

**Republication of Law no. 23/2007 of 04 July**

**CHAPTER I**

**General provisions**

**Article 1**

**Purpose**

This law lays out the conditions and procedures for the entry, stay, exit and removal of foreign citizens in Portuguese territory, together with the status of long-term resident.

**Article 2**

**Transposition of directives**

1 — This law transposes the following European Union directives into Portuguese law:

- a) Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification;
- b) Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air;
- c) Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents;
- d) Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities;
- e) Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data;
- f) Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service;
- g) Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research;
- h) Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals;
- i) 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;
- j) Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals;
- k) Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection;
- l) 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;
- m) Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers;
- n) Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer;
- o) Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing.

2 — Simultaneously, the following transposed EC acts are consolidated into Portuguese Law:

- a) Council Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence;

b) Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the removal of third-country nationals;

c) Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985;

d) Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence.

### **Article 3**

#### **Definitions**

1 — The following definitions shall apply for the purposes of this law:

a) "Highly qualified activity": an activity requiring specialised technical expertise of an exceptional nature, or an appropriate qualification to carry it out;

b) "Independent professional activity": any activity carried out personally, within the scope of a service provision agreement, for the practising of a liberal profession, or in the form of a company;

c) "Temporary professional activity": an activity of a seasonal or short-term nature, not exceeding six months, except when the activity is carried out as part of an investment agreement;

d) "Investment activity": any activity carried out personally or through a company which results, as a rule, in at least one of the following within Portuguese territory for a minimum of five years:

i) Transfer of €1 million or more in capital;

ii) Creation of at least 10 job positions;

iii) Acquisition of €500,000 or more in real estate;

iv) Acquisition of real estate constructed within the past 30 years, or located within an urban rehabilitation zone, with €350,000 or more in renovation work carried out on the real estate acquired;

v) Transfer of €350,000 or more in capital which is invested in research carried out by public or private scientific research institutions belonging to the Portuguese science and technology system;

vi) Transfer of €250,000 or more in capital which is invested in artistic production, restoration or maintenance of national cultural heritage, through direct central and peripheral administrative services, public institutes, entities from the public business sector, public foundations, private foundations with public utility status, inter-municipal entities, entities belonging to the local business sector, municipal associations and public cultural associations pursuing functions in the area of artistic production, restoration or maintenance of national cultural heritage;

vii) Transfer of €350,000 or more in capital for the acquisition of holdings in investment funds or venture capital funds for corporate capitalisation, established under Portuguese law, with at least five years' maturity at the time of the investment, and with at least 60% of the investment amount in commercial companies based in Portuguese territory;

viii) Transfer of €350,000 or more in capital to incorporate a commercial company based in Portuguese territory, together with the creation of five permanent job positions, or as capital input for an existing commercial company based in Portuguese territory, together with the creation or maintenance of job positions, with a minimum of five permanent positions, and for a minimum of three years.

e) "EU Blue Card": residence permit enabling a third-country national to reside and carry out a highly qualified employed professional activity in Portuguese territory;

f) "Research centre": any type of public or private body, or public or private research and development unit, which carries out research and is officially recognised;

g) "Particularly exploitative working conditions": working conditions, including those resulting from gender-based and other discrimination, which are clearly disproportionate to those applicable to legally employed workers and which, for example, may affect worker health and safety or compromise human dignity;

h) "Implementing Convention": the convention implementing the Schengen Agreement of 14 June 1985, signed in Schengen on 19 June 1990;

i) "Forced removal measure": administrative act declaring the illegal stay of a third-country national, and his/her respective exit from Portuguese territory;

j) "Educational establishment": an officially recognised educational establishment with recognised curricula, which participates in a secondary education pupil exchange programme or educational project for the purposes laid out in Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016;

k) "Third country": any state not belonging to the European Union, nor a party to the Implementing Convention, or where this does not apply;

l) "Trainee": third-country national with a higher education diploma, or attending a course in a third country to obtain a higher education diploma, who has been admitted to Portuguese territory to attend a non-remunerated vocational training programme, pursuant to applicable legislation;

m) "Higher education student": third-country national who has been accepted by a higher academic institution to attend, as their main activity, a full-time academic programme to obtain an academic degree or recognised higher education degree, namely a diploma, certificate or PhD, including preparatory courses for such studies or mandatory training for the academic programme;

n) "Secondary education student": third-country national admitted to Portuguese territory to attend a recognised academic programme equivalent to levels 2 and 3 of the International Standard Classification of Education, as part of a pupil exchange programme or by individual admission to the academic project of a recognised educational establishment;

o) "External borders": borders with third countries, airports, with regard to flights originating from or bound to the territories of states not subject to the Implementing Convention, together with maritime ports, except with regard to connections in Portuguese territory and regular transshipment connections between states which are parties to the Implementing Convention;

p) "Internal borders": common land borders between states which are parties to the Implementing Convention, airports, with regard to flights exclusively and directly originating from or bound to the territories of states which are parties to the Implementing Convention, together with maritime ports, with regard to regular transshipment connections of vessels exclusively originating from or bound to other ports in the territories of states who are parties to the Implementing Convention, without port calls outside of these territories;

q) "Researcher": third-country national with a PhD or suitable higher education qualification providing access to doctorate programmes, admitted by a research centre or higher education institution for the purpose of a research project normally requiring such qualifications;

r) "Volunteer programme": a programme with specific welfare activities based on a programme recognised by the competent authorities or by the European Union, pursuing goals of general interest promoting a non-profit cause, without remuneration, except for the purposes of expense reimbursement and/or pocket money, including volunteer activities within the scope of the European Voluntary Service.

s) "International protection": a Member State's recognition of a third-country national or stateless person with refugee or subsidiary protection status;

t) "Higher professional qualifications": qualifications proven by a higher education diploma, or at least five years' professional experience at a level comparable with higher education qualifications pertinent to the profession or sector referred to in the employment agreement or promissory employment agreement;

u) "Return": the return of third-country nationals to their country of origin or provenance due to a forced removal measure, or under bilateral or EC readmission agreements or other conventions, or to another third country at the foreign citizen's discretion where he/she is accepted;

v) "Legal resident": qualified foreign citizen with a residence permit in Portugal, valid for one year or more;

w) "Company": companies established under civil or commercial law, including cooperative societies and other public or private legal persons, except for non-profit entities;

x) "Residence permit": document issued in accordance with the rules and uniform format in force in the European Union to a third-country national with residence authorisation;

y) "Airport transit": the passage, for the purposes of removal by air, of a third-country national and, if necessary, his/her escort, through the premises of the airport;

z) "Carrier": any natural or legal person providing air, maritime or ground passenger transport services on a professional basis;

aa) "International port or airport zone": the area between the boarding and disembarking points and the location of the personal document checkpoints;

bb) "Waiting area or similar space": special area in the international zone of the Portuguese airport for

passengers not admitted into Portuguese territory who are awaiting transfer;

cc) "Seasonal worker": third-country national primarily residing outside of Portugal with a temporary legal stay in Portuguese territory to carry out seasonal work, pursuant to a fixed-term employment agreement signed directly with an employer established in Portugal;

dd) "Seasonal work": activities dependent upon seasons of the year, namely those tied to specific times of year by a recurring event or pattern of events associated with conditions of a seasonal nature, during which a significant increase in labour is needed to carry out regular tasks;

ee) "Short-stay visa for seasonal work": a visa issued pursuant to article 51.-A, in accordance with article 2 (2)(a) of the Community Code on Visas, authorising its holder to remain in Portuguese territory to carry out activities dependent on seasons of the year;

ff) "Long-term visa for seasonal work": temporary visa issued pursuant to article 56.-A, authorising its holder to remain in Portuguese territory for more than 90 days to carry out activities dependent on seasons of the year;

gg) "Intra-corporate transfer": temporary posting of a third-country national bound by an employment agreement with a company established outside of Portugal and residing there, to carry out professional or training activities at a host company established in Portugal and belonging to the same company or business group, together with the mobility of workers transferred from a host company established in another Member State to a host company established in Portugal;

hh) "Intra-corporate transferee": a third-country national residing outside of Portuguese territory and requesting intra-corporate transfer, pursuant to the above sub-paragraph, in one of the following capacities:

i) "Manager": worker belonging to senior staff whose main function is managing the host entity for intra-corporate transfer, under the general guidance or supervision of its administration, shareholders or equivalent, and in charge of managing the entity, its departments or divisions, supervising and controlling the work of other employees with oversight, technical or management duties, together with the management of staff;

ii) "Specialist": a highly-qualified worker belonging to a regulated profession, with specialised knowledge and adequate professional experience essential to the host entity's specific business, technical or management domains;

iii) "Trainee": holder of a higher education diploma who has been transferred to the host entity for the purposes of career advancement or training in business methods or techniques, remunerated during the period of the transfer;

ii) "Host company": an entity established in Portuguese territory, pursuant to Portuguese legislation, to which the worker is transferred under an intra-corporate transfer;

jj) "Residence authorisation for intra-corporate transferee": residence authorisation enabling its holder to reside and work in Portuguese territory, also called "ICT residence permit";

kk) "Residence authorisation for long-term mobility": residence authorisation enabling an intra-corporate transferee through mobility, granted by another Member State, to reside and work in Portuguese territory for more than 90 days, also called a "mobile ICT permit";

ll) "Corporate group": two or more companies recognised by national legislation as interconnected, having between them a corporate relationship of reciprocal holdings, a control relationship or group relationship, pursuant to article 3 (l) of Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014;

mm) "Volunteer": a third-country national admitted into Portuguese territory to participate in a volunteer programme.

nn) "Educational project": a set of academic activities carried out by an educational establishment, in cooperation with similar authorities from a third country, for the purpose of exchanging knowledge and culture;

oo) "Research": creative work done in a systematic manner for the purpose of increasing knowledge, including knowledge of human beings, culture and society, and the use of this knowledge in new applications;

pp) "Research centre": a public or private body which carries out research;

qq) "Host entity": a research centre, institution of higher education, educational establishment, organisation in charge of a volunteer programme or entity which hosts volunteers, located in Portuguese territory, to which third-country nationals are assigned pursuant to this law, regardless of its legal form or designation;

*rr*) "Institution of higher education": an officially recognised institution of higher learning which grants recognised academic degrees or higher education diplomas, from the first through the third cycles of higher education, regardless of its denomination, or official institution providing higher vocational education or training;

*ss*) "Employer": a natural or legal person on behalf of whom, or under whose direction or supervision, work is carried out;

*tt*) "Host agreement": an agreement or other document signed between a research centre or institution of higher education and a researcher, including the title, purpose and domain of the research, its scheduled start and completion or expected duration and, if possible, information on potential mobility in other European Union Member States, together with the centre's or institution's obligation to reimburse the state for subsistence and removal expenses if the researcher stays illegally in Portuguese territory;

*uu*) "Vocational training establishment": an officially recognised private or public establishment with recognised training programmes.

