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WE WILL ALWAYS HAVE TAMPERE: *A Case Study on the Regulation of the Residence Status of Long-Term Migrants*

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Abstract: While European Union citizenship gradually moved from a matter of employment rights toward a matter of fundamental rights, the status of third-country nationals (TCNs) remained locked in the policy areas of security and economic cooperation. This changed since the late-1990s under gradual developments favouring the centralization of migration policy. The current paper makes a contribution to trace this process by presenting a case study of the 2003 Directive concerning the status of third-country nationals who are long-term residents. An overview of the process leading to the adoption of the Directive is followed by an examination of the practicalities involved in its transposition into domestic law in Portugal, a country in which the relative novelty of the immigration phenomenon and an inconstant economic trajectory are critically entwined. It is concluded that migration policy can be developed at the EU level without a common position on integration being taken. Far from an incidental outcome, this enables nation-states to both concede benefits claimed through political mobilization for the advancement of immigrants' rights and reassert their gate-keeping capacity in the regulation of migration. The combination of protective advancements for TCNs and increased securitization of their mobility stands out as a piece of key explanatory value to understand the adoption of the Directive in a context of tightening immigration policy in various member-states.

Keywords: citizenship, European Union, migration, Portugal, residence status, third-country nationals

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Introduction¹

This article delves into the nexus of two levels of governance engaged in the regulation of migration: the European Union (EU) and the member states. It builds upon the notion that understanding the dynamics of policy-making in the area of migration – and especially its tentative centralization within the EU – requires a systematic examination of the materialization of goals established in occasions as important as the Tampere summit (1999) or the Hague summit (2004). While migration law making at both the EU and national levels has been widely discussed, less attention has been paid to the process of transposition (Schibel 2005). In view of these purposes, the choice is to focus on the Directive regulating the long-term residence status of third-country nationals (TCNs) and its transposition into domestic law in Portugal, a country in which the relative novelty of the immigration phenomenon and an inconstant economic trajectory are critically entwined. In addition, this case study is expected to contribute to the broader debate on EU decision-making and the interplay between various political actors and settings.

The article develops in three steps. First, an overview of the process leading to the adoption of this Directive is presented. While a thorough examination of the drafting process exceeds the scope of the article, a number of political elements and concepts are key to frame the ensuing analysis. Second, the transposition of the Directive in Portugal is assessed. Scrutiny is based on the analysis of institutional documents, and a normative approach allows pinpointing topical matters requiring attention. In the third and final section, it is concluded that this Directive is an important case of how the conditions of permanence of immigrants can be regulated at the EU level without a common position on integration being taken. Far from an incidental outcome, this enables nation-states to both concede benefits claimed through political mobilization for the advancement of immigrants' rights and reassert their gate-keeping capacity in the regulation of migration. The case of Portugal is informative because it exposes the tensions between the progressive centralization of migration policy at the EU level and the lingering domestic concerns about recent immigrant flows (especially in regard to social and economic integration). By redefining particular elements such as minimum years of stay, family reunification norms, or procedures to dispute permit refusals, the state engages in a trade-off between standards vindicated by lobbying NGOs and top-down migration control.

The Directive

In a historical perspective, the movement of people in the EU evolved from a matter of economic cooperation – freedom of labour next to freedom of goods, capital, and services – toward a matter of citizenship and fundamental rights, even if various issues were left

¹ While this article reaps the benefits of various discussions with experts, I am especially indebted to the comments of Nuria Ramos Martin, Christof Roos, Joana Azevedo, Sean Mueller, and the anonymous reviewer at *Federal Governance*. I also thank the members of the nongovernmental groups *Trusted Migrants* and *Respect* (in Amsterdam), *GAMI* and *ComuniDária* (in Lisbon), for their precious suggestions and inspiration. A draft version of this article was presented at the 4th Graduate Student Conference of the European Consortium for Political Research, Jacobs University, Bremen, 5 July 2012.

unsolved along the way (Jeffery 2001). Particular controversy has been raised in the pursuit of equal treatment between natives and immigrants. If this is a difficult task when it refers to EU citizens only, it becomes even more complex when it refers to migrants from third countries as well. Indeed, the rights of TCNs remained locked in the realms of national security and economic cooperation until the late-1990s.² From a cross-national comparison in 2001, Groenendijk and Guild (2001) nonetheless conclude that legislation in the 15 member states regarding the security of residence for TCNs was remarkably similar in many respects. This was the case regarding time of stay required to obtain a residence permit, rights to family reunification, access to health and education, participation in the labour market, or procedures of deportation in the event of unlawful behaviour. This suggests that the convergence of legislation was already under way across nations when governments decided to take a stand at the EU level. Furthermore, it is not a coincidence that the urge for Community legislation in this field grew as the greatest enlargement process so far was being prepared. The extension of the EU citizenship to twelve new member states in 2004/07 reinforced the need to clarify the *outer citizenship*, that is, the status (particular rights and duties) of individuals and families who are not nationals of any member-state and yet at some point seek their formal integration in the social, economic, and political structures of the EU.

