



**Conformity Study for Portugal**  
**Directive 2004/38/EC on the right of citizens of the Union**  
**and their family members to move and reside freely within**  
**the territory of the Member States**

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ENVIRONMENTAL LAW & POLICY



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The views expressed herein are those of the consultants alone and do not necessarily represent the official views of the European Commission. The national report reflects that legal situation as it stands on 1 August 2008. No subsequent changes have been taken into account.

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**ANALYSIS OF THE LEGISLATION TRANSPOSING  
DIRECTIVE 2004/38/EC ON FREE MOVEMENT OF UNION CITIZENS**

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## EXECUTIVE SUMMARY

### 1. Introduction

This study assesses the conformity of the measures adopted by the Portuguese legal system to transpose Directive 2004/34/EC amending Regulation (EEC) n.º 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC as from 29 April 2006, on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

### 2. Introduction to the main particularities of the legal system of the Member State relating to the transposition of Directive 2004/38/EC.

In accordance with Article 164 of the Portuguese Constitution, the Parliament is the only body competent to legislate in important matters related to the organization of the Portuguese State, including elections, security of the State, and citizenship. Directive 2004/38/EC has been transposed into Portuguese law by means of a statutory law enacted by the Parliament, namely Law 37/2006.

This Law is complemented by an administrative act of the Minister of Internal Administration (Order 1637/2006), which approves the models of the residency cards, as defined under the Law. The Ministry of Internal Administration is the governmental body in charge of formulating, coordinating, executing and evaluating the internal security policy.

In assessing the transposing measures adopted by Portugal, other complementary legislation has been consulted and analysed.

### 3. Conclusions of the legal analysis of the transposing measures for Directive 2004/38/EC.

The Table of Correspondence in Annex I and the present Conformity Study contain a detailed assessment of the transposing measures for Directive 2004/38/EC and their level of conformity.

#### 3.1 Transposition issues regarding the retention of the right of residence by family members:

The only situations of incomplete transposition were found under Art. 12.2 and Art. 13.2.

In both situations the national law, in spite of retaining the right of residence by family members in the event of death or departure of the Union citizen as well as in the event of divorce, annulment of marriage or termination of registered partnership, does not expressly provide that the right of residence is retained exclusively on a personal basis. However it is understood that such lack of transposition does not affect the right that is *de facto* granted under the remaining paragraphs of the same provisions. As such, this represents a minor instance of incomplete transposition.

#### 3.2 Transposition issues regarding reciprocity:

The reciprocity clauses under Art. 7.2 (b) and (c) are ambiguous. It is the experts' view that they create a more favourable treatment for EU citizens but it can also be argued that they discriminate on the basis of nationality.

#### 3.3 Transposition issues regarding fines:

The amount of the fines fixed under Art. 8.2, Art. 9.3 and Art. 20.2 doubles the amount that must be paid by Portuguese citizens under similar circumstances.

### 3.4 Transposition issues regarding the registration certificates

In accordance with the Portuguese law, the registration certificate can only be applied 30 days after the three months from the date of entry and not immediately as provided under Art. 8.2 and Art. 9.2 of the Directive.

### 3.5 Transposition issues regarding the right of equal treatment:

On equal treatment, it was found that the derogation foreseen under Art. 24.2 of the Portuguese law also seems to apply to workers and self-employed who, according to the Directive should benefit from the right to social assistance from the first day. This has therefore been classified as an incorrect transposition.

The reciprocity clause under Art. 7/1 b) and c) cannot be interpreted as discriminatory on the grounds of nationality. since by applying this clause EU citizens will either:

- not have to fulfil the conditions of the Directive if their country of origin does not require them of Portuguese citizens (in which case it is more favourable) or;
- if their country of origin requires that an applicant has sufficient resources for themselves and their family members and health insurance, then these are the only conditions that the Competent Authority in Portugal will require.

So in no case does application of the Portuguese law limit the rights of EU citizens and their family members that are granted by the Directive. On the contrary, on the grounds of reciprocity, some EU nationals may not even have to fulfil the conditions established under Art. 7/1 b) and c) of the Directive, and this is more favourable. This has been classified as ambiguous for further consideration by the Commission.

The sanctions scheme established by Law 37/2006 can be classified as ambiguous, since the amount established for the violation of some of its provisions doubles the amount fixed for national citizens in similar circumstances under different laws. The following infractions will render the person concerned liable for a fine of 400 € up to 1500€

- Failure to comply with the registration requirement under Art. 8/2;
- Failure to comply with the requirement to apply for a residence card under Art. 9/3; and
- Failure to apply for a permanent residence card before the residence card expires under Art. 20/2.

The amount that a national citizen that violates the rules on citizen card under Law 7/2007 must pay varies between 250€ and 750€

### Conclusions:

The overall assessment of the level of transposition of Directive 2004/38/EC into national law is positive. The Competent Authority is easily accessible through internet where the application forms are found in Portuguese and English, and a call centre is available to provide information and clarifications.

No minor instances of conformity were found. There is however a case of incorrect transposition of Art. 24/2, which is thought not to affect the overall balanced transposition of the Directive.

The instances of incomplete and ambiguous transposition identified do not affect in any way the right of free movement granted by the Directive.

The restricting of the free movement of citizens by Competent Authorities is limited to special circumstances, and shall only be taken after careful consideration of various elements including, the nature and seriousness of the criminal offence, the character of the offender and the length of stay in

national territory. Selected case law demonstrates that these criteria are followed by the Appeal Courts.

No tension is envisaged in the application of this Directive by the Portuguese competent authorities if Law 37/2006 is properly enforced by the Competent Authorities.



# SUMMARY DATASHEET

## 1. Transposing legislation

Directive 2004/38/EC on the right of EU citizens and their family to move and reside freely within the territory of the Member States was transposed into the Portuguese legal order by Law 37/2006, of 09.08 which establishes the right of citizens of the European Union and their families to move and reside freely in the national territory and transpose to national law<sup>1</sup>. The law entered into force on 9 of August 2006, 2 months and 9 days after the deadline established by the Directive (Art. 30°).

Law 37/2006 was regulated by Order 1637/2006 of 17.10, which approves the models of the registration certificate, the residence card of the family member of the citizen of the European Union, the permanent residence certificate of the citizen of the European Union and the permanent residence card of family member of his/her family member, according to Law 37/2006<sup>2</sup>.

Some other complementary legislation containing specific provision relevant to the matter being assessed were: Law Decree 83/2000 of 11.05 on granting and issuing passports, as modified by Law Decree 138/2006 of 26.07 on issuing electronic Portuguese passports<sup>3</sup>; Law 23/2007 of 04.07 on the legal framework of entry, permanence, exit and removal of foreigners into and out of national territory<sup>4</sup>; Law 7/2007 of 05.02 on the citizen card, conditions for its issue and use<sup>5</sup>; and Law 7/2001 of 11.05 on measures for the protection of the de facto union<sup>6</sup>

## 2. Assessment of the transposition

As is demonstrated under Annex I, the legislation indicated above transposes most of provisions of the Directive fully and accurately into national law. Section 2 of the present study provides a detailed legal analysis of the transposition of each provision of the Directive and demonstrates that in various instances the national measures are more favourable.

