clearly Brazil (31.7% of irregular cases), followed by Romania and Bulgaria.<sup>23</sup>

Observing the available data, two main trends are visible. First, there was a significant increase in the control mechanisms exerted by SEF over foreigners in an irregular situation. As regards the removal procedures, the number of notifications for voluntary return was multiplied by a factor of four between 2003 and 2006 and the number of actual expulsions almost doubled during the same period. As regards inspection activities, they have detected a significant amount of foreigners in an irregular situation, including almost 1/3 of Brazilians. However, second, these numbers are exceedingly low, when the total volume of irregular immigration in Portugal is taken into account. In face of it, the number of notifications, procedures for expulsion and actual expulsions is minimal.

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<sup>22</sup>) SEF, 2006.

<sup>23</sup>) *Ibid.*

In sum, the limitations of control mechanisms are various. As regards border control, the control of land frontiers is scarce, given the Schengen provisions. At airports the possibilities for action are limited, since irregular immigrants may use a variety of procedures, from visa exemption to visas issued by other EU countries. As regards internal control, the inefficacy of the actions is more obvious. Much concerns the limited number of inspections carried out by SEF, autonomously or in cooperation. This is even more valid since it is known that a large proportion of the notifications for voluntary return do not have the intended outcome, i.e., foreigners remain in the territory. Furthermore, inspection activities are sometimes concentrated in specific economic niches, such as establishments related to the sex industry and construction sites.

It may be argued that the internal control dimension was particularly overlooked by the immigration authorities. Given the weight of the informal economy, many irregular immigrants can easily find a job and make a living. This observation also may correspond to increased levels of exploitation and obstacles to integration. However, more resources were invested and more attention was paid to border than internal control, as confirmed during the interviews. A systematic control of economic activities where irregular immigration is common would certainly pay off.

#### 4. Political Parties and Stakeholders<sup>24</sup>

The stance of the main Portuguese political parties towards immigration issues is far from straightforward.<sup>25</sup> Although several differences exist between the two dominant parties (PS and PSD), they have shown a remarkable convergence since the 1990s. The changes made to immigration laws apparently seem to follow the electoral program of the governing party: they tend to be slightly more open and less restrictive during the PS governments, and less open and more restrictive during the PSD governments and the alliance PSD and CDS-PP. However, this picture becomes more blurred when the specific coalitions and the positions of the parties are studied in greater detail. In fact, the PS and the PSD

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<sup>24</sup> For further developments on these topics, see C. Sabino, A. Abreu and J. Peixoto, *The making of policies of immigration control in Portugal*, document prepared for the ISISPA research project, Lisbon: SOCIUS, mimeo (forthcoming); A. Abreu and J. Peixoto, Portugal, in E. Honekopp and H. Mattila (Eds.), *Permanent or Circular Migration? Policy Choices to Address Demographic Decline and Labour Shortages in Europe*, Budapest: IOM, 2008, pp. 183–214.

<sup>25</sup> The two main Portuguese political parties are the Socialist Party (PS) and the Social Democratic Party (PSD). The PS is a centre-left and the PSD a centre-right party. Since the instauration of the democracy, in 1974, these two parties have been in the government, alternately. Most of the time they have been in power solely, otherwise in coalition with third parties and once in coalition between themselves. On the opposition, the main parties are the Communist Party of Portugal (PCP), the Party of the Social Democratic Centre-Popular Party (CDS-PP) (which despite of its title is a right wing party) and the Left Bloc (BE), a left-wing party.

have converged very often on immigration issues, the CDP-PP has supported immigration initiatives by both of those parties and all governing parties have set in action some kind of regularization programs. Also the more leftist parties – PCP and BE – have converged with them in some initiatives. As stated by Zincone<sup>26</sup> for the Italian case, it was not rare to see a centre-right government moving to the left, and a centre-left government moving to the right.