In 1996, the European Council issued a resolution on the establishment of a common legal framework for TCNs who are long-term residents in the European Union (Council of the European Union 1996). On the one hand, it was important to facilitate the movement of long-term resident TCNs from a member state to another for the very same economic reasons underpinning freedom of movement for EU citizens. On the other hand, immigrants who have lived in the host country for a considerable number of years should be given all the tools to be fully integrated in economic as much as in social terms. This called for a legal status that would ensure security of residence, access to public and private services, and equal treatment. The public declaration of the intention to legislate in this area was followed by a large flow of policy advice from non-governmental organisations and independent experts, a development that seems to corroborate the idea of EU decision-making as a process of multi-level governance (Bache and Flinders 2004).

Gathering in Tampere in October 1999, the European Council laid down a set of goals toward the extension and standardization of the rights of TCNs, with a focus on approximating their rights to those of the EU citizens (Council of the European Union 1999; see especially paragraph 21). The far-reaching scope of these goals would soon contrast with the disappointing gap between “political ambitions and political reality” (Halleskov 2005: 2000). By 2001, the European Commission presented a proposal for a Directive on long-term resident TCNs. The aim was twofold: to create a single status of long-term resident for TCNs throughout the different member states, attached to a common set of requirements and rights; and to define to what extent such status is transferable in case a long-term resident TCN migrates from a member state to another. This proposal eventually materialized into the

² It is significant that this was very much how free movement rights for EU citizens began in the 1960s. If freedom of movement for EU citizens germinated under the auspices of employment mobility, the same process may constitute a lever for TCNs to obtain more favourable legislation in the near future.

Directive 2003/109/EC (Council of the European Union 2003a). Key guidelines were drawn from previous case law of the European Court of Justice and standards established in conventions of the International Labour Organisation and the International Organisation for Migration. The United Kingdom, Ireland and Denmark opted out of this Directive, which means that they are neither committed to grant long-term resident status to TCNs, nor to recognize the long-term resident status granted to TCNs by fellow member states.

The Directive under consideration is structured in four chapters: general provisions (definitions and scope); the long-term resident status in a member state (requirements, application procedure, rights, and loss of status); conditions of residence in a second member state once the long-term resident status has been obtained; and final provisions. A number of cautious provisions (e.g. on the modalities for granting social assistance benefits or on the progressive implementation of standards) were introduced along the document to appease fears of excessive protection of TCNs. A crucial challenge in the drafting process was to lay down definitions. By then, the keywords of the Directive had become part of the common vocabulary among policy-makers, social partners and experts without any sort of agreement as to what they exactly meant. “Third-country national” was eventually defined as a person who does not hold the nationality of any EU member state.³ This seemingly basic assumption confirms that, for purposes of moving within the EU, the conditions under which a TCN is able to acquire the nationality of the member state where he or she resides remain beyond discussion. On the other hand, “long-term residence” was defined as a minimum of five years of legal and continuous stay in the same member state – continuous meaning that the person is not absent from this country for longer than six consecutive months or a total of ten months during the five years.⁴

Once the main concepts are defined, the Directive offers member states a large amount of freedom in the act of transposition. This is especially the case for what counts as “legal” residence, the requirement to prove “stable and regular” resources in the course of the application for long-term resident status, and the access to social security benefits after obtaining the status. To be sure, every European Directive seeks to establish only basic standards, upon which national legislators shall decide on the “forms and methods” adequate in their particular state (European Union 2002: Art. 249; holding on to this definition is a valuable suggestion of Schibel 2005: 395-6). The specific problem in this Directive is that, by being loose in the definition of the requirements for long-term resident status, it then compensates by imposing too many limitations on the rights to move across member states. If all member states would agree on a full set of liquid criteria to grant the long-term resident status (and trust each other as to the correct application of these criteria), the need for controlling the internal movement of these citizens would be significantly reduced – though

³ Art. 2(a) of the Directive, mentioning Art. 17(1) of the Treaty of the European Community.