In summary the following instances of incomplete and incorrect or imprecise transposition were found:

### a) Incomplete transposition or non-transposition

Article 12.2, 3 <sup>rd</sup> paragraph	This paragraph has not been directly transposed.
Article 13.2, 3 <sup>rd</sup> paragraph	This paragraph has not been directly transposed.

### b) Incorrect/imprecise ambiguous transposition

Article 6.1	Literal transposition, but the national legislation does not
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<sup>1</sup> Lei 37/2006 de 09.08, regula o exercicio do direito de livre circulação e residência dos cidadãos da União Europeia e dos membros das suas famílias no território nacional e transpõe para a ordem jurídica interna a Directiva 2004/38/CE, do Parlamento Europeu e do Conselho de 29 de Abril (DR153/2006 I Série).

<sup>2</sup> Portaria 1637/2006 de 17.10 aprova os modelos de certificado de registo, do documento de residência permanente de cidadão da União Europeia e do cartão de residência de familiar de cidadão da União Europeia, em conformidade com o disposto na Lei 37/2006, de 9 de Agosto (DR 200/2006, Série II).

<sup>3</sup> Decreto-lei 83/2000 de 11.05 aprova o novo regime legal de emissão e concessão de passaportes modificado pelo Decreto Lei 138/2006 of 26.07 aprova o regime legal de emissão de passaportes Portugueses electrónicos (DR 143/2006, Série I)

<sup>4</sup> Lei 23/2007 de 4 de Julho aprova o regime jurídico de entrada, permanência, saída e afastamento de estrangeiros do território nacional (DR 127/2007, Série I)

<sup>5</sup> Lei 7/2007 de 05.02 que cria o cartão de cidadão e rege a sua emissão e utilização (DR 25/2007, I Série).

<sup>6</sup> Lei 7/2001 adopta medidas de protecção das uniões de facto (DRE 109/2001, Série I).

	take account of the special status granted to jobseekers by the ECJ.
Article 7.2(b) and (c)	It is ambiguous whether the reciprocity condition in Article 7.2(b) and (c) creates a more favourable treatment for certain Union citizens or whether it discriminates on the basis of nationality.
Article 8.2, Article 9.3, Article 20.2	Portuguese law imposes a fine that is double what would be imposed upon Portuguese nationals under similar circumstances. This is considered to be discriminatory.
Art. 8.2 and Art. 9.2	The deadline for applying for a registration certificate is 30 days from the date of entry, and not immediately as established by the Directive.
Article 24.2	The derogation regarding social assistance seems to also apply to workers and self-employed who, according to the Directive should benefit from the right to social assistance from the first day.
Article 40	Transposition was slightly late.

### **c) Minor instances of non-conformity**

No minor instances of non conformity were found.

It should be noted though, that the national law only establishes a validity period for the residence card for family members who are not nationals of a Member State, in line with Art. 11 of the Directive. However Order 1637/2006, which has approved the models of all the cards to be issued as provided by the Directive, has fixed a validity period for each of them.

## **ABBREVIATIONS USED**

Art	Article
CA	Competent Authority
CACP	Code of Administrative Courts Procedures
CCP	Code of Criminal Procedures
CPA	Code of Administrative Procedure
CRP	Constitution of the Portuguese Republic
ID	Identity card
MIA	Ministry of Internal Administration
SEF	Foreign and Borders Service Serviço de Estrangeiros e Fronteiras



# 1 INTRODUCTION

This conformity study analyses in detail the provisions of Directive 2004/38/EC on the free movement of EU citizens in its consolidated version, and it compares it with the legislation in place in Portugal.

Directive 2004/38/EC repealed the earlier directives on free movement of persons (Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC) as from 30 April 2006.

EU citizenship gives every Union citizen the right to move and to reside freely within the territory of the Member States. The facilitation and promotion of this right, which is at the same time one of the fundamental freedoms of the internal market, is the objective of Directive 2004/38/EC. A second objective of Directive 2004/38/EC was to codify and review the various pieces of legislation and case-law dealing with this issue.

## **Free movement as a fundamental freedom of the internal market**

Free movement is one of the fundamental freedoms of the internal market and can therefore only be restricted in a limited number of pre-determined circumstances. Thus, national legislation cannot adopt more restrictive legislation than provided for in the Directive.

Directive 2004/38/EC introduces a uniform approach regarding the formalities that Member States can impose upon EU citizens residing in their territory. These formalities are expressly established in the Directive and restricted in function of the duration of the stay in the Member States.

- For a stay of less than three months, the only formality a Member State can impose is the presentation of a valid passport or national identity card.
- For residence of more than three months, a Member State can only require the EU citizen to register in the population register of the place of residence. This registration needs to be validated immediately if a certain number of conditions are complied with. The Member State can only require the EU citizen to present proof that he/she is a worker, self-employed person, student or has sufficient resources not to become a burden upon the social security system of the Member State. Member States cannot lay down a fixed amount of what they consider to be “sufficient resources”, but must always take into account the personal situation of the person concerned. Family members of the EU citizen will have to present an identity document and proof of the family link to an EU citizen.
- After five years of continuous residence in a Member State, an EU citizen obtains a right to permanent residence. The host Member State shall issue a document certifying permanent residence. A permanent resident has the right to be treated equally to a national of the Member State.

The Directive also determines and clarifies the only acceptable reasons for restriction of the free movement of citizens by Member State authorities, namely for reasons of public order, public security and public health. (For the interpretation and conditions of such exceptions, it is important to rely upon the case-law of the Court of Justice.)

These measures guarantee a strong protection against expulsion for EU citizens who have been long-term residents in another Member State. Such measures need to be proportionate and shall always look at the personal conduct of the individual concerned which must represent a “genuine, present and sufficiently serious threat affecting one of the fundamental interests of society”. In addition, the Directive establishes some procedural safeguards in case an expulsion decision is considered.

## 1.1 OVERVIEW OF THE LEGAL FRAMEWORK IN PORTUGAL

Portugal is a civil law system and the Constitution of the Republic (CRP) from 1976<sup>7</sup> is the main source of law. It establishes under Art. 8º that: *the rules and principles of general or common international law shall form an integral part of Portuguese law*. It also states that: *the provisions of the treaties that govern the European Union and the rules issued by its institutions in the exercise of their respective responsibilities shall apply in Portuguese internal law in accordance with Union law, and with respect for the fundamental principles of a democratic State based on the rule of law*.