Considering the six major laws on immigration control issued from the 1980s, half were passed by a right-wing governments and half by left-wing ones. Although some more restrictive and open stances were visible according to the party in government, they were not always evident. Regularizations took place under both political orientations – again half for each. The main mechanism for immigration regulation, the quotas for labour recruitment, was approved by both, i.e., politically different, governments.

This has not been without conflict. The internal heterogeneity of the political parties became evident in some circumstances, and overt power struggles have occurred within parties and coalitions. Divergences arose within the same party and governing coalitions, but they were overcome in a more or less lengthy process. However, nationalistic positions, as well as radical nationalistic and xenophobic parties, are rare in Portugal. An anti-immigrant discourse has not paid off until today in the Portuguese political system.

In general, it may be argued that there has been some tolerance by all political parties concerning irregular immigration, leading to several extraordinary regularization measures. The fact that irregular immigrants mainly came from Portuguese-speaking countries (PALOP and Brazil) until the more recent immigration wave, in the late 1990s, partly explains those actions. This positive discrimination towards Portuguese speaking countries is linked to the external politics of Portugal with these countries, but also to the needs of a non-qualified workforce. The fact that other major immigrants groups, such as the Eastern European one, have not faced strong integration problems, may have consolidated those political measures.

Among stakeholders, the importance of the Catholic Church, including the Catholic organisations working directly with immigrants, must be emphasized. Catholic organisations were always in the forefront of the defence of immigrants' rights, even before the theme had gained visibility. During the 1980s, they were among the first to campaign for extraordinary regularization. Some of the left-wing political parties acknowledge this fact, and recognize that their own role was to bring about a debate that began elsewhere, into the political sphere, in the early 1990s. Although the current influence of the Catholic Church in Portugal is hard to ascertain (as the level of religious practice is decreasing among the

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<sup>26</sup> G. Zincone, The making of policies: immigration and immigrants in Italy, 32(3) *Journal of Ethnic and Migration Studies* (2006) 347–375.

population), it is certain that the Church is very active and that Catholic affiliations are transversal to many political parties, including the PS, PSD and CDS-PP. It is certainly not by chance that the second High Commissioner for Immigration and Ethnic Minorities, nominated by the PSD in 2002, was a Catholic priest, and that the third and fourth High Commissioners, nominated by the PS in 2005 and 2008, were persons actively committed to Catholicism.

The role of the immigrants' associations has also been strong. Their origin dates back to the late 1970s, when they were mainly devoted to the social support of recently arrived immigrants. Their number increased and they acquired a more political stance in the early 1990s, when connections with trade unions and political parties were made. This was the period that led to the first regularization. The second part of the 1990s is defined as the period of maturity, given their multiple interventions in the realm of immigrants' integration and frequent partnership with the government, particularly with ACIDI.<sup>27</sup>

As regards the labour market, both the Portuguese employers' associations and their trade union counterparts exhibit an acute awareness of the fact that immigration is a reality that has come to stay and reveal a positive attitude towards immigrants.<sup>28</sup> The employers are keen on recruiting them. Both in the informal and the formal economy, foreign immigrants have been beneficial for economic activity and employers recognize it. The political position most often defended by employers' representatives is an increased flexibility for international labour recruitment. In turn, trade unions denounce that immigrants are often used as a way of undermining and eroding labour standards and social rights secured by the domestic workforce. In spite of this, they have always stood up for the rights of immigrants asking for and helping to carry out extraordinary regularizations.

Public opinion is one of the most central variables, since it expresses the position of the electorates in successive moments. Some recent survey data on the attitudes and values of the Portuguese public opinion on these issues provide some indications on this matter.<sup>29</sup> The main picture that emerges from these surveys is that of a public opinion that, contrary to popular myth, is not particularly free from prejudice in its worldview nor open and welcoming in its attitude towards immigration and diversity. However, it also seems to have undergone considerable changes in recent times, favouring a more positive view of the impacts of immigration, and to be significantly differentiated according to factors

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<sup>27)</sup> R. Albuquerque, L. Ferreira and T. Viegas, *O Fenómeno Associativo em Contexto Migratório – Duas Décadas de Associativismo de Imigrantes em Portugal*, Oeiras: Celta Editora, 2000.