⁴ Art. 4 of the Directive. With the adoption of this Directive, “long-term resident” became an administrative concept to be used uniformly by member states as referring to third-country nationals who have been granted such status. Thus, it should not be confused with the concept “long-term migrant” as harmonized across official sources (e.g. for statistical purposes), which typically draws on the time span of one year of regular residence to distinguish long-term from short-term stay. To this day, “short-term residence” remains undefined at the EU administrative level, although it is sometimes used to designate third-country nationals who are still below the number of years of stay to obtain the long-term resident status.

certainly not eliminated, as the Directive still allows national authorities to “examine the situation of their labour market” when processing the application of a TCN with long-term resident status granted in a different member state.⁵

Furthermore, the Directive is vague about the rights of TCNs in the period of five years before applying for long-term resident status. Member states are therefore free to oppose the Directive *through the backdoor* by applying policies of immigration that make a legal and continuous stay of five years extremely difficult. Two distinct Directives adopted later have sought to address this challenge. In 2009, the TCNs entering the EU for the purpose of highly qualified employment were the subject of protective legislation: a Directive introducing the Blue Card against a backdrop of global competition and brain drain (Council of the European Union 2009). In 2011, the innovation was a single application procedure for the remaining TCNs with legal residence and paid employment in a member state (European Parliament and the Council 2011).

In practice, TCNs may be required to repeat a part of the application process – such as proving stable resources and sickness insurance, as well as complying with existing “integration measures” – as soon as they enter another member state with the purpose of taking permanent residence there.⁶ The same is to say that the status is not transferable across member states. Once the second member state has recognized it to a TCN, however, all the rights granted in the first member state are safeguarded. The implications of this inconsistency will depend on how member states decide to process applications from TCNs who obtained the long-term resident status in a distinct member state: it can range from a simple check-and-go to a complex bureaucratic operation.

However, the Directive does include some standard rules for application procedures, both in the “first” and “second” member states.⁷ Procedures must be transparent and non-binding, and the authorities have the duty to notify the applicant of the final decision within a maximum of six months, save for exceptional situations. Whenever an application is refused, the applicant must be given a written justification for the refusal and the right to dispute it by legal means. On the other hand, the Directive allows for a long list of administrative requirements regarding the length of the stay, sources of income, family members, health insurance and criminal record; and it does not mention who shall bear the expenses throughout the application process, nor in case of initiating a legal dispute of the official decision. This is a matter of high concern according to authors such as Brouwer (2005) and Cholewinski (2005) due to the risk of discrimination that it entails. In particular, the draft Directive produced by the European Commission was much clearer in protecting the applicants from expenses that they may not be able to cover.

Applicants may also be required to comply with national “integration conditions”.⁸ The integration condition that is most frequently applied across Europe is language proficiency, mostly for its tight link with social integration and political rights. Interestingly though, as

⁵ Art. 14(3) of the Directive.

⁶ Arts. 14 and 15 of the Directive.

⁷ Arts. 7 and 10 of the Directive for the first member state, Arts. 19 and 20 for second member states.

⁸ Art. 5 of the Directive. The same applies for the second member state in case a TCN with long-term resident status moves there (Art. 15).

noted by Gross (2005), this is not a requirement for EU citizens who move from their country to a second member state. In fact, imposing a language requirement inside the EU could easily be discarded as an obstacle to freedom of movement.

Art. 11 was one of the most widely discussed parts in the Directive, as much before as after the Council agreed on the final text. It describes the particular areas in which TCNs with long-term resident status deserve the same treatment as nationals of the member state where they reside. There are two possible approaches to this article. On the one hand, it is as specific as can be. It includes access to employment, education, training, social security,⁹ tax benefits, goods, and services; it also guarantees the recognition of diplomas and the freedom of association and affiliation. For non-discrimination purposes, it is a large step toward the goals established in Tampere. On the other hand, the enumeration of these rights – instead of presenting equal treatment as an overarching universal notion – can also be seen as the rejection of equal treatment *in itself*. Halleskov (2005: 189) goes right to the point when stating that Art. 11

reflects that the Community does not believe that even people who have resided for more than five years in a Member State and fulfilled the numerous conditions laid down in Chapter II of the Directive are worthy of genuine equality of treatment in all areas of life.