Together with international and EC Law, ordinary laws, which comprise laws enacted by Parliament (the Assembly of the Republic), decree laws issued by the Government and regional legislative decrees adopted by the Legislative Assemblies of the Autonomous Regions of the Azores and Madeira constitute the main sources of statutory law.

These sources are complemented by regulations, or legislative instruments of lower status than laws, whose purpose is to supplement laws and fill out the details in order to allow its proper application or implementation. These comprise regulatory decrees, regulations, decrees, regional regulatory decrees, decisions, rules, ministerial orders, executive rulings, police regulations issued by the Civil Governors, and municipal orders and regulations. Instruments with effect equivalent to that of laws, such as acts approving international conventions, treaties or agreements constitute another source of law.

The sources of statutory law are complemented and interpreted though academic opinions. Case law, i.e. the set of principles emerging from judgements and decisions handed down by the courts, is regarded as not constituting a genuine source of law, but as significant merely in revealing the meaning of legal provisions by providing solutions to problems of interpretation that may be followed in other instances according to the logical and technical arguments on which they are based. Court judgements are not by themselves a formal source of law but, like academic opinions, they are used as a source of interpretation.

## 1.2 FRAMEWORK FOR TRANSPOSITION & IMPLEMENTATION OF DIRECTIVE 2004/38/EC IN PORTUGAL

### 1.1 Distribution of competences according to the national Constitution

The distribution of the legislative competence in Portugal is defined under Arts 161, 164 and 165 of the CRP. The Parliament is the main legislative body. However, the legislative power is shared with the Government and the Regional Assemblies of the Azores and Madeira. Therefore, both the Parliament and the Government can implement EC instruments. In accordance with Art. 164 of the CRP, the Parliament is the only body competent to legislate in some important matters, related with the organization of the Portuguese State (exclusive competence), including elections, security of the State, and citizenship.

Law 37/2006 established the national legal framework on the right of EU citizens and their family members to move and reside freely in the Portuguese territory, and was enacted by the Parliament in accordance with Art. 161 c) of the CRP, which confers on Parliament a general legislative power in all matters with the exception of those under the competence of the Government. The present matter is not under the competence of the Government, implying that Parliament is the competent body to legislate.

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<sup>7</sup>

Adopted in 1976 and last modified in 2005 (DR 155/05, 12.08).

Some specific implementing measures have been adopted by the Government or by the competent governmental body (MAI). The ministerial Order that defines the forms of the certificates and the respective taxes was enacted by the Minister of Internal Administration.

## **1.2 General description of organisation of national authorities implementing Directive 2004/38/EC in Portugal**

The Ministry of Internal Administration (MAI)<sup>8</sup>, is the governmental body in charge of formulating, coordinating, executing and evaluating the internal security policy. The following Operational Services fall under the direct administration of MAI:

- a) Security Force;
- b) Service of Foreigners and Borders;
- c) National Authority of Civil Protection; and
- d) National Authority of Road Security.

The Service of Foreigners and Borders (SEF)<sup>9</sup>, is a security service organised vertically under MAI. It has administrative autonomy and its fundamental objectives within the internal security policy include border control of persons, leave to stay and the activities of foreigners in Portugal, as well as the study, promotion, coordination and execution of measures and actions related to these activities and migratory flows.

The organic law of SEF (Law Decree 252/2000 of 16.10) specifies its competences with regard to the control of documents of entry and exit of national and foreign citizens through land, maritime and aerial borders and granted it with the task of enforcing the new immigration policy. SEF centralises all the information regarding foreign citizens, providing the MAI with the elements required to adopt the guidelines of the immigration policy. It implements the Portuguese policy for immigration and asylum in line with the provisions of the Fundamental Law as well as the national legislation and Government's guidelines.

SEF is in charge of, inter alia, the following (Art. 2, Law Decree 252/2000): controlling the movement of people in the borders; controlling and surveying the activities of foreign citizens in all national territory; granting visas and residence cards; investigating, deciding and enforcing the expulsion of illegal foreign citizens and enforcing the judicial decisions of expulsion.

As a criminal police body in terms of criminal procedural law, SEF acts in the process under the direction and operational dependence of the competent legal authority, implementing the measures determined by that authority and the acts delegated by the same authority.

SEF is easily accessible though the Contact Centre (Phone: 808 202 653 (land line) or 808 962 690 (mobile)) and internet. Enforcing the law are a total of 6 Regional Directorates and 24 Regional Delegations and 8 aerial and 11 maritime control posts.

## **2 LEGAL ANALYSIS OF THE TRANSPOSING MEASURES FOR DIRECTIVE 2004/38/EC**

This section provides a legal analysis of the measures adopted by Portugal in transposing the Directive on free movement of citizens into the national legal system.

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<sup>8</sup> <http://www.mai.gov.pt/>

<sup>9</sup> <http://www.sef.pt/>

Directive 2004/38/EC was transposed by Law 37/2006, of 09.08 which sets up the legal framework for the right of citizens of the European Union and their families to move and reside freely in the national territory<sup>10</sup>. The transposition was completed by the following laws and law decrees dealing with specific measures, as well as implementing administrative orders:

- Order 1637/2006 of 17.10 approves the models of the register certificate, the residence card of the family member of the citizen of the European Union, the permanent residence certificate of the citizen of the European Union and the permanent residence card of family member of his/her family member, according to Law n.º 37/2006<sup>11</sup>;
- Law Decree 83/2000 of 11.05 approves the new legal regime for granting and issuing passports modified by Law Decree 138/2006 of 26.07 which approves the legal regime for issuing electronic Portuguese passports<sup>12</sup>;
- Law 23/2007 of 04.07 approves the legal framework of entry, permanence, exit and removal of foreigners into and out of national territory<sup>13</sup>;
- Law 7/2007 of 05.02 sets up the citizen card and defines the conditions for its issue and use;<sup>14</sup>
- Law 7/2001 of 11.05 adopts measures for the protection of the *de facto* union.<sup>15</sup>
- Law 5/95 of 21.02 requires the possession of identification document (DR 44/1995, Serie I) and was amended by Law 49/98, which extends to the maritime police competence to demand identification from any person (DR 184/1995 Serie I).

## 2.1 Definitions, family members and beneficiaries

### *Definitions (Article 2)*

All definitions were fully and accurately transposed into national law.

The Portuguese legislator transposed literally all the concepts, except under Art. 2.2 b) - no reference was found to the concept of “registered partnerships”. However, in defining the concept of partner both those who live in *de facto union*, regulated by Law 7/2001, and those who have a durable relationship dully attested, as defined under Art. 3. 2 (b) of the Directive, are included. Law 37/2006 is therefore more favourable as it grants the status of family member to partners in durable relationship.