2 — The minimum quantitative requirement or amount of the investment activities referred to in (d)(*ii*) to (d)(*vi*) of the above paragraph may be less than 20% when carried out in low-density territories.

3 — For the purposes of the above paragraph, low-density territories shall mean those with level III in the Nomenclature of Territorial Units for Statistical Purposes (NUTS III) with less than 100 inhabitants per km<sup>2</sup> or a per capita gross domestic product (GDP) below 75% of the national average.

#### **Article 4**

##### **Scope**

1 — The provisions of this law shall apply to foreign citizens and stateless persons.

2 — Notwithstanding its subsidiary application with express reference otherwise, this law shall not apply to:

*a*) Nationals of a Member State of the European Union, a state which is a party to the European Economic Area or a third country with which the European Community has entered into an agreement for the free movement of people;

*b*) Third-country nationals residing in Portuguese territory as refugees, beneficiaries of subsidiary protection under the regulatory provisions of asylum or beneficiaries of temporary protection;

*c*) Third-country nationals who are family members of a Portuguese citizen, or of a foreign citizen subject to the above sub-paragraphs.

#### **Article 5**

##### **Special schemes**

1 — The provisions of this law shall not prejudice the following special schemes:

*a*) Bilateral or multilateral agreements between the European Community (or the European Community and its Member States) and one or more third countries;

*b*) International conventions to which Portugal is a party or to which it is bound, particularly existing and future conventions with Portuguese-speaking countries, in bilateral terms, or within the scope of the Community of Portuguese Language Countries;

*c*) Protocols and memoranda of understanding between Portugal and third countries.

2 — The provisions of this law shall not prejudice the obligations arising from the Convention Relating to the Status of Refugees, signed in Geneva on 28 July 1951, as amended by the Protocol relating to the Status of Refugees, signed in New York on 31 January 1967, international conventions on human rights and international conventions on the extradition of persons to which Portugal is a party or to which it is bound.

## **CHAPTER II**

### **Entry into an exit from Portuguese territory**

#### **SECTION I**

##### **Border crossing**

#### **Article 6**

## **Border control**

1 — Entry into and exit from Portuguese territory shall be made through border posts designed for this purpose during their hours of operation, notwithstanding the provisions of the Implementing Convention.

2 — Individuals entering or exiting Portuguese territory, whose origin or destination is a state which is not a party to the Implementing Convention, shall be subject to control at border posts.

3 — The provisions of the above paragraph shall also apply to individuals using the domestic leg of a flight whose origin or destination is a state which is not a party to the Implementing Convention.

4 — Border control may be carried out on board vessels, en route, by request of the ship's captain or shipping agent, with payment of a fee.

5 — Following control of the exit of a ship or vessel, the Portuguese Immigration and Borders Service (Serviço de Estrangeiros e Fronteiras, hereinafter abbreviated "SEF") shall issue a clearance for departure, without which the vessel shall be prohibited from leaving the port.

6 — For reasons of public order and national security, after consulting other states which are parties to the Schengen Agreement, the internal border document control may be reinstated, on an exceptional basis, for a limited time.

## **Article 7**

### **International port zone**

1 — The international port zone shall coincide with the jurisdiction of the port authority, with closed port zones and free port zones with boarding and disembarkation points.

2 — The international port zone shall also include the SEF facilities.

## **Article 8**

### **Access to international port and airport zones**

1 — Access to an international airport zone, on stopover or on international flight transfer by foreign citizens subject to the obligation of an airport transit visa pursuant to this law, shall be conditional upon ownership of this visa.

2 — Access to an international port zone shall be restricted and conditional upon the SEF's authorisation.

3 — Authorisation to access an international port zone for specific purposes, namely a visit or the provision of services on board, may be granted by the head of the maritime border post.

4 — Authorisation to access the international port zone and to board vessels shall be subject to a fee.

5 — Shore leave licences may be granted at maritime border posts to the crew members and passengers of vessels during their time at port.

6 — Such licences shall allow travel in the area adjacent to the port, and shall be granted by the SEF upon request from shipping agents, accompanied by a liability form.

7 — Short-stay visas may be granted at maritime border posts, pursuant to the provisions of this law.

## **SECTION II**

### **General conditions of entry**

## **Article 9**

### **Travel documents and documents replacing them**

1 — Foreign citizens must possess a travel document recognised as valid to enter or exit Portuguese territory.

2 — The travel document's validity must exceed the duration of the stay, except in the case of a resident foreign citizen's re-entry into the country.

3 — The following foreign citizens may likewise enter or exit the country:

a) Nationals from states with which Portugal has international conventions allowing entry with an identity or equivalent document;

b) Those subject to relevant conventions between states which are parties to the North Atlantic Treaty;

c) Those bearing a *laissez-passer* issued by the authorities of the state of which they are nationals or state which represents them;

d) Those bearing a pilot or crew certificate, as referred to in annexes 1 and 9 to the Convention on International Civil Aviation, or other documents replacing them, when on duty;

e) Those bearing the maritime identification document referred to in Convention no. 108 of the International Labour Organisation, when on duty;

f) Nationals from states with which Portugal has international conventions allowing entry with a seaman's book only, when on duty.

4 — The *laissez-passer* referred to in (c) of the above paragraph shall only be valid for transit and, when issued in Portuguese territory, shall only allow exit from the country.

5 — Nationals may also enter or exit the country with an expired passport when belonging to states with which Portugal has international conventions in this regard.

6 — Foreign citizens with a safe-conduct or travel document for the forced removal or judicial deportation of a third-country national may also exit Portuguese territory.

## **Article 10**

### **Entry visa**

1 — To enter Portuguese territory, foreign citizens must also hold a valid visa suited to the purpose of travel, granted pursuant to this law or by the competent authorities of states which are parties to the Implementing Convention.

2 — The visa shall enable its holder to go to a border post and request entry into the country.

3 — The following persons, however, may enter the country without a visa:

a) Foreign citizens with a residence permit, extension of stay or identity card, pursuant to article 87 (2), when valid;

b) Foreign citizens entitled to this option pursuant to international conventions to which Portugal is a party.

4 — Visas may be cancelled by the issuing entity in a foreign territory or by the SEF in Portuguese territory or at border posts, when their holder is classified as non-admissible under the Schengen Information System or Integrated SEF Information System, or makes false statements in the application process.

5 — The SEF's cancellation of visas pursuant to the above paragraph shall be immediately notified to the issuing entity.

6 — The visa cancellation decision shall be notified electronically to the High Commission for Immigration and Intercultural Dialogue, I. P. (hereinafter abbreviated "ACIDI, I. P.") and to the Advisory Board for Immigration Affairs (hereinafter called "Advisory Board"), specifying the justifying grounds.

## **Article 11**

### **Means of subsistence**

1 — Foreign citizens lacking sufficient means of subsistence for their period of stay or to travel to their country of guaranteed admission, or unable to legally acquire such means, shall not be allowed to enter the country.

2 — For the purposes of entry and stay, foreigners must have, via forms of payment, *per capita*, the amounts established by order of the government members in charge of internal administration, employment and social security, subject to exemption to those with proof of food and accommodation during their stay.

3 — The amounts established pursuant to the above paragraph shall be updated automatically in accordance with the percent increases of the highest national minimum wage.

## **Article 12**

### **Liability form**

1 — For the purposes of the above article, a third-country national may, alternatively, submit a liability form signed by a Portuguese national or foreigner authorised to remain in Portuguese territory on a regular basis.

2 — Acceptance of the liability form referred to in the above paragraph shall depend on proof of the signer's financial capacity, with a mandatory commitment to ensure the following:

- a) Conditions of stay in Portuguese territory;
- b) Payment of removal costs, in the event of illegal stay.

3 — The provisions of the above paragraph shall not exclude the liability of the entities referred to in articles 198 and 198-A, provided that the respective assumptions have been met.

4 — The liability form shall constitute a means of enforcing the obligation referred to in (2)(b).

5 — A template of the liability form shall be approved by order of the SEF National Director.

6 — The SEF shall implement a system for recording and archiving the liability forms submitted, notwithstanding the applicable norms of personal data protection.

### **Article 13**

#### **Purpose and conditions of stay**

The border authority may require foreign citizens to submit adequate proof, whenever deemed necessary, of the purpose and conditions of stay.

## **SECTION III**

### **Declaration of entry and record of accommodation**

#### **Article 14**

##### **Declaration of entry**

1 — Foreign citizens entering the country from another Member State through a border not subject to control shall be obliged to declare their entry within three working days.

2 — The declaration of entry must be provided to the SEF, pursuant to terms to be determined by order of the government member in charge of internal administration.

3 — The provisions of the above paragraphs shall not apply to the following foreign citizens:

- a) Residents, or those authorised to stay in the country for more than six months;
- b) Those who accommodate themselves, immediately after entering the country, at hotels or other types of accommodation subject to the provisions of article 16 (1);
- c) Those benefiting from European Union or similar regulations.

#### **Article 15**

##### **Record of accommodation**

1 — The purpose of the record of accommodation is to control foreign citizens in Portuguese territory.

2 — For each foreign citizen, including nationals from other European Union Member States, one record of accommodation, whose template shall be approved by order of the government member in charge of internal administration, shall be filled in and signed.

3 — Records of accommodation do not require completion or personal signing by both spouses and their accompanying minors, or by all members of a travel group; this obligation may be met by one spouse or by one member of the group in question.

4 — To simplify the sending of records of accommodation, hotels and similar establishments shall register them with the SEF as users of the Record of Accommodation Information System, in order to send them electronically under secure conditions.

5 — Records of accommodation and their duplicates, together with their substitute mediums referred to in the above paragraph, shall be kept for one year of the day following that of notification of departure.

#### **Article 16**

##### **Notification of accommodation**

1 — Companies operating hotels, supplementary means of tourist accommodation or tourist complexes, together with all those providing accommodation to foreign citizens for consideration, shall be obliged to provide notification to the SEF (or, where it does not exist, to the National Republican Guard or Public Security Police) within three working days by means of a record of accommodation.

2 — Foreign citizens' departure from this accommodation must be notified to the entities referred to in the above paragraph within this same time period.

3 — Records of accommodation produced pursuant to (4) of the above article shall be transmitted in a secure manner, pursuant to terms to be determined by order of the government member in charge of internal administration.

## **SECTION IV**

### **Travel documents**

#### **SUB-SECTION I**

#### **Travel documents issued by Portuguese authorities on behalf of foreign citizens**

##### **Article 17**

#### **Travel documents**

1 — The Portuguese authorities may issue the following travel documents on behalf of foreign citizens:

- a) Foreigner's passport;
- b) Travel document for refugees;
- c) Safe-conduct;
- d) Travel document for the forced removal or judicial deportation of third-country nationals;
- e) Travel list for students.

2 — Travel documents issued by Portuguese authorities on behalf of foreign citizens shall not constitute proof of their bearer's nationality.