A last remark about the content of the Directive is that it incorporates security concerns associated with the various terrorist attacks of the years before. The possibility to refuse and withdraw long-term resident status to TCNs who are deemed a threat to public security is mentioned twice in the preamble (paragraphs 8 and 21) and in three distinct articles (6, 9, 17). Plus, Art. 12 concerning the protection against expulsion for long-term residents excludes citizens who are considered to represent a public threat. As observed by Brouwer (2005), the drafting process was simultaneous to a significant progress on data surveillance networks, such as the Schengen Information System, the Eurodac fingerprint database and the Visa Information System. The Directive allows member states to refuse or withdraw long-term resident status based on information collected in these networks. Although the citizens who are being refused or withdrawn the status must be given a justification, it is unclear how much they are allowed to know about it. It is unlikely that this will include confidential files from international security systems.

The remainder of this article analyses how the EU-level regulation was incorporated into domestic law in one particular member-state: Portugal.

Transposition into domestic law: the case of Portugal

Migration law making in Portugal developed under two main sources of pressure: the fast increase in migration inflows and European integration (Baganha and Marques, 2001; Malheiros, 2005; Peixoto, 2007; Machado and Azevedo, 2009; Pires, 2010). These two elements are not isolated from each other, since accession to the EU in 1986 certainly contributed to the economic growth that created demand for immigrant labour. Between 1986

⁹ The rights of access to social security had already been asserted as an issue of non-discrimination in a previous decision (Council of the European Union 2003b).

and 2003, the number of foreign citizens with legal residence in Portugal increased fivefold, and it reached as high as 434 thousands by 2007 (4,1% of total resident population). This number would remain on the increase until the outburst of the economic crisis in 2008. The large majority of foreigners are non-EU citizens coming from either former Portuguese colonies or more recent sending countries such as Ukraine, Moldavia, and China (Peixoto, 2007). Table 1 and Graph 1 included in the Appendix of this article show the aggregate numbers of foreign residents in the period between 1999 and 2011, as well as the number of those who were granted long-term resident status since 2008.

The first law devoted to immigration was adopted in 1981, and subsequently reformed on several occasions (for the most substantial changes, see Ministério da Administração Interna 1981, 1993, 1998, 2001, 2003; Assembleia da República 2007). The relative novelty of the immigration phenomenon and an inconstant economic trajectory render Portugal an informative case to be studied. In particular, the progressive centralization of migration policy at the EU level has been simultaneous with growing concerns about the social and economic integration of a large number of third-country nationals. This is illustrated by the practical context hampering the transposition process. In line with standard practice, the Directive 2003/109/EC specified a deadline of two years for transposition into domestic law.¹⁰ Deadline infringement motivated letters of formal notice from the European Commission to Portugal, Spain, France, Luxembourg, Hungary, and Italy. Only Portugal and Spain were eventually condemned by the European Court of Justice to pay the fine for the delay. The fact that a process of public consultation was still under way in Portugal (the formal justification presented by this country in the European Court of Justice) is suggestive of the low level of agreement between domestic actors – especially government, political parties, immigrant representatives, and trade unions. The transposition of this particular Directive would be incorporated in a whole new immigration law, which responded to a variety of domestic concerns as well as transposed six other Council Directives.¹¹ A further obstacle was that the political party in office and the distribution of seats in parliament changed in February 2005. This was due to early legislative elections following the resignation of the Prime Minister who had been appointed President of the European Commission in November 2004.

Until 2007, the closest that the Portuguese immigration law came to a long-term resident status for TCNs was through the “permanent residence permit”. This permit allowed TCNs to remain in the Portuguese territory for indefinite time without having to prove the viability or the conditions of their stay. As long as all statutory rules were fulfilled, it operated as a plain right – meaning that the acceptance or refusal of an application was not at the discretion of authorities. While this represented an important triumph in the struggle of non-governmental organizations for the rights of immigrants, the statutory rules were not exactly easy to meet. They consisted of ten years of lawful residence so far,¹² proof of current accommodation in

¹⁰ Art. 26 of the Directive.

¹¹ These Directives concerned the right to family reunification, assistance in cases of transit for the purposes of deportation, residence permits issued to third-country nationals who are victims of smuggling, the obligation of carriers to communicate passenger data, the conditions of admission of third-country nationals for the purposes of studies, and a specific procedure for admitting third-country nationals for the purposes of scientific research.