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<sup>10</sup> *Lei 37/2006 de 09.08, regula o exercício do direito de livre circulação e residência dos cidadãos da União Europeia e dos membros das suas famílias no território nacional e transpõe para a ordem jurídica interna a Directiva 2004/38/CE, do Parlamento Europeu e do Conselho de 29 de Abril (DR153/2006 I Serie).*

<sup>11</sup> *Portaria 1637/2006 de 17.10 aprova os modelos de certificado de registo, do documento de residência permanente de cidadão da União Europeia e do cartão de residência de familiar de cidadão da União Europeia, em conformidade com o disposto na Lei 37/2006, de 9 de Agosto (DR 200/2006, Série II).*

<sup>12</sup> *Decreto-lei 83/2000 de 11.05 aprova o novo regime legal de emissão e concessão de passaportes modificado pelo Decreto Lei 138/2006 of 26.07 que aprova o regime legal de emissão de passaportes Portugueses electrónicos (DR 143/2006, Série I).*

<sup>13</sup> *Lei 23/2007 de 4 de Julho aprova o regime jurídico de entrada, permanência, saída e afastamento de estrangeiros do território nacional (DR 127/2007, Série I).*

<sup>14</sup> *Lei 7/2007 de 05.02 que cria o cartão de cidadão e rege a sua emissão e utilização (DR 25/2007, I Série).*

<sup>15</sup> *Lei 7/2001 adopta medidas de protecção das uniões de facto (DRE 109/2001, Série I).*

### ***Beneficiaries (Article 3)***

The personal scope of law 37/2006 is the same as in the Directive. Facilitative procedures for entry and residence the Portuguese law are provided for “any other family members, irrespective of their nationality”, as well as to the “partner with whom the Union citizen has a durable relationship, duly attested”. The facilitative procedure is mainly related with the paper work required at the moment of registration which is simplified under Art. 14, paragraph 5 and 6 of Law 37/2006 when compared with the general procedures of entry of foreign citizens as defined under Law 23/2007.

The Portuguese law is more favourable since it includes the “partner with whom the Union citizen has a durable relationship” in the definition of family member (Art. 2 e ii). Law 7/2001 of 11.05 defines the legal regime applicable to persons living in *de facto union* for more than 2 years.

Since the concept of “durable” is not defined by EC law it is under discretion of the member State. The threshold of two years only applies to *de facto unions* regulated by Portuguese law and not to other durable relationships.

## **2.2 Rights of exit and entry**

### ***Right of exit (Article 4)***

The right of exit from the national territory is granted to all Union citizens with a valid identity card or passport and their family members who hold a valid passport.

Portuguese citizens are granted both identity cards (ID) and passports stating their nationality. Law Decree 83/2000 of 11.05, as modified by Law Decree 138/2006 of 26.07, grants the right to hold a passport to national citizens. Law 7/2007 included in the citizen card the ID, the social security number, the finance number and the health number and defines under its Art. 3/1 that *all national citizens residing in Portugal or abroad have a citizen card from the age of six years or whenever that is required by public services.*

No specification was found of the territorial scope of the passport but since Portugal applies the common features for all EU Passports included in Council Resolution of 23 June 1981 and Regulation 2252/2006, it is understood that Art. 4/4 has been effectively transposed into national law.

### ***Right of entry (Article 5)***

The right of entry to the Portuguese territory is granted to all Union citizens with a valid identity card or a passport, and no visa or equivalent formality is imposed. Law 27/2008 defines the types of visas and the application procedures and specifically excludes from its scope EU citizens.

For family members who are not nationals of an EU Member State (defined under Art. 5.2), the visa is issued free of charge and on the basis of an accelerated procedure, which is not specified by law but in accordance with the Competent Authority. The simplified procedures established for the required documents results in a more expedited process for granting the visa. Namely the Portuguese focal point has referred to the expedited visa procedures which apply in exceptional circumstances.

Under Art. 5.4 “family members” are required to show their identity and family links. In accordance with the Portuguese focal point the definition of “reasonable opportunity” and “reasonable period of time” is within the discretion of the Competent Authority and to be determined on a case by case basis.

Art. 5.5 is within the discretion of the Member State, but has been effectively transposed by the Portuguese law. The Declaration of Entry is only applicable to foreign citizens who in case of entry without filling out the declaration will be liable for a fine of 60 to 160 Euros. This sanction seems to

be non-discriminatory in the sense that it applies to all foreign citizens who violated the procedures of entry into the national territory and can be considered to be proportionate.

The forms for Declaration of Entry are provided by the Foreign and Borders Service (SEF) and are available on line: <http://www.sef.pt/documentos/57/Mod.%20%20Dec.%20Entrada%20-%20Corrigido%2006.08.2007.pdf>

## **2.3 Right of residence**

### **2.3.1 Right of residence for up to three months (Article 6)**

All EU citizens have an unconditional right to reside up to three months in Portuguese territory. Art. 6 was fully and accurately transposed into national law since the only formality imposed for a stay of less than three months is the presentation of a valid passport or ID card.

However, the national legislation does not take account of the special status granted to jobseekers by the ECJ and thus the overall assessment of the transposition is incorrect.

Nevertheless, jobseekers are allowed to extend their right of residence. The status of worker or self-employed is retained for all the circumstances defined under Article 7(3) of the Directive. Although the Portuguese law does not specify the period of employment, the Competent Authority clarified that the period of employment is not relevant for the purpose of registering as a job seeker. The only criteria for an EU citizen to be register as a jobseeker in the Employment and Vocational Training Institute, I.P. Are possession of a registration certificate as defined under Article 8.2 of the Directive, and to be capable and available to work. The length of previous employments may only be relevant for purposes of assessing the level of experience.

### **2.3.2 Right of residence for more than 3 months (Article 7-13)**

#### ***(a) Conditions under Article 7***

In defining the conditions under which Union citizens shall be granted the right of residence on the Portuguese territory for more than three months some of the national measures adopted are more favourable. In line with Art. 39 of the EC Treaty, workers are exempt from the requirement to provide proof of being in possession of sufficient resources, but this condition is required of those Union citizens and their family members whose Member State of origin requires the same to Portuguese citizens (Art. 7(1)(b)). The purpose of the enrolment and whether it is financed by the Portuguese government or is not specified (Art. 7(1)(c)). This right of residence is extended to family members who are not nationals of a Member State, accompanying or joining the Union citizen who satisfies the conditions referred of Art. 7(1)(a),(b) and (c).