##### **Article 18**

#### **Foreigner's passport**

The granting of a foreigner's passport shall comply with the provisions of applicable separate legislation.

##### **Article 19**

#### **Travel document for refugees**

1 — Foreign citizens residing in the country as refugees, pursuant to the law governing the right to asylum, together with refugees subject to the provisions of (§ 11) of the annex to the Convention Relating to the Status of Refugees, signed in Geneva on 28 July 1951, may obtain a travel document following a template to be approved by order of the government member in charge of internal administration.

2 — The travel document for refugees shall be valid for one year, subject to extension, and may be used for an unlimited number of trips, allowing its holder to return before its expiry.

3 — The travel document for refugees may include only one person/holder and children or adopted children under 10 years of age.

4 — Once issued, travel documents cannot be amended, except for amendments involving extended validity as provided for in (2).

##### **Article 20**

#### **Authority to grant travel document for refugees**

The following shall be authorised to grant and extend travel documents for refugees:

- a) In Portuguese territory, the SEF National Director, with the power to delegate;

b) Abroad, Portuguese diplomatic or consular authorities, with SEF approval.

#### **Article 21**

##### **Issuance and control of travel document for refugees**

1 — The entities in charge of granting travel documents for refugees shall be responsible for their issuance.

2 — The SEF shall be responsible for the national registry and control of travel documents issued.

#### **Article 22**

##### **Terms of validity for travel document for refugees**

1 — Travel documents for refugees shall only be valid when completed legibly using all spaces, when mandatory, or leaving them blank otherwise.

2 — Corrections and erasures of any kind are not allowed.

3 — Photographs must be up-to-date, in colour, with a flat contrasting background and in proper conditions for identification.

4 — The photograph of the bearer and signature of the travel document's issuer must be certified using the department's embossed seal.

5 — The travel document shall be signed by its bearer, unless the issuer includes a statement that the bearer is unable to sign/incapable of signing in the space in question.

#### **Article 23**

##### **Request for travel document for refugees**

1 — Travel documents shall be requested directly by their applicants.

2 — Travel documents for minors may be requested:

a) By either of the parents, when married;

b) By a parent exercising parental responsibilities, pursuant to a court decision;

c) By the individual exercising parental responsibilities, pursuant to the law, in the absence of parents.

3 — In the event of individuals declared disqualified or incapacitated, the request shall be made by the individual having custody or guardianship.

4 — The SEF National Director may, on justified grounds, override, by order, the capacities referred to in (2) and (3).

#### **Article 24**

##### **Limitations on the use of travel document for refugees**

Refugees who, using a travel document acquired pursuant to this law, have been in a country in which any of the situations referred to in article 1, section C (1) to (4) of the Convention Relating to the Status of Refugees, signed in Geneva on 28 July 1951, has been acquired, must obtain a travel document for that country.

#### **Article 25**

##### **Misuse of travel document for refugees**

1 — Travel documents for refugees used in breach of the law shall be seized by the authorities to whom they were submitted and sent to the SEF.

2 — Travel documents whose individual identification information is non-compliant may be rejected.

#### **Article 26**

##### **Safe-conduct**

1 — A safe-conduct may be issued to foreign citizens residing outside of the country whose departure from Portuguese territory is impeded or made impossible.

2 — Under exceptional circumstances arising from the national interest or fulfilment of international obligations, a safe-conduct may be issued to foreign citizens residing outside of the country who prove their inability to obtain another travel document.

3 — The SEF National Director, with the power to delegate, shall be responsible for issuing safe-conducts for the sole purpose of allowing departure from the country.

4 — Portuguese consular posts and embassies, with SEF approval, shall be responsible for issuing safe-conducts for the sole purpose of allowing entry into the country.

5 — The safe-conduct template shall be approved by order of the government member in charge of internal administration.

#### **Article 27**

##### **Travel document for the return or deportation of third-country nationals**

1 — Third-country nationals subject to a forced removal measure or judicial deportation, when lacking a travel document, shall be issued a document for this purpose.

2 — The document referred to in the above paragraph shall be valid for a single trip.

3 — The document template shall be approved by order of the government member in charge of internal administration.

### **SUB-SECTION II**

#### **Travel documents issued by foreign authorities**

#### **Article 28**

##### **Control of travel documents**

Non-resident foreign citizens with travel documents issued in Portuguese territory by foreign consular posts or diplomatic missions must submit these documents to the SEF for validation within three days of their date of issuance.

### **SECTION V**

#### **Entry and exit of third-country student nationals**

#### **Article 29**

##### **Entry and stay of students residing in the European Union**

1 — Third-country student nationals residing in the territory of other European Union Member States may enter and temporarily stay in Portuguese territory without a visa when travelling on a school trip organised by an officially recognised educational establishment.

2 — For the purposes of the above paragraph, students must:

a) be accompanied by a teacher from the educational establishment;

b) be included on the list of students participating in the trip, issued by the educational establishment, including their identification and the purpose and circumstances of the trip;

c) have a valid travel document.

3 — The requirement referred to in c) of the above paragraph shall not apply for students appearing on a list, duly certified by the competent entity of the Member State of origin, containing the following items:

a) Recent photographs of the students;

- b) Confirmation of their resident status;
- c) Authorisation for re-entry.

### **Article 30**

#### **Exit of resident students from the country**

Third-country student nationals residing in Portuguese territory may also depart to other European Union Member States, provided that they meet the requirements of the above article; the SEF shall be responsible for authenticating the list referred to in this same norm.

## **SECTION VI**

### **Entry and exit of minors**

#### **Article 31**

#### **Entry and exit of minors**

1 — Notwithstanding youth exchanges and tourism, the competent authority shall prohibit entry into the country to foreign citizens under 18 years of age when not accompanied by an individual with parental responsibilities or when no individual exists in Portuguese territory with responsibility for their stay, duly authorised by a legal representative.

2 — Except under exceptional and duly justified circumstances, foreign minors shall not be authorised to enter Portuguese territory when the holder of parental responsibilities, or person to whom the minor is entrusted, is not admitted into the country.

3 — If a foreign minor is not admitted into Portuguese territory, the person to whom the minor has been entrusted shall likewise be denied entry.

4 — Foreign resident minors travelling without the individual having parental responsibilities, and without this individual's legally certified authorisation, shall be denied exit from Portuguese territory.

5 — Unaccompanied minors awaiting a decision on their entry into Portuguese territory or repatriation shall be given all material support and assistance needed to meet their basic needs of food, hygiene, accommodation and medical aid.

6 — Unaccompanied minors may only be repatriated to their country of origin, or to a third country willing to receive them, with a guarantee of appropriate assistance and welcome upon arrival.

## **SECTION VII**

### **Denial of entry**

#### **Article 32**

#### **Denial of entry**

1 — Entry into Portuguese territory shall be denied to foreign citizens who:

- a) do not meet all legal requirements for entry; or
- b) are classified as non-admissible in the Schengen Information System; or
- b) are classified as non-admissible in the Integrated SEF Information System; or
- d) constitute a hazard or serious threat to public order, national security, public health or international relations of European Union Member States or states subject to the Implementing Convention.

2 — The denial of entry based on reasons of public health may only be based on illnesses referred to in the applicable instruments of the World Health Organisation, or on other contagious parasitic or infectious diseases subject to protective measures in Portuguese territory.

3 — Third-country nationals may be subject to a mandatory medical examination to verify that they do not suffer from any of the illnesses referred to in the above paragraph, together with the appropriate medical measures.

### **Article 33**

#### **Non-admission classification**

1 — The following foreign citizens are classified as non-admissible in the Integrated SEF Information System:

- a) Foreign citizens subject to a forced removal measure or judicial deportation from the country;
- b) Foreign citizens sent back to another country under a readmission agreement;
- c) Foreign citizens with strong evidence of having committed serious punishable offences;
- d) Foreign citizens with strong evidence of an intent to commit serious punishable offences, or constituting a threat to public order, national security or international relations of a European Union Member State or states subject to the Implementing Convention;
- e) Foreign citizens who have been dispatched to the border, pursuant to article 147.

2 — Beneficiaries of support for voluntary return, pursuant to article 139, shall also be classified as non-admissible in the Integrated SEF Information System, with the elimination of this classification under the circumstances provided for in (3) of this provision.

3 — Foreign citizens sentenced by a final ruling to the deprivation of liberty for one year or more, even when the sentence has not been served, or who have been sentenced more than once to the same penalty, even when its enforcement has been suspended, may also be classified as non-admissible.

4 — Measures for the entry ban without specific time periods pursuant to this law shall be periodically reassessed for the purpose of their maintenance or elimination.

5 — Measures for the entry ban which have not been judicially decreed and which have specific time periods pursuant to this law may be reassessed at any time, by initiative of the SEF National Director, for humanitarian reasons or reasons of national interest, for the purpose of eliminating them.

6 — The classification of a foreign citizen in the Schengen Information System shall depend on a decision from the competent entities of a state which is a party to the Implementing Convention.

7 — The SEF National Director shall be responsible for classifying a foreign citizen in the Schengen Information System or in the Integrated SEF Information System for purposes of non-admission.

### **Article 34**

#### **Seizure of travel documents**

When the denial of entry is based on the submission of a travel document which is counterfeit, falsified, extraneous or fraudulently obtained, the document in question shall be seized and sent to the competent domestic or foreign authority, pursuant to applicable provisions.

### **Article 35**

#### **Verification of document validity**

In the event of questions regarding the authenticity of documents issued by Portuguese authorities, the SEF may access information on the process for issuing the passport, identity card or other document used to cross borders.

### **Article 36**

#### **Limits on the denial of entry**

Except as provided for in article 33 (1) (a), (c) and (d) and (3), entry cannot be denied to foreign citizens who:

- a) were born in Portuguese territory and habitually reside there;
- b) have minor children of Portuguese or foreign nationality in their custody, legally residing in Portugal, who they support and raise with parental responsibilities.

### **Article 37**

#### **Authority to deny entry**

The SEF National Director shall be responsible for denying entry in Portuguese territory, with the power to delegate.

#### **Article 38**

##### **Decision and notification**

1 — The decision to deny entry shall be handed down after hearing the foreign citizen, which shall be considered a right to a fair hearing for all purposes, and shall be immediately notified to the diplomatic or consular office of the foreign citizen's country of origin.

2 — The decision to deny entry shall be notified to the interested party, in a language presumed to be understandable, specifying its justifying grounds, and including the right to judicial review and the respective term.

3 — The carrier shall also be notified for the purposes of article 41.

4 — Whenever a foreign citizen cannot be transferred within 48 hours of a decision to deny entry, notification shall be given to the judge of the petty criminal court having jurisdiction, or circuit court in other areas of the country, to determine whether the foreign citizen will be kept in a waiting area or similar space.