¹² The requirement of ten years of stay before obtaining security of residence meant that, by the time the Directive 2003/109/EC was adopted, Portugal was – together with Greece – the strictest member state in this respect. At

Portugal, a criminal record free of serious offences, and holding a valid residence visa. This last requirement was often the hardest. The residence visa is a temporary permit with a renewable validity of two years, requiring TCNs to prove at the time of every renewal the purpose of their stay, their means of support, and housing. The degree according to which these criteria are assessed is stricter if the applicant is living with dependent family members.

The nationals of former Portuguese colonies such as Cape Verde, Guinea Bissau, Mozambique or Brazil were not provided special treatment among TCNs in regard to the permanent residence permit. However, due to existing bilateral agreements with their countries of origin, they did enjoy an easier access to the labour market and educational system in the absence of a secure status (besides the practical advantage of usually speaking the official language). This meant that they had better chances than other TCNs to satisfy the requirements for the permanent residence permit. At the same time, access to dual citizenship or full Portuguese nationality was rather flexible in comparison with most of the EU member states, constituting a true alternative to the application for secure residence.

The long-term resident status established at the EU level did not replace the permanent residence permit in Portugal. It was decided that these two forms of secure status should coexist in the law of 2007, even if the length of stay required to apply for a permanent residence permit had to be lowered from ten to five years – otherwise it would be more convenient for TCNs to apply for the long-term resident status. If the same exact set of basic rights is provided by both statuses, why were they not merged? Administrative inertia seems to have played a role in this decision: it is easier to add a category of secure residence than to reform the original one. In fact, some differences remain at the procedural level. The most significant is that the long-term resident status is the result of a stricter application process, while the permanent residence permit remains a plain right as long as statutory rules are fulfilled.

According to the law of 1998, the right to family reunification was granted after two years of lawful residence in Portugal. This included spouse, children (of the working TCN or the spouse's) up to 21 years old, dependent ascendants, and adult siblings depending on specific approval. Furthermore, children who were born in Portugal or under 21 at the time of arrival could apply directly for a permanent status. Very often they enjoyed a degree of security that their working parents lacked. In fact, immigrants who did not have a stable employment situation could apply for the renewal of their residence visa on the grounds of having dependent children in Portuguese territory.

The notion of family was watered down in 2007. Although the right to reunification is extended to adult children (even if economically independent), it is only applicable to parents of the worker in case they do not work, while brothers and sisters have been excluded altogether. The law is also a bit stricter than earlier regarding minor children. They are still given the right to stay in Portugal as long as one of their parents holds a residence permit, but the retention of this privilege after reaching 18 years old now depends on being studying or working, and not having been absent for a considerable amount of time during the years

the national level, the definition of a time span of ten years had actually been a difficult victory for immigrant organizations; the law of 1993 required twenty years of stay to apply for the permanent residence permit.

before. In comparison with the standards set by the EU, one cannot conclude that these conditions are too strict; they do however represent a stricter approach than the previous law.

In relation to the specification of rights to equal treatment described in Art. 11 of the Directive, they are transposed to the Article 133 of the Portuguese law exactly as they have been phrased by the European Council. The outcome regarding approximation of rights between TCNs of different origins is less clear. It is mentioned that the law does not rule over bilateral or multilateral agreements signed in the past or in the future with particular countries. This may raise complaints of unfair treatment towards TCNs coming from other countries, especially since the law protects potential future agreements. The EU has been under similar tension due to the preferential treatment enjoyed by TCNs from the European Economic area (non-members of the EU), Switzerland and other countries under association agreements such as Turkey. On the other hand, the fact that the Portuguese law has not eliminated the privileges granted to citizens of former colonies may operate as a lever for the rights of the other TCNs in the near future, similarly to what happened following the interpretations of the decision 1/80 of the EEC-Turkey Association Agreement by the European Court of Justice.

The law is equally silent concerning the procedure to dispute a refusal of the long-term resident status. It does mention that TCNs have such right. What entity to appeal to or who shall bear the costs of it are nowhere to be found though. This very much reflects the approach of the European Council as it settled for a broad reference to the "right to mount a legal challenge" instead of the more detailed formulation in the Commission's original proposal (Cholewinski 2005: 241). If the European Council favoured a more moderate version on the grounds that every member state should decide what sort of legal dispute is more adequate, the transposition into Portuguese law clearly lags behind that purpose.