<sup>28)</sup> Abreu and Peixoto, 2008.

<sup>29)</sup> These data result from both international surveys – namely the European Value Study (EVS) and the European Social Survey (ESS) – and two Portuguese surveys (M. Lages and V. Policarpo, *Atitudes e Valores perante a Imigração*, Lisboa, Lisboa: OI/ACIME, 2003; M. Lages (coord.) et al., *Os Imigrantes e a População Portuguesa: Imagens Recíprocas – Análise de duas sondagens*, Lisboa: OI/ACIME, 2006).

such as age and educational level, which may hint at the most likely direction of future trends.<sup>30</sup>

On the level of acceptance of immigration, we find that Portuguese public opinion can hardly be characterised as welcoming. The vast majority (58.6%) of the respondents to the 1999 EVS questionnaire considered that immigrants should only be allowed into the country ‘as long as jobs are available’ and a full 22.2% were in favour of ‘strict limits’, as opposed to 11.0% in favour of ‘letting anyone come’. This is generally consistent with the conclusions of the ESS questionnaire carried out seven years later in 2006, in which 60.6% were in favour of allowing ‘none’ or only ‘a few’ immigrants of the same race/ethnic background into the country. The numbers rise further when the question referred to immigrants of a different race/ethnic background (64.3%) and to immigrants from poorer countries outside Europe (also 64.3%). This is also consistent with the results obtained by Lages et al.,<sup>31</sup> whose question referred to whether the overall number of immigrants in the country (rather than that of *new* immigrants) should increase, remain the same, or decrease – the results indicating a clear majority of the latter.

Among the factors identified in Lages et al. as significantly influencing resistance to immigration, we find sex (women are more resistant than men), age (younger adults are most favourable), intensity of regular contact with people from different backgrounds (suggesting that contact breeds sympathy and understanding), religiousness (which correlates positively with hostility to immigration), self-assessed political positioning (left of centre being more favourable) and a series of interrelated factors having to do with educational level, socio-professional status and income (the higher the aforementioned factors, the more favourable the attitude).

The media may be argued to play a mixed and contradictory role in this respect. On the one hand, it has often been ‘accused’ of being largely responsible for the common association between immigration and deviant behaviour that is prevalent in public opinion. Seabra and Santos,<sup>32</sup> in particular, have shown that the incidence of criminal behaviour among the foreign population in Portugal has been statistically equivalent to that of the Portuguese autochthonous population, once social class effects are taken into account. Yet the same authors also cite studies that have concluded that crime is the topic most frequently addressed by the mass media in their coverage of immigration. On the other hand, the media must also be regarded as at least partially responsible for the dissemination of more

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<sup>30</sup> The fact that Portuguese out-migration never ceased and resumed after the early 2000s may be an explanation for the positive stance towards immigrants. However, this must be weighted against the potential conflict resulting from perceived competition in the labour market.

<sup>31</sup> M. Lages (coord.) et al., *Os Imigrantes e a População Portuguesa: Imagens Recíprocas – Análise de duas sondagens*, Lisboa: OI/ACIME, 2006.

<sup>32</sup> H. Seabra and T. Santos, *A Criminalidade de Estrangeiros em Portugal*, Lisboa, OI/ACIME, 2005 .



‘objective’ information on the impacts of immigration, such as that which has led to the shift in perceptions mentioned above. The increasing perception of the positive net contribution of the immigrants to the social security budget, for example, is especially illustrative of this.<sup>33</sup>

## **5. Conclusions**

The making of policies of immigration control in Portugal has taken place in the context of a recent and non-linear immigration experience, as inflows have not been stable and its characteristics varied. International migration flows occurred in a changing context as globalization has gradually given rise to a large internationalised labour market, the migration industry – including smuggling – has expanded its activities and the EU and Schengen membership constrained some of the classical regulation mechanisms. In sum, Portugal was not used to regulate immigration and had to learn in a different context than its more developed European counterparts. Moreover, immigration has been linked to some structural traits of the Portuguese society, such as the informal economy, responsible for a significant part of the immigrant labour recruitment, and the weak welfare state, challenging the capabilities of the state for control.