#### **Article 39**

##### **Judicial review**

The decision to deny entry shall be subject to judicial review, with merely non-staying effects, before the administrative courts.

#### **Article 40**

##### **Rights of foreign citizens denied entry**

1 — During their stay in the international port or airport zone, waiting area or similar space, foreign citizens who have been denied entry into Portuguese territory may communicate with their country's diplomatic or consular office or with any person of their choice, while also benefiting from the assistance of an interpreter and health care, including an attending physician when necessary, as well as all material support needed to meet their basic needs.

2 — Foreign citizens who have been denied entry into Portuguese territory shall be ensured timely access to the legal assistance of an attorney, at their expense or, upon request, to legal protection, subject, with the necessary adaptations, to Law no. 34/2004 of 29 July, under the scheme for the appointment of a defence advocate for urgent proceedings.

3 — For the purposes of the above paragraph, the guarantee of legal assistance to foreign citizens denied entry may be subject to a protocol between the Ministry of the Interior, the Ministry of Justice and the Portuguese Bar Association (Ordem dos Advogados).

4 — Notwithstanding the protection granted by asylum law, citizens subject to a decision of denied entry shall likewise be guaranteed observance, with the necessary adaptations, of the scheme provided for in article 143.

### **CHAPTER III**

#### **Obligations of carriers**

#### **Article 41**

##### **Carrier liability**

1 — Carriers providing transport to Portuguese territory, by air, sea or land, of foreign citizens not meeting the conditions for entry shall be obliged to return them, as quickly as possible, to the starting point of their transportation or, when this is not possible, to the country of issuance of their travel document or any other location where their admission is guaranteed.

2 — Until their time of return, such passengers shall be the responsibility of the carrier, together with fees for their stay at a waiting area or similar space.

3 — Whenever so justified, foreign citizens not meeting the conditions for entry shall be removed from Portuguese territory, by escort, by means of the SEF.

4 — The carrier shall be responsible for expenses involving the escort's use, together with payment of the respective fee.

5 — The provisions of the above paragraphs shall also apply the denial of entry of a foreign citizen in transit when:

- a) the carrier in charge of transport to the destination country refuses to do so;
- b) the authorities of the destination state have denied entry, and have rerouted the foreign citizen to Portuguese territory.

## **Article 42**

### **Data transmission**

1 — Prior to the completion of check-in and at the SEF's request, carriers providing passenger air transport services shall be obliged to transmit, information on passengers transported to a border post by which they will enter Portuguese territory.

2 — The information referred to in the above paragraph includes:

- a) The number, type, issue date and validity of the travel document used;
- b) Nationality;
- c) Full name;
- d) Date of birth;
- e) The border crossing point to enter Portuguese territory;
- f) Transport code;
- g) Transport departure and arrival times;
- h) Total number of passengers included in the transport;
- i) Initial departure point.

3 — The transmission of data referred to in this article shall not release carriers from the obligations and responsibilities provided for in the previous article.

4 — Ship owners, the shipping agents who represent them and the captains of fishing vessels sailing in international waters shall provide the SEF with a list of crew members and passengers, without corrections, erasures or changes to the information recorded therein, together with the existence of any stowaways on board, forty-eight hours before arrival and two hours before departure of the vessel from a national port.

## **Article 43**

### **Data processing**

1 — The data referred to in the previous article shall be collected by carriers and transmitted electronically or, in the event of failure, by any other appropriate means, to the SEF, with a view to facilitating controls at the authorised border crossing point for passengers entering Portuguese territory.

2 — The SEF shall keep this data in a provisional file.

3 — Following the entry of passengers, the authority referred to in the previous paragraph shall delete the data within twenty-four hours of its transmission, unless it is needed to perform legal functions by the authorities in charge of passenger control at foreign borders, pursuant to the law and in accordance with Law no. 67/98 of 26 October concerning personal data protection.

4 — Carriers shall delete, within twenty-four hours of the transport's arrival, the personal data they collect and transmit to the SEF.

5 — Notwithstanding the provisions of Law no. 67/98 of 26 October on the protection of personal data, the data referred to in the previous article may be used for the purposes of applying legal provisions on public order and safety.

## **Article 44**

### **Information for passengers**

1 — For the purposes of applying the provisions of article 42, carriers shall provide the following information to passengers at the time of collecting data:

- a) Identity of data controller;
- b) Intended purposes of data processing;
- c) Other information, bearing in mind the specific circumstances of data collection, to ensure faithful data processing to the person in question, such as the data recipients or categories of data recipients, the mandatory nature of response, potential consequences of omission and the person's right to access and correct data.

2 — When data has not been collected from the person in question, the data controller or its representative shall provide this person with the information referred to in the above paragraph when the data is recorded or, at the latest, when this data is first communicated.

## **CHAPTER IV**

### **Visas**

#### **SECTION I**

#### **Visas granted abroad**

### **Article 45**

#### **Types of visas granted abroad**

The following types of visas may be granted abroad:

- a) Airport transit visa;
- b) *(Revoked.)*
- c) Short-stay visa;
- d) Temporary stay visa;
- e) Visa to obtain residence authorisation, hereinafter called "residence visa".

### **Article 46**

#### **Territorial validity of visas**

1 — Airport transit and short-stay visas may be valid for one or more states who are parties to the Implementing Convention.

2 — Temporary stay and residence visas are only valid for Portuguese territory.

### **Article 47**

#### **Individual visa**

- 1 — Individual visas shall be affixed to the individual or family passport.
- 2 — *(Revoked.)*
- 3 — Visas issued abroad shall be done so individually.
- 4 — *(Revoked.)*
- 5 — *(Revoked.)*

### **Article 48**

#### **Authority to issue visas**

1 — The following are authorised to issue visas:

a) Portuguese embassies and consular posts, when involving airport transit and short-stay visas requested by holders of diplomatic, service, official and special passports or travel documents issued by international organisations;

b) Consular posts and offices, in all other cases.

2 — The entities referred to in the above paragraph shall be responsible for requesting opinions, information and other items needed to file requests.

#### **Article 49**

##### **Airport transit visa**

1 — The purpose of the airport transit visa is to allow its holder, when travelling on an international flight, to pass through an airport of a state which is a party to the Implementing Convention.

2 — Holders of airport transit visas may only access the airport's international zone, continuing the trip there or in another aircraft, in accordance with the ticket in question.

3 — Nationals from states identified by order of the government members in charge of internal administration and foreign affairs, or holders of travel documents issued by these states, shall be subject to airport transit visas.

4 — The order referred to in the above paragraph shall determine the exceptions applicable to this type of visa requirement.

#### **Article 50**

##### **Transit visa**

*(Revoked.)*

#### **Article 51**

##### **Short-stay visa**

1 — The purpose of the short-stay visa is to allow its holder to enter Portuguese territory for purposes which, having been approved by the competent authorities, do not justify the issuance of another type of visa, namely purposes involving transit, tourism, visiting or accompanying family members with temporary stay visas.

2 — Short-stay visas may be issued with a validity of one year, for one or more entries; the duration of one uninterrupted stay or the total duration of consecutive stays, however, may not exceed 90 days per 180 days from the date of initial passage at a foreign border.

3 — *(Revoked.)*

#### **Article 51-A**

##### **Short-stay visa for seasonal work for 90 days or less**

1 — Short-stay visas for seasonal work may be issued for 90 days or less to third-country nationals who, notwithstanding article 52, meet the following conditions:

a) Possession of a valid employment agreement or promissory employment agreement for seasonal work, signed with a temporary work agency or employer in Portuguese territory, specifying the location, work schedule, type of work, duration, remuneration and duration of any paid holidays;

b) Adequate protection in the event of illness, comparable to that of Portuguese nationals, or health insurance for periods without this type of coverage, or benefits from professional practice or from work carried out, together with occupational accident insurance provided by the employer;

c) Appropriate accommodation, through a rental or equivalent agreement, or accommodation provided by the employer pursuant to article 56-D (3) and (4);

d) In the case of a regulated profession, fulfilment of conditions for practising the profession under national legislation;

e) A valid ticket for returning to his/her country of origin.

2 — In the "comments" field of the visa's vignette, it should be noted that the visa is being issued for purposes of seasonal work.

3 — Short-stay visas for seasonal work authorise their holder to carry out seasonal work for a period of less than 90 days, and are valid as a work authorisation whenever their holder is exempt from a visa to enter Portuguese territory.

4 — The denial of a short-stay visa for seasonal work shall comply with the provisions of the Community Code on Visas.

5 — The government member in charge of labour shall establish, after consulting social partners, a list of job sectors with seasonal work as defined in article 3(cc), with notice to the European Commission.

## **Article 52**

### **General conditions for issuing residence visas, temporary stay visas and short-stay visas**

1 — Notwithstanding the special conditions for granting visas provided for in this law or by international instruments or conventions to which Portugal is a party, residence visas, temporary stay visas and short-stay visas may only be issued to third-country nationals meeting the following conditions:

a) They are not subject to a removal measure with an ensuing period of prohibition from entering Portuguese territory;

b) They are not classified as non-admissible in the Schengen Information System by any European Union Member State;

c) They are not classified as non-admissible in the Integrated SEF Information System, pursuant to article 33;

d) They have adequate means of subsistence, as defined by order of the government members in charge of internal administration, welfare and social security;

e) They are in possession of a valid travel document;

f) They are in possession of travel insurance;

g) They have parental authorisation or an equivalent document, when the applicant is a minor, and is not accompanied by the individual exercising parental power or custody during the period of stay.

2 — The granting of temporary stay and short-stay visas shall also require a valid return ticket.

3 — Residence visas and temporary stay visas shall be denied to third-country nationals convicted of a crime which, in Portugal, is punishable by deprivation of liberty of more than one year, even when the sentence has not been served or its enforcement has been suspended.

4 — Visas shall be denied to third-country nationals constituting a hazard or threat to public order, national security or defence, or public health.

5 — Whenever a visa is denied on the grounds provided for in (1) (b) and (1) (c), the applicant shall be notified of the option to request correction of any erroneous data.

6 — Applicants subject to an entry ban, issued by a state which is a party to or associated with the Implementing Convention of the Schengen Agreement, must be consulted in advance to take their interests into account, pursuant to article 25 of this Convention.

7 — For the purposes of (1) (d), for those applying for residence visas for the purpose of study, pupil exchange, research, professional traineeships or volunteer work, the financial means originating from a grant, scholarship, employment agreement, promissory employment agreement or liability form signed by the organisation in charge of the pupil exchange/volunteer programme or trainee host entity should be taken into account and assessed on an individual basis.

8 — Residence visas issued for study, pupil exchange, research or volunteer work shall contain a reference to "researcher", "higher education student", "secondary education student", "trainee" or "volunteer" in the comments area of the vignette.

## **Article 53**

### **Formalities prior to the issuance of visas**

1 — A mandatory opinion from the SEF shall be required prior to issuing a visa under the following

circumstances:

a) When residence and temporary stay visas are requested;  
b) When dictated by reasons of national interest, domestic security or preventing illegal immigration and associated crime.