In regard to the TCNs who acquired long-term resident status in a different member state and wish to settle down in Portugal, the law allows them to apply for an initial residence visa of three months. This application requires the TCN to specify the reason for moving, but such reason does not have to be accompanied by any document and it is enough that the migrant intends to find a job or to pursue studies in Portugal. However, the application for a permanent resident status that must take place after three months does require proof of resources and accommodation.

Concluding remarks

An overall suggestion from this case study is that migration policy can be developed at the EU level without a common position on integration being taken. Gross (2005) usefully proposes two ways of looking at the link between migration law and integration. On the one hand, integration can be seen as a precondition to obtain a secure status of residence; security is then granted as a sort of *prize* for integration. On the other hand, a secure status may be granted as a *means* to the end of integration. The Directive under examination and its transposition into Portuguese law fall somewhere between the two approaches. If the first view is endorsed, then it should be related to the current working and living conditions of the TCNs and not depend on a combination of years with a sinuous line of bureaucratic

arrangements. If the second view is assumed instead, five years of lawful residence (which often correspond to more years of actual stay) seem certainly too long a period to be without the proper formal means to integrate.

By not addressing integration matters in a clear tone, the Directive enables nation-states to both concede benefits claimed through political mobilization for the advancement of immigrants' rights and reassert their gate-keeping capacity in the regulation of migration. The redefinition of norms concerning minimum years of stay, family reunification or procedures to dispute permit refusals, among others, reflect a trade-off between standards vindicated by lobbying NGOs and top-down migration control. This notable achievement is far from an incidental outcome. On the contrary, it emerges as a piece of key explanatory value to understand the adoption of the Directive in a context of tightening immigration policy in various member-states. The combination of protective advancements for TCNs and increased securitization of their mobility is crucial.

From the standpoint of governance, two tensions remain at stake: one at the state-society gates between governmental and non-governmental actors such as immigrant and human rights NGOs, the other one at the domestic-foreign gates between distinct member states (Piattoni 2009: 155-6). The coexistence of two statuses for long-term resident TCNs in Portugal – the first of them inherited from previous domestic law-making, the second one introduced by the EU Directive – can be read in distinct manners. On the one hand, it suggests a hybrid form of multi-level governance requiring further research. On the other, administrative inertia and lack of technical expertise to deal with new challenges emerge as a plausible explanation. Remarkably, the conditions to access the “traditional” status had to be brought down in a sort of indirect impact of EU policy-making. The adoption of a case study approach in this article limits the possibilities of immediate generalization. An important line of enquiry in such respect would be the systematic study of how one same Directive has been implemented across distinct countries.

In fact, since the adoption of the Directive 2003/109/EC the rights of TCNs have remained under debate at the EU level. In November 2004, the European Council gathered to reflect upon the practical results of the Tampere resolutions five years before. This meeting provided the basis for the European Commission's Hague Programme – a strategic plan “for freedom, justice and security” in the Community area. There is some concern that this new programme took over the Tampere's principle of “access to justice for all” and pretty much limited it to civil and criminal regulations (Brouwer 2005). There are risks of continuing securitization in migration policy-making (Sasse 2005). The case study undertaken in this paper confirms the need to conduct a critical and systematic examination of goals established in top-level political meetings.