The reciprocity clause under Art. 7(1)(b) and (c) can, in the expert's view, not be interpreted as discriminatory on the grounds of nationality, since by applying this clause EU citizens will either not have to fulfil the conditions of the Directive if their country of origin does not require them from Portuguese citizens (in which case it is more favourable), or if their country of origin requires that the applicants have sufficient resources for themselves and their family members and health insurance cover, these are the only conditions that the Competent Authority in Portugal will require. So in no case can application of the Portuguese law limit the rights of EU citizens and their family members as granted by the Directive. On the contrary, on the grounds of reciprocity some EU nationals may not even have to fulfil the conditions established under Art. 7/1 b) of the Directive and that can only be interpreted as being more favourable. It should also be noted that the Portuguese law requires health insurance but does not classify the scope of the cover as "comprehensive". This is not considered to affect the level of transposition since the Directive does not indicate the level of comprehensiveness

(death, personal injury, etc) and the requirement to present a health insurance does not affect the rights of the EU citizens covered by Art. 7.1.

The derogation established under Art. 7(4) is not allowed under national law, which seems to enable ascendants of students to be granted the right of residence.

***(b) Administrative formalities for Union citizens (Article 8)***

The administrative formalities for Union citizens for periods of residence longer than three months have been fully and accurately transposed into national law (Art. 14, Law 37/2006), with the exception of Article 8.2 of the Directive. The law does not contain any reference to the validity of the card.

Regarding Article 8.2 of the Directive, the deadline in order for the registration to be issued is not in line with the Directive as EU citizens can apply immediately (not only after three months from the date of entry into the national territory) for a registration certificate.

Failure to comply with the registration requirement renders the person concerned liable to a fine of 400 €- 1500€ This is considered discriminatory since the amount fixed by law to national citizen that violate the rules on citizen cards varies between 250€and 750€under Law 7/2007.

The model of the Registration Certificate is defined under Annex I of Order 1637/2006 (Art. 1) and has been attached to this study (Annex II). The registration certificate is valid until a certain date to be specified (*valid until .../.../...*).

***(c) Family members who are not nationals of a Member State (Article 9-11)***

- **Administrative formalities (Article 9)**

The administrative formalities for family members who are not nationals of a MS for periods of residence longer than three months have been incorrectly transposed into national law (Art. 15, Law 37/2006).

When transposing Article 9.2, the deadline established by the Portuguese provision is 30 days after the end of the three months period, which is in line with the time limit fixed by Directive. The deadline in order for the registration to be issued is not in line with the Directive, where EU citizens can apply immediately (not only after three months from the date of entry into the national territory) for a registration certificate.

The forms for requesting an authorisation of residence are provided by SEF and are available on line: [http://www.sef.pt/documentos/57/Concessao\\_com\\_Visto1c.pdf](http://www.sef.pt/documentos/57/Concessao_com_Visto1c.pdf)

Regarding Article 9.3 of the Directive, failure to comply with the requirement to apply for a residence card makes the person concerned liable to a fine of 400 € - 1500€ which can be considered discriminatory since the amount fixed by law to national citizen that violate the rules on citizen card varies between 250€and 750€under Law 7/2007.

The model of the Residence Card of a Family Member of a Union Citizen National of a Third Country is defined under Annex III of Order 1637/2006 (Art. 2 b)) and has been attached to this study (Annex III).

- **Issue of residence cards (Article 10)**

Members of a Union citizen who are not nationals of a Member State are granted the right of residence evidenced by the issuing of the 'Residence card of a family member of a Union citizen' within three months from the application (Art. 15, Law 37/2006). The period established by national law to issue

the Card is shorter than what is required by the Directive and the documents are comprehensively specified by law and literally the same required by the Directive.

- **Validity of residence cards (Article 11)**

The Residence card is valid for a period of 5 years and its validity shall not be affected by the situations established under Art. 11/2 of the Directive.

***(d) Retention of the right of residence in the event of death, departure, divorce, annulment or termination***

- **Retention of the right of residence by family members in the event of death or departure of the Union citizen (Article 12)**

As indicated under Art. 5/1, the Portuguese legislator merged Art. 12(1) and 12(2) under the same provision applicable to any family member independently of their nationality, so no distinction is made between family members who are EU citizen and those who are third countries citizens for the purpose of Art. 12.

Under Art. 8 of Law 37/2006, family members who are themselves Union citizens retain the right of residence in all the circumstances foreseen under the Directive. A minimum period of residence under Art. 12(2) is not required and the scope of Art. 8/4 (which transposes Art. 12(3)) is broader since it grants the right of residence to the person having custody of the children who may not be a parent.

It should also be noted that no reference was found under national legislation to the right of residence being retained exclusively on a personal basis. This is not considered to affect the level of conformity of the national measures on retention of the right of residence by family members in the event of death or departure of the union citizen.

- **Retention of the right of residence by family members in the event of divorce, annulment of marriage or termination of registered partnership (Article 13)**

*Family members who are EU citizens (Article 13(1))*

The right of residence by family members is retained in the event of divorce, annulment of marriage or termination of registered partnership independently of their nationality.

*Family members who are not EU citizens (Article 13(2))*

The transposition of Art. 13(2) is more favourable since the right of residence by family members in the event of divorce, annulment of marriage or termination of *de facto union* is granted unconditionally.

As indicated under Art. 12 above, no reference was found under national legislation to the right of residence being retained exclusively on a personal basis. This is not considered to affect the level of conformity of the national measures on retention of the right of residence by family members in the event of divorce, annulment of marriage or termination of registered partnership.

### **2.3.3 Retention of the right of residence (Article 14)**

***(a) Residence for less than 3 months (Article 14(1))***

The Portuguese provision is more favourable with regard to the residence for less than three months that is granted to Union citizens and their family members, as long as they fulfil the conditions defined under Art. 7 (right of residence for more than three months) and Art. 8 (retention of the right of

residence by family members of a Union citizen). No conditions are attached for the retention of the right of residence for up to three months.

***(b) Residence for more than 3 months (Article 14(2))***

Art. 14(2) has been literally transposed into national law. In case of reasonable doubt as to whether a Union citizen or his/her family members satisfies the conditions set out in Articles 7, 12 and 13, the verification should only be carried out in specific cases where there are reasonable doubts and is not carried out systematically.

***(c) Protection against expulsion (Article 14(3)-(4))***

In line with recital 16 Art. 14(3) has been literally transposed into national law.

The measure adopted to transpose Art. 14(4) is more favourable since it does not require job seekers to provide evidence that they have a genuine chance of being engaged.

***(d) Article 15(2) – expiry of document not a ground for expulsion***

Art. 15 was literally transposed into national law.

## **2.4 Right of permanent residence**

### **2.4.1 General rule for Union citizens and their family members (Article 16: Eligibility)**

The rules on eligibility for the right of permanent residence have been literally transposed into national law granting this right to all Union citizen and their family members who have resided in Portugal during a continuous period of five years in compliance with the rules established under Art. 16 of the Directive.

### **2.4.2 Acquisition of the right of permanent residence for workers/self employed person and their family members (Article 17)**

The Portuguese legislator has fully and literally transposed the derogation to the general rule contained under Art. 16 and granted advantages to Union citizens who are workers or self-employed persons and to their family members who can acquire the right of permanent residence before having resided five years in Portugal.