2 — When the visa requests referred to in the above paragraph are given a negative opinion, whenever the applicant has been sentenced by a final ruling in Portugal to a prison sentence of more than one year, even when it has not been served, or has been sentenced more than once to the same penalty, even when its enforcement has been suspended.

3 — On duly justified urgent grounds, the prior consultation may be waived for residence visa requests for carrying out independent professional activity and temporary stay.

4 — The issuance of a visa shall require prior consultation of the Security Information Service when dictated by reasons of national security or compliance with agreed mechanisms under the EU's Common Security and Defence Policy.

5 — The SEF shall be responsible for requesting and obtaining opinions, information and other items needed from other entities to fulfil the provisions of this law regarding the issuance of residence and temporary stay visas.

6 — Opinions required to issue visas, when negative, shall be binding, and shall be issued within seven days for short-stay visas and 20 days for all other visas, after which time the lack of an opinion shall correspond to approval.

#### **SUB-SECTION I**

#### **Temporary stay visa**

#### **Article 54**

#### **Temporary stay visa**

1 — The purpose of temporary stay visas is to allow entry and stay in Portuguese territory for less than one year for the following purposes:

- a) Medical treatment at official or officially recognised health establishments;
- b) Transfer of nationals from states belonging to the World Trade Organisation for the provision of services or for vocational training in Portuguese territory;
- c) Practice of independent professional activity in Portuguese territory;
- d) Carrying out scientific research at research centres, teaching at a higher education establishment or highly qualified activities for a period of less than one year in Portuguese territory;
- e) Participating in amateur athletic activity in Portuguese territory, certified by the respective federation, provided that the athletic team or association assumes responsibility for health care and accommodation;
- f) Stays in Portuguese territory for periods of more than three months, under duly justified exceptional circumstances, namely to attend an academic programme at an educational establishment, pupil exchange, non-remunerated professional traineeship or volunteer work, for one year or less, or for the purpose of fulfilling international commitments for the World Trade Organisation or commitments arising from international agreements and conventions to which Portugal is a party, within the scope of the freedom to provide services;
- g) Accompanying a family member undergoing medical treatment pursuant to (a);
- h) Seasonal work for more than 90 days;
- i) Attendance of a course at an educational or vocational training establishment.

2 — Notwithstanding any special provision, temporary stay visas shall be granted for the duration of the stay, and shall be valid for multiple entries in Portuguese territory.

3 — The maximum time period for deciding on a temporary stay visa request shall be 30 days from its filing.

#### **Article 55**

#### **Temporary stay visa for the transfer of workers**

The granting of temporary stay visas to nationals from states belonging to the World Trade Organisation, transferred for the provision of services or for vocational training in Portuguese territory, shall depend on the following conditions:

*a)* The transfer must be carried out between establishments of the same company or company group, with the establishment located in Portuguese territory providing the same services as those of the establishment from which the foreign citizen is being transferred;

*b)* The transfer must entail partners or workers subordinated, for at least one year, in the establishment located in another state belonging to the World Trade Organisation, included in one of the following categories:

*i)* Those who, having management powers, work in senior management positions at the company, effectively managing an establishment or department following general guidelines from the Board of Directors;

*ii)* Those with specific technical knowledge essential to the business, research equipment, techniques or management of the business;

*iii)* Those needing to receive vocational training at the establishment located in Portuguese territory.

## **Article 56**

### **Temporary stay visa for seasonal work exceeding 90 days**

1 — Temporary stay visas for seasonal work exceeding 90 days shall be granted to third-country nationals who, notwithstanding article 52, meet the conditions laid out in article 51-A (1)(a) to (1)(d) and possess a valid travel document for the visa's validity period.

2 — The provisions of Article 51-A (5) shall apply to a temporary stay visa granted pursuant to this article.

3 — Temporary stay visas granted pursuant to this article shall be valid for the duration of the employment agreement, up to a maximum of 9 months per 12-month period;

4 — Temporary stay visas valid for less than 9 months may be extended to up to 9 months per 12-month period, pursuant to article 71-A.

5 — In the "comments" field of the visa's vignette, it should be noted that the visa is being issued for purposes of seasonal work.

## **Article 56-A**

### **Denial of request for temporary stay visa for seasonal work**

1 — Requests for temporary stay visas for seasonal work shall be denied if:

*a)* The conditions for their issuance pursuant to (1) of the above article are not met;

*b)* The documents submitted have been obtained fraudulently, or are falsified or forged;

*c)* The employer is applied a penalty pursuant to articles 56-F, 185-A or 198-A;

*d)* The third-country national has not fulfilled his/her obligations from prior admission as a seasonal worker;

*e)* The employer has eliminated a permanent job position to create an opening for seasonal work in the 12 months immediately preceding the request.

*f)* The employer carries out no economic activities, or the employer's company has been wound up or is undergoing insolvency proceedings.

2 — Notwithstanding the provisions of the above paragraph, decisions to deny a request shall take the case's specific circumstances into account, namely the seasonal worker's interests, in accordance with the proportionality rule.

## **Article 56-B**

### **Cancellation of short-stay or temporary stay visa for seasonal work**

1 — Notwithstanding the provisions of article 70 and of the Visa Code regarding grounds for the cancellation or revocation of short-stay visas, short-stay or temporary stay visas for seasonal work may be cancelled if the third-country national remains in Portuguese territory for purposes other than those for which the stay was authorised, or under the circumstances provided for in article 56-A (1)(b) and (1)(c).

2 — Visa cancellation decisions shall be subject to article 56-A (2).

3 — In the event of cancellation pursuant to article 56-A (1)(c), the employer shall be responsible for the payment of any compensation resulting from the employment relationship with the seasonal worker, including the payment of remuneration and other entitlements pursuant to labour legislation.

#### **Article 56-C**

##### **Procedural guarantees and processes**

1 — Short-stay visa requests shall be governed by the Community Code on Visas.

2 — Requests for temporary stay visas for seasonal work must be submitted by third-country nationals at Portuguese consular posts and offices, in accordance with article 48 (1)(b), to be governed procedurally by the provisions of this article.

3 — Requests for short-stay and temporary stay visas for seasonal work must be accompanied by documents supporting the applicant's compliance with the conditions laid out in articles 51-A or 56.

4 — At the time of the request, information shall be provided to the applicant on entering and staying in Portuguese territory, together with the documentation legally required for this purpose and the associated rights, obligations and guarantees.

5 — If the information or documentation submitted by the applicant are incomplete or insufficient, the request's assessment shall be suspended, with a request for the necessary supplementary information or documents, which must be submitted within 10 days.

6 — Notwithstanding the provisions of the above paragraph, a decision shall be made within 30 days of the request's submission date.

7 — Third-country nationals admitted for the purposes of seasonal work in Portuguese territory, at least once in the past five years, who have complied with the provisions of this law with regard to entering and staying in Portuguese territory, shall benefit from a simplified procedure for the issuance of a new short-stay or temporary stay visa for seasonal work, namely exemption from submitting the documents referred to in article 51-A (1)(c) to (1)(e) and priority treatment of the request, with a decision made within 15 days.

8 — Decisions to deny the issuance of a short-stay or temporary stay visa for seasonal work, together with extensions to stays, shall be notified to applicants in writing, specifying the justifying grounds, the right to judicial review, the competent court and the respective term.

9 — Decisions to cancel visas pursuant to article 56-B shall be notified to applicants in writing, specifying the justifying grounds, the right to judicial review and the respective term.

#### **Article 56-D**

##### **Rights, equal treatment and accommodation**

1 — Holders of short-stay and temporary stay visas for seasonal work shall be entitled to enter and remain in the entire national territory and carry out the work specified in the visa for one or several consecutive employers.

2 — Holders of short-stay and temporary stay visas for seasonal work shall be ensured equal treatment in relation to domestic workers pursuant to article 83 (2), and with regard to labour rights under the law or collective bargaining, including payment of outstanding remuneration, advisory services on seasonal work and vocational training and education.

3 — Whenever an employer or user of the work or activity provides accommodation to a seasonal worker, with or without charge, they must ensure that the accommodation complies with health and safety norms in force, subject to a written agreement or clauses in the employment agreement specifying the conditions of the accommodation.

4 — If the accommodation is provided for a charge by the employer or user of the work or activity, a rental amount proportional to remuneration and the conditions of the accommodation may be demanded, which under no circumstances may be automatically deducted from the seasonal worker's remuneration, nor exceed 20% of this remuneration.

#### **Article 56-E**

##### **Inspections and protection of seasonal workers**

1 — Notwithstanding the provisions of article 198-C, within the scope of its powers, the SEF shall carry out assessments and inspections to gauge compliance with the scheme for the entry and stay of seasonal workers.

2 — The inspection department of the ministry in charge of labour shall, in cooperation with the SEF, carry out inspections aimed at preventing and penalising infringements with regard to the employment of seasonal workers, have access to the workplace for this purpose and, if authorised by the employee, access to the employee's accommodation.

3 — Seasonal workers shall benefit from the complaint procedure, support and representation pursuant to article 198-B.

#### **Article 56-F**

##### **Penalties**

1 — Notwithstanding applicable penalties provided for by labour, tax and social security legislation, the provisions of articles 185-A and 198-A shall apply to the employers of third-country nationals carrying out seasonal work without residence authorisation, a short-stay visa or a temporary stay visa.

2 — The provisions of article 198-A (5) shall apply to employers, primary contractors or any intermediate subcontractors of employers of seasonal workers.

#### **Article 56-G**

##### **Statistics**

1 — The SEF shall be responsible for preparing statistics on the issuance, extension and cancellation of visas for seasonal workers, broken down by nationality, validity period and economic sector.

2 — The statistics referred to in the above paragraph shall correspond to the calendar year, and shall be provided to the Commission within six months of the end of each calendar year, pursuant to Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007.

#### **Article 57**

##### **Temporary stay visa for research or highly qualified activities**

Temporary stay visas may be granted to third-country nationals intending to carry out research activities, teaching activities at a higher education establishment or highly qualified activities for less than one year, provided that:

a) They have been admitted to work at a research centre, recognised by the Ministry of Education and Science, namely through a promissory agreement or employment agreement, a proposal or agreement for the provision of services or a scientific research grant; or

b) They have a promissory agreement or employment agreement, written proposal or agreement for the provision of services to carry out teaching activities at a higher education establishment or a highly qualified activity in Portuguese territory.

#### **SUB-SECTION II**

##### **Residence visa**

#### **Article 58**

##### **Residence visa**

1 — The purpose of the residence visa is to allow its holder to enter Portuguese territory to request residence authorisation.

2 — Residence visas shall be valid for two entries into Portuguese territory, allowing their holder to remain there for four months.

3 — Notwithstanding applicable specific conditions, the intended purpose for establishing residence shall be considered when assessing residence visa requests.