References

- Assembleia da República 2007, "Lei 23/07 de 4 de Julho", *Diário da República I Série-A*, 04.07.2007, No. 127, pp. 4290-4330.
- Bache, I. & Flinders, M. 2004, "Themes and Issues in Multi-Level Governance", in *Multi-Level Governance*, ed. I. Bache & M. Flinders, Oxford University Press, Oxford, pp. 1-14.
- Baganha, M.I. & Marques, J.C. 2001, *Imigração e Política. O Caso Português*, Fundação Luso-Americana, Lisbon.
- Brouwer, E. 2005, "Effective Remedies for Third-Country Nationals in EU Law: Justice Accessible to All?", *European Journal of Migration and Law*, 7, pp. 219-236.
- Cholewinski, R. 2005, "The Need for Effective Individual Legal Protection in Immigration Matters", *European Journal of Migration and Law*, 7, pp. 237-262.
- Council of the European Union 1996, "Council Resolution of 4 March 1996 on the Status of Third-Country Nationals Residing on a Long-Term Basis in the Territory of the Member States", *Official Journal of the European Union*, 18.03.1996, pp. C080/2-4.
- Council of the European Union 1999, "Presidency Conclusions, Tampere European Council 15 and 16 October 1999", *Bulletin of the European Union*, No. 10/1999.
- Council of the European Union 2003a, "Council Directive 2003/109/EC of 25 November 2003 Concerning the Status of Third-Country Nationals who are Long-Term Residents", *Official Journal of the European Union*, 23.01.2004, pp. L16/44-53.
- Council of the European Union 2003b, "Council Regulation 859/2003 of 14 May 2003 Extending the Provisions of Regulation (EEC) No. 1408/71 and Regulation (EEC) 574/72 to Nationals of Third Countries who are not Already Covered by those Provisions Solely on the Ground of Their Nationality", *Official Journal of the European Communities*, 20.05.2003, p. L124/1.
- Council of the European Union 2009, "Council Directive 2009/50/EC of 25 May 2009 on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment", *Official Journal of the European Union*, 18.06.2009, pp. L155/17-29.
- European Parliament and the Council 2011, "Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a Single Application Procedure for a Single Permit for Third-Country Nationals to Reside and Work in the Territory of a Member State and on a Common Set of Rights for Third-Country Workers Legally Residing in a Member State", *Official Journal of the European Union*, 23.12.2011, L343, pp. 1-9.
- European Union 2002, "Consolidated Version of the Treaty Establishing the European Community", *Official Journal of the European Communities*, 24.12.2002, C325, pp. 1-184.
- Gronendijk, K. & Guild, E. 2001, "Converging Criteria: Creating an Area of Security of Residence for Europe's Third Country Nationals", *European Journal of Migration and Law*, 3, pp. 37-59.
- Gross, T. 2005, "Integration of Immigrants: the Perspective of European Community Law", *European Journal of Migration and Law*, 7, pp. 145-161.
- Halleskov, L. 2005, "The Long-Term Residents Directive: a Fulfilment of the Tampere Objective of Near-Equality?", *European Journal of Migration and Law*, 7, pp. 181-201.

- Jeffery, M. 2001, "The Free Movement of Persons within the European Union: Moving from Employment Rights to Fundamental Rights", *Comparative Labor Law and Policy Journal*, 23, 1, pp. 211-232.
- Machado, F.L. & Azevedo, J. 2009, "A Investigação sobre Imigração e Etnicidade em Portugal: Tendências, Vazios e Propostas", *Migrações*, 4, pp. 7-31.
- Malheiros, J.M. 2005, "Jogos de Relações Internacionais: Repensar a Posição de Portugal no Arquipélago Migratório Global" in *Globalização e Migrações*, ed. A. Barreto, Imprensa de Ciências Sociais, Lisbon, pp. 251-272.
- Ministério da Administração Interna 1981, "Decreto-Lei 264-B/81 de 3 de Setembro", *Diário da República I Série-A*, No. 202, 03.09.1981, pp. 2350/11-24.
- Ministério da Administração Interna 1993, "Decreto-Lei 59/93 de 3 de Março", *Diário da República I Série-A*, No. 52, 03.03.1993, pp. 929-943.
- Ministério da Administração Interna 1998, "Decreto-Lei 244/98 de 8 de Agosto", *Diário da República I Série-A*, No. 182, 08.08.1998, pp. 3832-3850.
- Ministério da Administração Interna 2001, "Decreto-Lei 4/2001, de 10 de Janeiro", *Diário da República I Série-A*, No. 8, 10.01.2001, pp. 99-127.
- Ministério da Administração Interna 2003, "Decreto-Lei 34/2003, de 25 de Fevereiro", *Diário da República I Série-A*, No. 47, 25.02.2003, pp. 1338-1375.
- Peixoto, J. 2007, "Dinâmicas e Regimes Migratórios: O Caso das Migrações Internacionais em Portugal", *Análise Social*, 183, pp. 445-369.
- Piattoni, S. 2009, "Multi-level Governance: a Historical and Conceptual Analysis", *Journal of European Integration*, 31, 2, pp. 163-180.
- Pires, R.P. (ed) 2010, *Portugal: Atlas das Migrações Internacionais*, Tinta-da-China, Lisbon.
- Sasse, G. 2005, "Securitization or Securing Rights? Exploring the Conceptual Foundations of Policies Towards Minorities and Migrants in Europe", *Journal of Common Market Studies*, 43, 4, pp. 673-93.
- Schibel, Y. 2005, "Transposing EU Law on Legal Migration", *European Journal of Migration and Law*, 6, pp. 395-404.