### **2.4.3 Acquisition of the right of permanent residence by family members who are not nationals of a MS and retained their right of residence (Article 18)**

This right is acquired literally as prescribed by Art. 18 of the Directive.

### **2.4.4 Documents certifying permanent residence for Union citizens (Article 19)**

The administrative formalities for applying to permanent residence are simple: application forms are provided by SEF and available on line: <http://www.sef.pt/portal/V10/EN.aspx/page.aspx>. The period fixed by national law to issue the permanent residence certificate is 15 days and the law does not establish a validity period for these cards.

The model of the Permanent Residence Card is contained under Annex II of Order 1637/2006 (Art. 2 a)) and has been attached to this study (Annex IV). The document certifying permanent residence is valid until a certain date to be specified (*valid until .../.../...*).

#### **2.4.5 Permanent residence card for family members who are not nationals of a MS (Article 20)**

The permanent residence card for family members who are not nationals of a MS is issued in a period of time three months shorter than the one established by the Directive and is automatically renewed. The law does not establish a validity period for these cards.

The model of the Permanent Residence Card for Family Members who are not nationals of a Member State is defined under Annex IV of Order 1637/2006 (Art. 2 b)) and has been attached to this study (Annex V). This permanent residence card is valid until a certain date to be specified (*valid until .../.../...*).

The application forms are provided by SEF and are available on line: <http://www.sef.pt/portal/V10/EN/asp/asp/page.aspx>.

Failure to apply for a permanent residence card before the residence card expires makes the person concerned liable to a fine of 400 €- 1500€ which can be considered discriminatory since the amount demanded of a national citizen that violate the rules on citizen card varies between 250€ and 750€ under Law 7/2007.

#### **2.4.6 Continuity of residence (Article 21)**

Article 21 of the Directive was literally transposed into national law.

### **2.5 Common provisions (Articles 22-26)**

#### **2.5.1 Territorial scope (Article 22)**

The right of residence covers the whole Portuguese territory. The Code of Criminal Procedures<sup>16</sup> (CPP) establishes the general principle that the freedom of citizen can only be limited for procedural reasons (Art. 191) and any limitation shall take into account the principles of necessity and proportionality to the seriousness of the crime committed (Art. 193). Territorial restrictions are only applicable when the concerned person has become defendant in a criminal procedure allowed to any defendant, without distinction of nationality, as a legal measure of constraint whenever there is a danger of the suspect escaping, affecting the course of the investigations or continuing the criminal activity (Art. 204).

Art. 250 of the CPP establishes that the judicial authority or the criminal police may issue any suspects of violating the criminal law within an expulsion procedure, where they have entered or stayed in the country illegally or regarding whom a warrant of arrest had been issued. It then distinguishes the documents to be presented requiring the ID or passport for national citizens and the residence card for foreign citizens and applies the same procedures for both national and foreign citizens.

#### **2.5.2 Right to take up employment by family members (Article 23)**

The family members of a Union citizen who have the right of residence or the right of permanent residence in the national territory are, irrespective of their nationality, entitled to take up employment or self-employment in Portugal.

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<sup>16</sup>

DL 78/87 from 17.02 replaced by Law 48/2007 from 29.08 (DR 166/2007, I Serie).

### **2.5.3 Equal treatment (Article 24)**

The principle of equal treatment is enshrined in Art. 13 of the CRP. Also in its relationship with individuals the Public Administration shall, in accordance with Art. 5 of the Code of Administrative Procedures<sup>17</sup> (CPA), which applies to all administrative bodies at central and local level, as well as autonomous regions and public institutes, act in accordance with *inter alia* principles of equal treatment and shall not discriminate based in the territory of origin.

This right has been transposed by Art. 20 of Law 37/2006, is unconditional and not dependent on the resident card. The derogation established under Art. 24/2 seems, however, to apply to workers and self-employed (Art.20/3, Law 37/2006) who, according to the Directive should benefit from the right to social assistance from the first day and not be exempted from this right for the first three months as seems to result from the national law. This has therefore been considered incorrect transposition.

### **2.5.4 General provisions concerning residence documents (Article 25)**

The general provisions concerning residence documents are fully and accurately transposed into national law. The amount to pay for each document issued is 7 Euros. National citizens pay 7,05 Euros for issuing of their ID: <http://www.mj.gov.pt/sections/pessoas-e-bens/identificacao-e-registo/bilhete-de-identidade/custos/>

### **2.5.5 Checks (Article 26)**

Law 5/95 establishes the obligation to carry out identification documents and allows the CA to carry out checks on compliance with any requirement deriving from Portuguese legislation to non-nationals always to carry their residence card and the same requirement applies to Portuguese nationals as regards their identity card.

## **2.6 Restrictions on the right of entry and residence on grounds of public policy, public security and public health**

### **2.6.1 General principles (Article 27)**

The freedom of movement and residence of Union citizens and their family members, irrespective of nationality, may only be restricted on grounds of public policy, public security or public health. The provisions established under Art. 22 of Law 37/2006 transpose literally the general principles of Art. 27 of the Directive. No definition was found of the concepts of public policy, public security and public health in the general applicable rules of law.

Law 23/2007 defines that, without prejudice to any criminal liability in the country of origin, foreign citizens that have acted against national security or public policy may be expelled from Portuguese territory. This decision may, according to Art. 134, also be applied in the following cases: illegal entry or stay in Portuguese territory; presence or activities in national territory represent a threat to the interests or dignity of the Portuguese State or its citizens; interfere in an abusive manner in the exercise of political participation rights reserved to national citizens; having performed acts which if known by the Portuguese authorities would have prevented his/her entry in the country; the belief that he/her has committed serious offences or intends to commit such actions, namely in the EU territory.

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<sup>17</sup>

Approved by Law Decree 422/91 (DR 263/91, 15/11) and modified by Law-Decree 6/96 (DR 26/96, 31.01)

### **2.6.2 Protection against expulsion (Article 28)**

Before taking an expulsion decision on grounds of public policy or public security, Art. 23 of Law 37/2006 requires the MAI to take account of the same considerations established under Art. 28 of the Directive.

For long term residents, Law 2372007 determines that the decision of expulsion can only be based on the fact that he/she represents an actual threat and sufficiently serious to public policy or public security and should not be based on economical reasons. Specifically before the decision is made, the following elements should be taken into account: the length of residence in the territory; the age of the concerned person; the consequences for that person and for his/her family members; the bonds with the residence country or the absence of bonds with the country of origin.

### **2.6.3 Public health (Article 29)**

Article 29 of the Directive was fully and accurately transposed into national law by Art. 24.