4 — Notwithstanding shorter time periods provided for by this law, decisions on residence visa requests shall be made within 60 days.

## Article 59

### Residence visa for carrying out employed professional activities

1 — The issuance of a visa to obtain residence authorisation to carry out employed professional activities shall depend on the existence of employment opportunities not filled by Portuguese nationals, nationals from European Union Member States, from the European Economic Area, from a third country with which the European Community has signed an agreement for the free movement of people or third-country nationals legally residing in Portugal.

2 — For the purposes of the above paragraph, the Council of Ministers, with a prior opinion from the Standing Commission for Social Dialogue, shall approve an annual resolution determining an overall quota of employment opportunities presumed not filled by the workers referred to in the above paragraph, potentially excluding sectors or businesses without labour needs, if job market circumstances so justify.

3 — The overall quota referred to in the above paragraph shall include quotas for each of the autonomous regions, in accordance with their specific regional circumstances and needs.

4 — The Employment and Vocational Training Institute (Instituto do Emprego e da Formação Profissional, I. P.) and respective departments of each autonomous region shall maintain a constantly updated information system available to the public, via Internet, of the job opportunities referred to in (1), disclosing them on its own initiative or at the request of employers or immigrant associations recognised as representatives of immigrant communities by the High Commissariat for Immigration and Intercultural Dialogue (ACIDI, I. P.), pursuant to the law.

5 — Residence visas for carrying out employed professional activities may be issued, up to the overall quota established pursuant to (2), for job offers not filled by the workers referred to in (1), to third-country nationals who meet the conditions of article 52, and who:

- a) have an employment agreement or promissory employment agreement; or
- b) have recognised skills, expertise or qualifications suited to one of the activities referred to in the above paragraph, and have an individualised expression of interest from an employer.

6 — For the purposes of (b) of the above paragraph, applications from third-country nationals shall be remitted, through the Employment and Vocational Training Institute (Instituto do Emprego e da Formação Profissional, I. P.) or the respective departments in the autonomous regions, to employers with job offers pursuant to (4).

7 — On an exceptional basis, and regardless of the overall quota referred to in (2), visas to obtain residence authorisation for carrying out employed professional activities may be issued to third-country nationals meeting the requirements of article 52 and in possession of an employment agreement, provided that they prove the job offer has not been filled by the workers referred to in (1).

8 — The Employment and Vocational Training Institute (Instituto do Emprego e da Formação Profissional, I. P.) shall prepare a biannual report on the completion of the overall quota.

9 — For the purposes of the above paragraph, the issuance of visas pursuant to this provision shall be notified to the Employment and Vocational Training Institute (Instituto do Emprego e da Formação Profissional, I. P.) within a maximum of five days.

## Article 60

### Residence visa for carrying out independent professional activities or for immigrant entrepreneurs

1 — Visas to obtain residence authorisation to carry out independent professional activities may be issued to third-country nationals who:

- a) have an agreement or written proposal for a service provision agreement within the scope of liberal professions; and
- b) are qualified to carry out independent activities, whenever applicable.

2 — Residence visas shall be issued to immigrant entrepreneurs wishing to invest in Portugal, provided that:

- a) they have carried out investment transactions;
- b) they can prove their possession of available financial means in Portugal, including those from financing obtained from a Portuguese financial institution, and can demonstrate, by any means, their intent to carry out an investment transaction in Portuguese territory; or

c) they develop an entrepreneurial undertaking, including the creation of an innovation-based company, belonging to an incubator certified pursuant to terms defined by order of the government members in charge of internal administration and the economy.

## **Article 61**

### **Residence visa for teaching, highly qualified or cultural activities**

1 — Notwithstanding the applicable "EU Blue Card" scheme provided for in article 121-A and following, residence visas shall be granted to third-country nationals to carry out teaching activities at an academic or vocational training institution, or highly qualified or cultural activities, provided that they meet the conditions of article 52 and possess:

- a) an employment agreement, promissory employment agreement or service provision agreement; or
- b) an invitation letter from an academic or vocational training institution; or
- c) a liability form from a company certified pursuant to the terms defined by order of the government members in charge of internal administration and the economy; or
- d) an invitation letter from a company or entity which carries out, in Portuguese territory, a cultural activity recognised by the government member in charge of culture as being of interest to the country, or defined as such by law; or
- e) an invitation letter issued by a research centre.

2 — *(Revoked.)*

3 — Decisions on requests for the visas referred to in this article shall be taken within 30 days.

4 — The provisions of article 59 shall not apply to the third-country nationals subject to this article.

## **Article 61-A**

### **Residence visa for highly qualified activities carried out by employed workers**

1 — Residence visas for carrying out highly qualified activities by employed workers shall be granted to third-country nationals who:

- a) possess an employment agreement or promissory employment agreement valid for at least one year, with annual remuneration of at least 1.5 times the nation's average gross annual salary or three times the social support index (Indexante de Apoios Sociais/IAS);
- b) in the case of regulated professions, hold higher professional qualifications, duly proven pursuant to the provisions of Law no. 9/2009 of 04 March, or a specific law concerning the recognition of professional qualifications, as needed to access and practice the profession specified in the employment agreement or promissory employment agreement;
- c) in the case of unregulated professions, hold higher professional qualifications suited to the activity or sector specified in the employment agreement or promissory employment agreement.

2 — For the purposes of employment in professions belonging to major groups 1 and 2 of the International Standard Classification of Occupations (ISCO), indicated by Resolution of the Council of Ministers, with a prior opinion from the Standing Commission for Social Dialogue, as professions in particular need of third-country nationals, the salary threshold referred to in (1)(a) shall correspond to 1.2 times the nation's average gross salary, or twice the social support index.

3 — In the event of doubts with regard to the activity's applicability, and to verify the suitability of the third-country national's professional experience, the ministries in charge of employment, education and science shall issue an opinion prior to granting the visa.

## **Article 62**

### **Residence visa for research, study, secondary education student exchange, traineeships and volunteer work**

1 — Researchers, higher education students, secondary education students, trainees and volunteers shall be issued residence visas to obtain residence authorisation to carry out scientific research activities, attend a higher education academic programme, be part of a secondary education pupil exchange programme or a traineeship in Portuguese territory, provided that:

- a) they meet the general conditions of article 52;
- b) they have health insurance or the equivalent covering the duration of their stay.
- c) they meet the special conditions laid out in this article.

2 — Researchers requiring a visa for research in Portuguese territory must have an employment or host agreement with the research centre or higher education institution, or have been admitted to a research centre or higher education institution, and have a research scholarship or grant, or submit a liability form signed by the research centre or higher education institution to guarantee their admission and cover the expenses of their stay.

3 — Researchers admitted to research centres or higher education institutions officially recognised pursuant to article 91-B shall be exempt from submitting the support documentation for the provisions of (1)(b) and (2), and the provisions of article 52 (1)(d) and (f) and (3).

4 — Higher education students meeting the conditions in article 3 (m) must prove that they meet the conditions for admission or have been accepted to a higher education institution to attend an academic programme, and have sufficient resources to do so.

5 — Higher education students admitted to a higher education institution approved pursuant to article 91 (5) and following shall be exempt from submitting the support documentation for the provisions of (1)(b) and the above paragraph, and the provisions of article 52 (1)(d) and (f).

6 — Secondary education students meeting the conditions of article 3 n) must prove that:

a) they are above the minimum age and below the maximum age established for this purpose by order of the government members in charge of internal administration and education;

b) they have been accepted at an educational establishment, with the option of being admitted under a pupil exchange programme, through an organisation recognised by the government member in charge of education, for this purpose or within the scope of an educational project;

c) during the time of their stay, they are hosted by a family or have accommodation at adequate facilities, within the educational establishment or otherwise, provided that they meet the conditions of the pupil exchange programme or educational project.

7 — Trainees meeting the conditions of article 3 (l) must prove they have been accepted as a trainee by a certified host entity, and submit an agreement for theoretical and practical training, in the field of the higher education diploma in their possession or study cycle which they attend, which must contain:

a) A description of the training programme, namely its academic goals or learning components;

b) Training duration and schedule;

c) Location and supervision of the traineeship;

d) Description of the legal relationship between the trainee and host entity;

e) Statement that the traineeship does not substitute a job position, and that the host entity is responsible for reimbursing the State for the expenses of the stay and removal if the trainee stays illegally in Portuguese territory.

8 — In addition to the general conditions referred to in article 52, volunteers requesting visas to obtain residence authorisation to participate in a volunteer programme pursuant to (3)(r) must prove that:

a) They have an agreement with the host entity in charge of the volunteer programme, including a description of the volunteer programme's content, duration, schedule, conditions of supervision and guaranteed coverage of food and accommodation expenses, including a minimum sum for subsistence allowances or pocket money;

b) The host entity has civil liability insurance, except for volunteers participating in the European Voluntary Service.

9 — For the purposes of issuing a residence visa pursuant to this article, the minimum means of subsistence in the order referred to in article 52 (1) may be waived in view of the circumstances of the specific case.

10 — The procedure for granting residence visas to the third-country nationals referred to in (1) participating in Community programmes promoting mobility to the European Union or Community of Portuguese Language Countries, or in their interest, shall be simplified, pursuant to terms to be defined in an order of the government members in charge of foreign affairs and internal administration.

11 — Residence visas shall also be granted to third-country nationals admitted to attend qualification level 4

or 5 courses in the National Qualifications Framework (NQF), or training courses taught by educational or vocational training establishments, provided that they meet the requirements in (1)(a) and (b).

### **Article 63**

#### **Higher education student mobility**

1 — The mobility of higher education students residing in the territory of a European Union Member State wishing to attend part of an academic programme in Portugal, or supplement it with an academic programme taught by a higher education institution in Portuguese territory, shall be governed by the provisions of article 91-A, with no requirement for a residence visa for the purpose of entry and stay.

2 — (Revoked.)

### **Article 64**

#### **Residence visa for the purpose of family reunification**

Applicants shall be provided a residence visa allowing entry into Portuguese territory, within the scope of filing a residence visa request for the purpose of family reunification, whenever the SEF gives a favourable opinion pursuant to this law.

### **Article 65**

#### **Communication and notification**

1 — For the purposes of the above article, the SEF shall notify the Directorate-General of Consular Affairs and Portuguese Communities of decisions to approve requests for family reunification, with notice to the interested party.

2 — The residence visa shall be issued following the notice referred to in the above paragraph and pursuant to its terms, with this notice being valid as a mandatory SEF opinion, pursuant to article 53.