Appendix

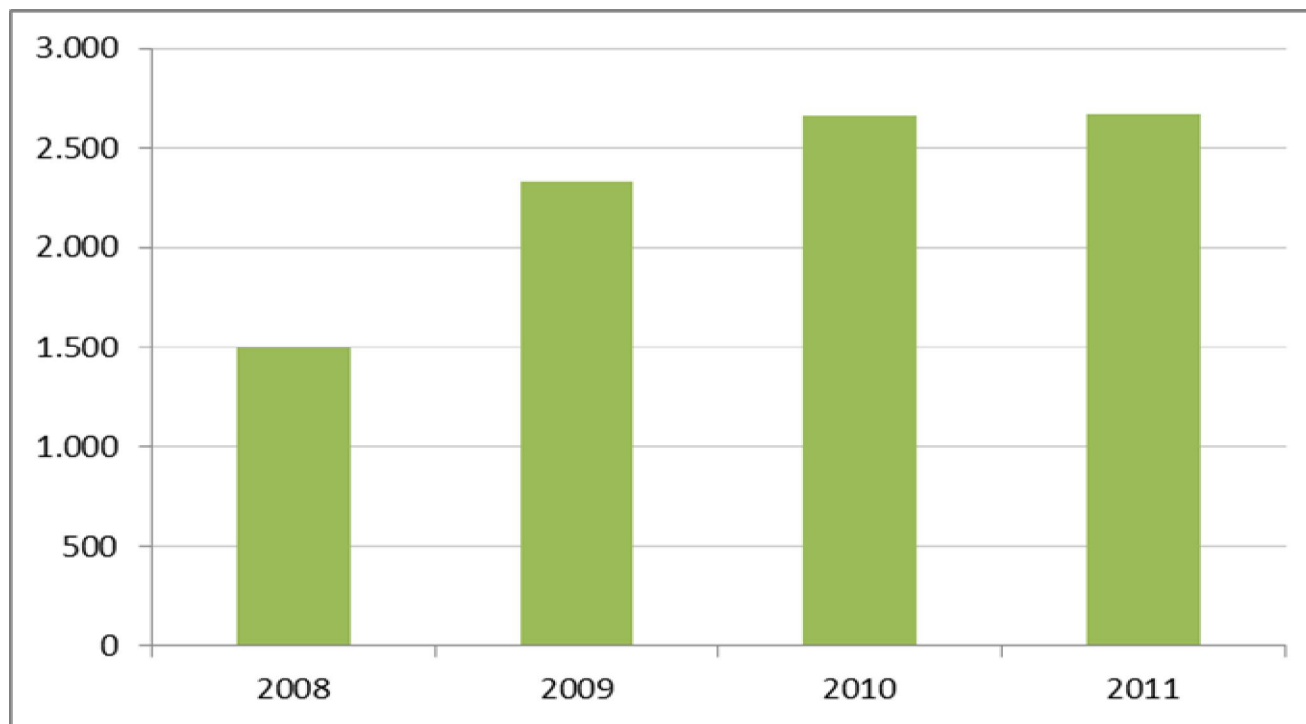
Table 1: Total resident population and foreign population by broad group of citizenship, Portugal, 1999-2011 (selected years)

Year	Total resident population	Foreign population						
		Total	EU15		EU25		EU27	
			Other EU15-countries	Non EU15-countries	Other EU25-countries	Non EU25-countries	Other EU27-countries	Non EU27-countries
1999	10.198.233	178.137	48.171	129.966	-	-	-	-
2003	10.407.465	238.746	66.013	172.733	66.672	172.074	67.837	170.909
2007	10.599.095	434.887	78.579	356.308	80.104	354.783	95.556	339.331
2011	10.636.979	448.083	54.946	393.137	58.226	389.857	103.230	344.853

Note: Blue-colored cells refer to the population corresponding to “third-country nationals” at each year respectively.

Source: Own computation based on data from Statistics Portugal and EUROSTAT, extracted on 20 December 2012, <http://epp.eurostat.ec.europa.eu> (migr_pop1ctz).

Graph 1: Total foreign long-term resident population, Portugal, 2008-2011



Note: Annual values correspond to data by 31 December of each year; long-term resident status refers to permits issued under Council Directive 2003/109/EC.

Source: Statistic Portugal and EUROSTAT, extracted on 20 December 2012, <http://epp.eurostat.ec.europa.eu> (migr_reslong).