## **2.7 Procedural safeguards against decisions restricting free movement (Article 15, and Articles 30-31)**

### **2.7.1 Notifications of the decisions (Article 30)**

Art. 149 of Law 23/2007 states that the decision of expulsion shall be notified to the person concerned with a clear indication of the rationale, and that judicial review of the administrative decision is always allowed. The decision shall include the following information: the rationale; the legal obligations of the concerned person; the interdiction of entry in national territory and its term; the indication of the country to where the citizen should not be sent to in accordance with Art. 143. Art. 143 states that “Expulsion cannot be made to a country where the foreign citizen may be pursued for the motives that, in accordance to law, justify the granting of the asylum right or where the foreign citizen may suffer torture, inhuman or degrading treatment according to the sense of article 3.º of the European Human Rights Convention”.

### **2.7.2 Procedural safeguards (Article 31)**

The national law allows a hierarchical appeal to be lodged and judicial review of the decisions taken by the Competent Authority on the restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health to be sought.

Art. 166 of the CAP allows hierarchical appeal of all the administrative acts enacted by bodies subject to the hierarchical powers of other bodies and the procedures are defined under Art. 168 to Art. 175 of the CPA.

Concerning judicial review, the Portuguese Constitution grants, under Art. 20º, all citizens with the right of access to the law and courts for the defence of their rights and legally protected interests and this right cannot be denied due to lack of financial means. Decisions, acts or omissions by the public administration can be challenged before administrative courts. These proceedings are regulated by the Code of Administrative Courts Procedures (CACP)<sup>18</sup>. The judicial review of an administrative act may result the suspension of the effects of an administrative act or in access to administrative documents as established under the CPCA, and the decision of the administrative court is legally binding.

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<sup>18</sup>

Approved by Law Decree 267/97 from 16.06 and last modified by Law 15/2002 from 22.02

The decision of expulsion may be taken by the general director of SEF or by the judicial authority as an accessory sanction. Specific procedures are defined by the law for each case. The expulsion decision can be subject to judicial review with suspensive effects before an administrative court.

The long-term resident who has not enough financial resources is given judiciary support according to law. Law 34/2004 on Access to Law and to Courts<sup>19</sup> establishes that legal protection may be granted for the resolution of any type of legal dispute or litigation and includes legal advice and legal aid through total or partial exemption from court fees and appointment and payment of attorney's fees. In order to ensure effective access to justice, all Portuguese and EU citizens, as well as foreigners and stateless persons living in another EU Member State, that demonstrate partial or total disability to meet the costs of procedures as a result of their economic situation can be granted legal aid which includes legal assistance in bringing the case before the court and exemption from court and attorney's fees (Art. 7º Law 34/2004). The scope of legal aid includes all jurisdictions (Art. 17º Law 34/2004).

### **2.7.3 Duration of exclusion orders (Article 32)**

Article 32 has been fully and accurately transpose into national law by Art. 27.

Art. 144 of Law 23/2007 states that a foreign citizen that has been expelled is prohibited from entering national territory for a period no less than five years.

### **2.7.4 Expulsion as a penalty or legal consequence (Article 33)**

With regard to expulsion as a penalty or accessory sanction, Art. 151 of Law 23/2007 specifies that foreign citizens residing in Portugal who have been condemned for an intentional crime with imprisonment for more than one year can be subject to the accessory sanction of expulsion. However the law determines that in applying such sanction due consideration shall be given to the following factors: the seriousness of the facts; the character of the offender; the eventual recidivism; the degree of social integration; a special prevention; and the length of residence in Portugal. The law further specifies that this penalty can only be applied to the permanent resident foreign citizen when his/her conduct seriously threatens the public policy or national security. An appeal can always be lodged to the Appeal Court.

Several crimes can be punished with more than one year imprisonment, which according to the Penal Code include: murder, rape, kidnapping, child sexual abuse, theft, racial, religious or sexual discrimination and many others. However the main cases where the expulsion measures were applied by Portuguese courts to foreigners residing in Portugal relate to the traffic and consumption of drugs, as demonstrated under Annex V of the present study.

In all the cases assessed the Supreme Court has taken into account the legal factors for determining the application of the accessory sanction established under Art. 151 of Law 23/2007.

## **2.8 Final provisions (Chapter VII)**

### **2.8.1 Publicity (Article 34)**

The Foreigners and Border Service has an on line help service with frequently asked questions and links to all the application forms in English- this is available at: <http://www.sef.pt/portal/V10/EN/asp/page.aspx>

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<sup>19</sup> DR. n.º 177/2004, Série I-A 07-02

There is also a site with information to immigrants which contains legislation, forums and news available at: <http://www.imigrante.pt/#1>.

Unfortunately the English version was not working at the time of completion of this study. The Centre was contacted and indicated that the information is being translated and will be available soon.

### **2.8.2 Abuse of rights (Article 35)**

In the case of abuse of rights or fraud, such as marriages of convenience, the rights of residence and social assistance conferred by this Law 37/2006 are refused or withdrawn. The Portuguese provision makes Art. 35.1 of the Directive subject to the provisions on notification of decisions (Art. 25) and procedural safeguards (Art. 26) defined by national law, which as indicated above are also in line with the Directive, and includes the refusal or withdrawal of social assistance.

### **2.8.3 Sanctions (Article 36)**

Art. 30 of Law 37/2006 defines the sanction scheme applicable in case of violation of its provisions. As was indicated above in some cases it was found that the amount of the fines established are higher than those applicable to national citizens in case of violation of similar provisions namely:

- Failure to comply with the obligation to report under Art. 5/5 renders the person concerned liable to a fine of 60€ up to 160€
- Failure to comply with the registration requirement under Art. 8/2 renders the person concerned liable to a fine of 400 € up to 1500€
- Failure to comply with the requirement to apply for a residence card under Art. 9/3 makes the person concerned liable to a fine of 400 € up to 1500€
- Failure to apply for a permanent residence card before the residence card expires under Art. 20/2 makes the person concerned liable to a fine of 400 € up to 1500€

The amounts of the fines established by Law 37/2006 for the violation of Art. 8/2, Art. 9/3 and Art. 20/2 of the Directive may be considered discriminatory since the amount fixed by law to national citizens that violate the rules on citizen card varies between 250€ and 750€ under Law 7/2007. As for the violation of Art. 5/5, there is no equivalent provision in national law and it is not possible to determine whether it is proportionate or not.

### **2.8.4 More favourable provisions (Article 37)**

In adopting national measures to transpose Directive 2004/38/EC the Portuguese legislator has in many instances opted for a more favourable regime as was indicated above.

National measures adopted to transpose Art. 14 are more favourable: (i) Union citizens and their family members shall have the right of residence provided for in Article 6, as long as they fulfil the conditions defined under Art. 7 (right of residence for more than three months) and Art. 8 (retention of the right of residence by family members of a Union citizen, with no conditions attached to the retention of the right of residence for up to three months); (ii) the transposition of Art. 14/4 does not require job seekers to provide evidence that they have a genuine chance of being engaged.