## **SECTION II**

### **Visas granted at border posts**

### **Article 66**

#### **Types of visas**

The following types of visas may be granted at border posts:

- a) (Revoked.)*
- b) Short-stay visa;*
- c) Special visa.*

### **Article 67**

#### **Short-stay visa**

1 — At border posts subject to control, short-stay visas may be granted on an exceptional basis to foreign citizens who, for unforeseen reasons, are unable to request a visa from the competent authority, provided that the interested party:

- a) is the bearer of a valid travel document allowing passage across the border;*
- b) meets the general conditions of article 11;*
- c) is not included in the Schengen Information System or national list of non-admissible persons;*
- d) does not constitute a threat to public order, national security or the international relations of a European Union Member State;*
- e) is guaranteed travel to and admission from the country of origin or travel to the destination country.*

2 — Short-stay visas issued pursuant to the above paragraph may only be granted for one entry, with a maximum validity of 15 days.

3 — The visas referred to in this article may be valid for one or more states who are parties to the

Implementing Convention.

## **Article 68**

### **Special visa**

1 — For humanitarian reasons or reasons of national interest, recognised by order of the government member in charge of internal administration, special visas may be granted for entry and temporary stay in the country to foreign citizens not meeting the legal requirements for this purpose.

2 — The visa referred to in the above paragraph shall only be valid for Portuguese territory.

3 — The power referred to in (1) may be delegated to the SEF National Director, with the power to sub-delegate.

4 — If a person admitted under the conditions referred to in the above paragraphs is included in the Schengen Information System, the admission shall be notified to the competent authorities of the other states which are parties to the Implementing Convention.

5 — The Ministry of Foreign Affairs shall be consulted, whenever possible, in the case of foreign citizens who are holders of a diplomatic, service, official or special passport or a travel document issued by an international organisation.

## **Article 69**

### **Authority to issue visas at border posts**

The SEF National Director shall be responsible for issuing the visas referred to in this section, with the power to delegate.

## **SECTION III**

### **Cancellation of visas**

## **Article 70**

### **Cancellation of visas**

1 — Visas may be cancelled under the following circumstances:

- a) When the holder fails to meet the conditions for its issuance;
- b) When the visa has been issued based on the provision of false statements, the use of fraudulent means or the citing of reasons differing from those allowing its holder to enter the country;
- c) When its holder is subject to a removal measure from Portuguese territory;
- d) When its holder constitutes a hazard or serious threat to public order, national security or defence due to his/her involvement in activities related to terrorism, pursuant to the law.

2 — Residence and temporary stay visas may also be cancelled when their holder, without justifiable grounds, is absent from the country for 60 days during the visa's validity.

3 — The provisions of the above paragraphs shall also apply during the validity of extended stays granted pursuant to this law.

4 — Residence visas shall also be cancelled if the residence authorisation request is denied.

5 — After the visa holder's entry into Portuguese territory, the government member in charge of internal administration shall be responsible for the visa cancellations referred to in the above paragraphs, with the option to delegate this power to the SEF National Director, with the power to sub-delegate.

6 — The cancellation of visas pursuant to the above paragraph shall be notified electronically to the Directorate-General of Consular Affairs and Portuguese Communities.

7 — Diplomatic missions and consular posts shall be responsible for cancelling visas prior to the holder's arrival in Portuguese territory, with communication electronically to the SEF.

## **CHAPTER V**

### **Extension of stay**

#### **Article 71**

##### **Extension of stay**

1 — Foreign citizens admitted to Portuguese territory pursuant to this law wishing to remain in the country beyond the initially authorised time period may be allowed an extension of stay.

2 — Extensions of stay granted to holders of transit and short-stay visas may be valid for one or more states which are parties to the Implementing Convention.

3 — Except on duly justified grounds, the extension referred to in (1) may be granted provided that the conditions allowing the foreign citizen's admission are upheld.

4 — Temporary stay visas for carrying out employed professional activities may only be extended if the applicant has an employment agreement pursuant to the law, and is covered by the National Health Service or has health insurance.

5 — Temporary stay visas for research or highly qualified activities may only be extended if the applicant has an employment agreement, service provision agreement or scientific research grant, and is covered by the National Health Service or has health insurance.

6 — Except on duly justified grounds, extensions of stay for holders of residence visas for carrying out employed professional activities, independent activities and research or highly qualified activities shall depend on upholding the conditions allowing the foreign citizen's initial admission.

#### **Article 71-A**

##### **Extension of stay for seasonal work**

1 — Notwithstanding the relevant provisions of the Community Code on Visas, extensions of stay of up to nine months may be given to third-country nationals admitted in Portuguese territory pursuant to article 51-A wishing to remain in Portugal beyond the initially authorised time period.

2 — Extensions shall be granted provided that the conditions allowing the seasonal worker's admission are upheld, regardless of any change of employer, with a decision handed down within 30 days.

3 — Decisions on extensions of stay shall take the case's specific circumstances into account, namely the seasonal worker's interests, in accordance with the proportionality rule.

4 — While the extension request remains pending, the applicant may remain in Portuguese territory to carry out his/her seasonal work, benefiting from all associated rights until the final decision, provided that they are exercised in a timely manner.

#### **Article 72**

##### **Limits to extension of stay**

1 — Extensions of stay may be granted for:

- a) up to five days, for holders of transit visas;
- b) up to 60 days, for holders of special visas;
- c) up to 90 days, for holders of residence visas;
- d) up to 90 days, extendable for an additional time period, for holders of short-stay visas or those admitted to the country with no visa requirement;
- e) up one year, for holders of temporary stay visas.

2 — In addition to the limits provided for in the above paragraph, extensions of stay may be granted while residence authorisation requests remain pending, and on duly justified grounds.

3 — Under exceptional circumstances occurring after legal entry in Portuguese territory, extensions of stay may be granted to the family members of temporary stay visa holders; in such cases, the extension of stay's validity and duration may not exceed those of the visa issued to the family member.

4 — Extensions of stay granted to citizens admitted to the country with no visa requirement and to the

holders of short-stay visas shall be limited to Portugal whenever the stay exceeds 90 days per six-month period, calculated from the date of initial passage from foreign borders.

5 — Notwithstanding the penalties provided for by this law, and except under exceptional circumstances, extension of stay requests will not be approved when submitted 30 days after the end of the authorised period of stay.

6 — Extensions of stay shall be granted in the form of an adhesive vignette using a template to be approved by order of the government member in charge of internal administration.

### **Article 73**

#### **Responsibility**

The SEF National Director shall be responsible for deciding on extension of stay requests, with the power to delegate.

## **CHAPTER VI**

### **Residence in Portuguese territory**

#### **SECTION I**

#### **General provisions**

### **Article 74**

#### **Types of residence authorisations**

1 — Residence authorisation falls under two types:

- a) Temporary residence authorisation;
- b) Permanent residence authorisation.

2 — Foreign citizens authorised to reside in Portuguese territory shall be issued a residence permit.

### **Article 75**

#### **Temporary residence authorisation**

1 — Notwithstanding applicable special legal provisions, temporary residence authorisation shall be valid for one year from the residence permit's issue date, renewable for consecutive two-year periods.

2 — The residence permit, however, must be renewed whenever changes occur to its identification information.

### **Article 76**

#### **Permanent residence authorisation**

1 — Permanent residence authorisation has no limit to its validity.

2 — The residence permit, however, must be renewed every five years, or whenever changes occur to its identification information.

3 — In the authorisation renewal request, holders shall be exempt from delivering any documents already found in the electronic workflow used by the SEF.

### **Article 77**

#### **General terms for granting temporary residence authorisation**

1 — Notwithstanding applicable special conditions, applicants must meet all of the following requirements to receive residence authorisation:

- a) Possession of a valid residence visa, issued for one of the purposes provided for in this law for the granting of residence authorisation;
- b) Non-existence of any facts which, if known by the competent authorities, would preclude the granting of a visa;

- c) Presence in Portuguese territory;
- d) Possession of means of subsistence, as defined in the order referred to in article 52 (1)(d);
- e) Accommodation;
- f) Enrolment in social security, whenever applicable;
- g) Absence of any conviction for a crime which in Portugal would be punishable with the deprivation of liberty for more than one year;
- h) Not being subject to prohibition from entering Portuguese territory, following a removal measure from the country;
- i) Absence of inclusion in the Schengen Information System;
- j) Absence of inclusion in the Integrated SEF Information System for the purpose of non-admission, pursuant to article 33.

2 — Notwithstanding applicable special provisions, residence authorisation may be denied for reasons involving public order, public safety or public health.

3 — The denial of residence authorisation based on reasons of public health may only be based on illnesses referred to in the applicable instruments of the World Health Organisation, or on other contagious parasitic or infectious diseases subject to protective measures in Portuguese territory.

4 — Residence authorisation applicants may be subject to a mandatory medical examination to verify that they do not suffer from any of the illnesses referred to in the above paragraph, together with the appropriate medical measures.

5 — The medical examinations and measures referred to in the above paragraph are not systematic in nature.

6 — Applicants subject to an entry ban, issued by a state which is a party to or associated with the Implementing Convention of the Schengen Agreement, must be consulted in advance to take their interests into account, pursuant to article 25 of this Convention.

## **Article 78**

### **Renewal of temporary residence authorisation**

1 — Interested parties must request the renewal of temporary residence authorisation at least 30 days prior to its expiry.

2 — Residence authorisation shall only be renewed for third-country nationals who:

- a) Have the means of subsistence as defined in the order referred to in article 52 (1)(d);
- b) Have accommodation;
- c) Have met their tax and social security obligations;
- d) Have not been subject to any conviction or convictions which, individually or cumulatively, surpass one year of prison, even when the sentence's enforcement has been suspended in the case of felonious crimes referred to in or related to this law, or crimes of terrorism, violent crimes or particularly violent or highly organised crimes.

3 — The renewal of residence authorisation may be denied for reasons of public order or public safety.

4 — The emergence of illness after the issuance of the first residence permit shall not constitute sufficient grounds for denying renewal of the residence authorisation.

5 — Residence authorisation shall not be renewed for any foreign citizen declared contumacious, provided the citizen is unable to prove that this status has expired.

6 — In the event of a request's denial, a copy of the decision with the justifying grounds must be sent to the High Commissariat for Immigration and Intercultural Dialogue (ACIDI, I. P.) and to the Advisory Board.

7 — A receipt for the residence authorisation renewal request shall have the same effectiveness as a residence permit for a period of 60 days, subject to renewal.

8 — The SEF may enter into agreements with local municipalities, and with agencies and departments of the autonomous regions, to facilitate and simplify the procedures for receiving and routing residence authorisation renewal requests and their respective permits.

## **Article 79**

### **Renewal of residence authorisation in special cases**

1 — Residence authorisation for foreign citizens serving a prison sentence may only be renewed if his/her deportation has not been decreed.

2 — A residence authorisation renewal request which has expired shall not be subject to administrative proceedings if submitted within 30 days of the interested party's release.