The political elites have exhibited a significant degree of consensus when it comes to immigration policy. The ‘central bloc’, meaning a tacit or explicit alliance between the two main governing parties, the PS and the PSD, functioned more than once. The consensus, situated at the centre of the political axis, has sometimes involved other parties, such as the right-wing CDS-PP and the left-wing PCP. This process was far from being straightforward, but allowed some coherence during the years. In the expression of one of the interviewees (who worked for the government during several years), ‘we constructed, we negotiated’.

The lack of a strong political divide in relation to immigration may be partially explained by the characteristics of public opinion on this issue. The attitudes and values of the Portuguese population towards immigration are complex and sometimes contradictory, but reveal, nonetheless, the increase of a more favourable stance over the years. This is still more relevant since from the early 2000s economic recession, rising levels of unemployment and the resume of Portuguese out-migration took place. Despite this, public opinion did not rise against immigrants. In the words of one of the interviewees, ‘there is social peace regarding immigration’. In face of this, it is not surprising that the major political parties are keen in maintaining a generally favourable stance in this domain.

The position of relevant stakeholders is also an explanation for the overall consensus. Employers and trade unions have revealed a generally favourable attitude towards immigration. They accept the inevitability of immigration and

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<sup>33</sup> Lages et al., 2006.

show a positive attitude towards immigrants. The Catholic Church has been an important actor. Although arguably of little influence as far as everyday practices (e.g., concerning family and contraception) the Catholic faith is transversal to many sectors of the Portuguese society, including right- and left-wing political parties. The role of Catholic organisations in the making of Portuguese immigration policies seems decisive. The immigrants' associations lack the pervasive character of its Catholic counterparts, but also have had a significant voice in these debates.

The degree of adhesion of stated policy objectives with the reality of immigration is nonetheless limited. In other words, the gap between the aims and outcomes of policy has increased, – turning Portugal into another example of the 'crisis of control' in this domain.<sup>34</sup> As occurs in other contexts, the political discourse has been keen in proclaiming an objective of strict regulation and control. Several measures were launched to promote legal immigration, to provide international labour recruitment and to improve control mechanisms. Extraordinary regularizations were designed to solve previously unsolved situations and to make a start for new eras where no regularizations were needed. However, all policy mechanisms devised to facilitate legal immigration proved to be ineffective, the efforts for control have been insufficient (regarding border and, mostly, internal control) and the strength of other factors proved too strong for political regulation.

The factors hindering the implementation of regulation policies included high demand in labour-intensive sectors, particularly in the informal economy, the strength of informal social networks and the functioning of smuggling networks. The opening of the land borders, given the Schengen provisions and the possibilities of visa issuance, added to the difficulties of control, especially for Eastern European immigrants. When trying to synthesize these factors, they encompass the economic (labour market demand), social (networks and smuggling), institutional (EU regulations) and legal (inadequacy of legal immigration channels) domains. In short, irregular immigration has been endemic in Portuguese society.

The future of immigration control in Portugal remains an open question. To a large extent, the outcome will depend on factors outside the reach of immigration policy. The type of economic demand, the rates of economic growth and the extent of the informal economy will largely determine future inflows. The functioning of networks is always resistant to regulation. EU norms will also constrain future policies. The attitudes and norms of public opinion, a decisive factor for political action, are uncertain. As an interviewee told us, the plea for tolerance and immigrants' acceptance 'is an everyday fight'. The main Portuguese political actors will probably maintain a generally favourable stance towards immigration

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<sup>34</sup> Cornelius et al., 2004; Baganha, 2005.

and will try to promote more effective channels for legal immigration. Efforts to achieve an effective regulation will continue, in closer connection with other EU Member States and migrants' sending countries. The other relevant stakeholders are also likely to maintain a positive stance towards immigration. The overall outcome will certainly be easier to explain in the future than to forecast in the present.



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