### **2.8.5 Transposition (Article 40)**

The Directive was transposed two months and nine days after the deadline. Law 37/2006 was approved in 22.06.2006 by the Parliament and published in 09.08.2006.



**ANNEX I:** Table of concordance for Directive 2004/38/EC

**ANNEX II:** List of relevant national legislation and administrative acts

<b>LIST OF NATIONAL RELEVANT LEGISLATION</b>	
<b>DOCUMENT</b>	<b>LINK</b>
<p style="text-align: center;"><b>Portuguese Constitution</b></p> <p>(Approved on April 2, 1976, and amended by the Constitutional Laws 1/82, September 30; 1/89 of 8 July; 1/92, November 25; 1/97, September 20, 1/2001, December 12; 1/2004, July 24; and finally by the Constitutional Law 1/2005, August 12).</p>	<p><a href="http://dre.pt/pdffiles/crp.pdf">http://dre.pt/pdffiles/crp.pdf</a></p>
<p style="text-align: center;"><b>Code of Administrative Procedures</b></p> <p>(Decree-Law 442/91, November 15; with the changes made by the following acts: Correction declaration 265/91, December 31; Correction declaration 22-A/92, February 29; Decree-Law 6/96, January 31; and Decision from the Constitutional Court 118/97, April 24)</p>	<p><a href="http://www.cne.pt/dl/cpa_2002.pdf">http://www.cne.pt/dl/cpa_2002.pdf</a></p>
<p style="text-align: center;"><b>Code of Administrative Courts Procedure</b></p> <p>(Approved by Law 15/2002, February 22; and amended by Law 4-A/2003, February 19).</p>	<p><a href="http://www.sta.mj.pt/pdf/CodigoDeProcessoNosTribunaisAdministrativos.pdf">http://www.sta.mj.pt/pdf/CodigoDeProcessoNosTribunaisAdministrativos.pdf</a></p>
<p style="text-align: center;"><b>Code of Criminal Procedure</b></p> <p>(Approved by Law 78/87, February 17; and republished by Law 48/2007, August 29).</p>	<p><a href="http://www.legix.pt/docs/ CPP.pdf">http://www.legix.pt/docs/ CPP.pdf</a></p>
<p style="text-align: center;">Law 7/2001 <i>DR 109/200, Série I</i></p>	<p><a href="http://dre.pt/pdf1s/2001/05/109A00/27972798.pdf">http://dre.pt/pdf1s/2001/05/109A00/27972798.pdf</a></p>
<p style="text-align: center;">Law 37/2006 <i>DR 153/2006 I Serie</i></p>	<p><a href="http://dre.pt/pdf1s/2006/08/15300/57175724.pdf">http://dre.pt/pdf1s/2006/08/15300/57175724.pdf</a></p>
<p style="text-align: center;">Law 23/2007 <i>DR 127/2007, Série I</i></p>	<p><a href="http://dre.pt/pdf1s/2007/07/12700/42904330.pdf">http://dre.pt/pdf1s/2007/07/12700/42904330.pdf</a></p>
<p style="text-align: center;">Law 7/2007 <i>DR 25/2007, Série I</i></p>	<p><a href="http://www.cnpd.pt/bin/legis/nacional/Lei7-2007-cartao-cidadao.pdf">http://www.cnpd.pt/bin/legis/nacional/Lei7-2007-cartao-cidadao.pdf</a></p>
<p style="text-align: center;">Law 5/95 <i>DR 44/1995, Serie I</i></p>	<p><a href="http://www.dre.pt/pdf1s/1995/02/044A00/10371038.pdf">http://www.dre.pt/pdf1s/1995/02/044A00/10371038.pdf</a></p>
<p style="text-align: center;">Law Decree 83/2000 <i>DR 109/2000, Série I</i></p>	<p><a href="http://dre.pt/pdf1s/2000/05/109A00/20382044.pdf">http://dre.pt/pdf1s/2000/05/109A00/20382044.pdf</a></p>
<p style="text-align: center;">Law Decree 138/2006 <i>DR 143/2006, Série I</i></p>	<p><a href="http://dre.pt/pdf1s/2006/07/14300/52565271.pdf">http://dre.pt/pdf1s/2006/07/14300/52565271.pdf</a></p>
<p style="text-align: center;">Order 1637/2006 <i>DR 200/2006, Série II</i></p>	<p><a href="http://dre.pt/pdf2sdip/2006/10/200000000/2219822200.pdf">http://dre.pt/pdf2sdip/2006/10/200000000/2219822200.pdf</a></p>

**ANNEX III:** List of Case Law

High Court Process:	<b>98P045</b>
N°:	<b>JSTJ00033121</b>
Description:	<b>Expulsion of Foreigner for traffic of drugs</b>
Date:	<b>15.04.1998</b>

In this case the Supreme Court ruled that “whenever there is an authorisation to reside in Portugal the decision to expel a foreign citizen shall always take into account the proportionality of the measure, the level of guilt and need and be based on material facts. In this case the Supreme Court”. The Supreme Court kept the imprisonment of 7 years for traffic of drugs but invalidated the accessory sanction of expulsion.

Full description of this case is available at:

<http://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/3eb7292c6c3328ad802568fc003b6f1a?OpenDocument>

High Court Process:	<b>98P1453</b>
N°:	<b>JSTJ00035626</b>
Description:	<b>Expulsion of Foreigner for traffic of drugs</b>
Date:	<b>17.02.1999</b>

The Supreme Court of Justice ruled that “an expulsion measure of a foreigner cannot take place as an automatic consequence of his/her conviction for any of the crimes foreseen under Law Decree 15/93, January 22, on traffic and consumption of drugs but must always be evaluated on a case by case basis taking into account the needs and rationale”.

Full description of this case is available at:

<http://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/b3bb37a40691e506802568fc003ba380?OpenDocument&Highlight=0,SJ199902170014533>

High Court Process:	<b>06P2802</b>
N°:	<b>JSTJ000</b>
Description:	<b>Expulsion of Foreigner for traffic of drugs</b>
Date:	<b>27/09/2006</b>

The Supreme Court ruled that in applying an expulsion measures the following factors shall be taken into account: “the seriousness of the offence, the character of the offender, the eventual recidivism, the degree of social integration, a special prevention and the period of residence in Portugal”. It further stated that the decision of expulsion constitutes in itself an interference in the life of the person

expelled and therefore it requires “an assessment of the fair balance, reasonableness, and proportionality between the public interest and the respect of Art. 8º of the European Human Rights Convention”.

Full description of this case is available at:

<http://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/82b8407fdd8996c88025724b005786b5?OpenDocument&Highlight=0,SJ200609270028023>

**ANNEX IV:** Registration certificates and residence cards