## **Article 80**

### **Granting of permanent residence authorisation**

1 — Notwithstanding the provisions of this law regarding the long-term resident status of third-country nationals, foreign citizens meeting all of the following conditions shall enjoy permanent residence authorisation:

- a) Possession of a temporary residence authorisation for at least five years;
- b) Absence, in the past five years of residence in Portuguese territory, of any conviction or convictions which, individually or cumulatively, surpass one year of prison, even when the sentence's enforcement has been suspended in the case of felonious crimes referred to in or related to this law, or crimes of terrorism, violent crimes or particularly violent or highly organised crimes;
- c) Have the means of subsistence as defined in the order referred to in article 52 (1)(d);
- d) Have accommodation;
- e) Provide proof of basic knowledge of Portuguese.

2 — The period of residence prior to this law's entry and force shall apply for the purposes of the above paragraph.

## **Article 81**

### **Residence authorisation request**

1 — Residence authorisations may be requested by the interested party or by his/her legal representative, and must be submitted to the SEF.

2 — The request may be extended to minors in the applicant's custody.

3 — While a residence authorisation request remains pending, for reasons not attributable to the applicant, the residence visa holder shall not be prohibited from practising a professional activity pursuant to the law.

4 — Residence authorisation applicants may simultaneously request family reunification.

## **Article 82**

### **Decision and notification**

1 — Decisions on requests for residence authorisation shall be made within 90 days.

2 — Decisions on requests to renew residence authorisation shall be made within 60 days.

3 — If no decision is made within the time period referred to in the above paragraph, for reasons not attributable to the applicant, the request shall be considered approved, with immediate issuance of the residence permit.

4 — Decisions of denial shall be notified to the interested party, specifying the justifying grounds, the right to judicial review and the respective term, with a copy sent to the Advisory Board.

## **Article 83**

### **Rights of residence authorisation holders**

1 — Notwithstanding applicable special provisions and other rights provided for by law or international conventions to which Portugal is a party, holders of residence authorisation shall be entitled, without need for special authorisation with regard to their foreigner status, to the following:

- a) Education and learning;
- b) The practising of employed professional activity;
- b) The practising of independent professional activity;
- d) Vocational guidance, training, development and retraining;
- e) Access to health;
- f) Access to law and the courts.

2 — Foreign citizens shall benefit from provisions ensuring equal treatment, namely with regard to social security, tax benefits, trade union memberships, recognition of diplomas, certificates and other professional titles and access to public goods and services, together with applicable provisions ensuring special rights.

#### **Article 84**

##### **Identification document**

The residence permit shall replace the identification document for all legal purposes, notwithstanding the scheme provided for in the Treaty of Friendship, Cooperation and Consultation between the Portuguese Republic and the Federative Republic of Brazil, signed in Porto Seguro on 22 April 2000.

#### **Article 85**

##### **Residence authorisation cancellation**

1 — Residence authorisation shall be cancelled whenever:

- a) Its holder has been subject to a forced removal measure or judicial deportation from Portuguese territory; or
- b) The residence authorisation has been granted based on false or misleading statements, counterfeit or falsified documents, or through the use of fraudulent means; or
- c) There are reasons to believe that its holder has committed serious criminal acts, or there is actual evidence of the holder's intent to commit such acts, namely in the European Union territory; or
- d) For reasons of public order or security.

2 — Notwithstanding applicable special provisions, residence authorisation may also be cancelled if the interested party, without justifiable grounds, is absent from the country:

- a) six consecutive months or eight non-consecutive months, during the entire period of the authorisation's validity, in the case of temporary residence authorisations;
- b) 24 consecutive months, or 30 non-consecutive months in a three-year period, in the case of permanent residence authorisations.

3 — Absences preceding the limits in the above paragraph must be notified by means of a request to the SEF prior to the resident's exit from Portuguese territory or, in exceptional cases, after his/her exit.

4 — Residence authorisations shall not be cancelled for citizens who are absent beyond the limits referred to in (2) when they can prove that they were carrying out a professional or corporate activity, or an activity of a cultural or social nature, during their absence from Portuguese territory.

5 — Residence authorisation cancellations shall be notified to the interested party and electronically to the High Commissariat for Immigration and Intercultural Dialogue (ACIDI, I. P.) and Advisory Board, specifying the grounds for the decision, with corresponding seizure of the corresponding permit.

6 — The government member in charge of internal administration shall be responsible for cancellation, with the ability to delegate to the SEF National Director.

7 — The cancellation decision shall be subject to judicial review, with merely non-staying effects, before the administrative courts.

#### **Article 86**

##### **Registry of residents**

Residents shall notify the SEF any changes to marital status or domicile within 60 days of their occurrence.

#### **Article 87**

##### **Foreigners exempt from residence authorisation**

1 — Residence authorisation shall not be required for diplomatic and consular agents accredited in Portugal, administrative/domestic or comparable staff serving at diplomatic missions or consular posts of their respective states, workers of international organisations based in Portugal, or any of their family members.

2 — The persons referred to in the above paragraph shall be given an identification document issued by the Ministry of Foreign Affairs, after consultation with the SEF.

### **SECTION II**

#### **Residence authorisation**

##### **SUB-SECTION I**

#### **Residence authorisation for carrying out professional activities**

#### **Article 88**

##### **Residence authorisation for carrying out professional employed activities**

1 — In addition to the general requirements laid down in Article 77, a residence permit shall be granted only for the purpose of pursuing a professional activity subordinate to nationals of third States who have a contract of employment concluded in accordance with the law and registered in the social security system.

2 — By an expression of interest submitted via the SEF website or directly at one of its regional offices, the requirement referred to in article 77 (1)(a) shall be waived, provided that the foreign citizen meets, in addition to the general conditions of that provision, the following conditions:

a) Possession of an employment agreement or promissory employment agreement, or an employment relationship proven by a trade union, by a representative of migrant communities with a seat on the Migration Board or by the Labour Conditions Authority;

b) Legal entry into Portuguese territory;

c) Enrolment in social security, except when the document submitted pursuant to (a) is a promissory employment agreement.

3 — *(Revoked.)*

4 — The granting of residence authorisation pursuant to the above paragraphs shall be notified electronically by SEF to the Labour Conditions Authority or, in the autonomous regions, to the regional secretary, so that these entities may oversee the employer's compliance with all legal obligations to the residence authorisation holder, and to the tax and social security authorities.

5 — Holders of a residence authorisation to carry out employed professional activities may also practice independent professional activity, through replacement of the residence permit, subject, with the necessary adaptations, to the provisions of the following article.

#### **Article 89**

##### **Residence authorisation for carrying out independent professional activities or for immigrant entrepreneurs**

1 — In addition to the general requirements of article 77, residence authorisation for carrying out independent professional activities shall only be granted to third-country nationals who meet the following requirements:

a) Incorporation of a company pursuant to the law, declaring the start of business with the tax authorities and social security as a natural person, or the signing of a service provision agreement to practice a liberal profession;

- b) A qualification to carry out independent professional activity, when applicable;
- c) Have the means of subsistence as defined in the order referred to in article 52 (1)(d);
- d) Submission of a statement from the respective professional association that they meet the requirements of enrolment, when required.

2 — By an expression of interest submitted via the SEF website or directly at one of its regional offices, the requirement referred to in article 77 (1)(a) shall be waived, provided that the foreign citizen has entered Portuguese territory legally.

3 — Holders of residence authorisation to carry out independent professional activity may also practice a professional employed activity, subject to the provisions of the above article, with the necessary adaptations, by replacement of the residence permit.

4 — Residence authorisation shall be granted to third-country nationals developing an entrepreneurial undertaking, including the creation of an innovation-based company, belonging to an incubator certified pursuant to terms defined by order of the government members in charge of internal administration and the economy, provided that they meet the general requirements of article 77, except for the provisions of article 77 (1)(a).

## **Article 90**

### **Residence authorisation for teaching, highly qualified or cultural activities**

1 — Residence authorisation shall be granted to third-country nationals to carry out teaching activities at a higher education institution, educational establishment or vocational training establishment, or highly qualified or cultural activities who, in addition to the conditions of article 77, meet the following conditions:

- a) Possession of an employment agreement or service provision agreement compatible with the teaching or highly qualified activity;
- b) Invitation letter from an academic or vocational training institution; or
- c) Submission of a liability form from a company certified pursuant to terms defined by order of the government members in charge of internal administration and the economy;
- d) Involvement in a cultural activity in Portuguese territory within the scope of a project recognised, by the government member in charge of culture, as being of interest to the country.

2 — Applicants who have entered and remained legally in Portuguese territory shall be exempt from a residence visa.

3 — *(Revoked.)*

## **SUB-SECTION II**

### **Residence authorisation for investment activities**

#### **Article 90-A**

### **Residence authorisation for investment activities**

1 — Residence authorisation shall be granted, for the purposes of carrying out investment activities, to third-country nationals who meet all of the following conditions:

- a) Fulfilment of the general requirements of article 77, with the exception of (1)(a);
- b) Possession of valid Schengen visas;
- c) Legal registry of their stay in Portugal within 90 days of their first entry into Portuguese territory;
- d) Fulfilment of the requirements of article 3(d).

2 — Residence authorisation shall be renewed for periods of two years, pursuant to this law, for applicants with proof of upholding any of the requirements in article 3(d).

3 — *(Revoked.)*

## **SUB-SECTION III**

### **Residence authorisation for research, study, professional traineeship or volunteer work**

## Article 91

### Residence authorisation for higher education students

1 — Higher education students with a residence visa issued pursuant to article 62, and meeting the general conditions of article 77, shall be granted residence authorisation, provided that they provide proof of the following:

- a) Enrolment in a higher education institution;
- b) Payment of tuition, if applicable;
- c) Means of subsistence as defined in the order referred to in article 52 (1)(d);
- d) Coverage by the National Health Service or health insurance.

2 — Residence authorisation granted pursuant to this article shall be valid for one year, subject to renewal for equal time periods, if the holder continues to meet the initial conditions for its granting.

3 — Residence authorisation shall be granted to higher education students subject to European Union or multilateral programmes with mobility measures, or an agreement between two or more higher education institutions, for two years, or for the duration of the academic programme (when shorter), or for one year if the conditions of article 62 (4) are not met as of the date of its granting.

4 — Residence authorisation may be granted to higher education students without a residence visa issued pursuant to article 62, provided that they have entered Portuguese territory legally and meet the other conditions of this article.

5 — Higher education students admitted to a higher education institution approved, for the purposes of this law, pursuant to the terms of the order of the government members in charge of internal administration and higher education, shall be exempt from submitting documents proving payment of tuition and means of subsistence.

6 — For the purposes of the above paragraph, the higher education institute's approval shall be decided via submission of the request, preceded by a favourable opinion from the SEF, with a validity of five years.

7 — Approval shall be cancelled, or not renewed, whenever the higher education institution ceases its activities in Portuguese territory, has obtained approval in a fraudulent manner or admits higher education students in a fraudulent or negligent manner.

8 — The government member in charge of science and higher education shall keep, at the SEF, an updated list of higher education institutions approved for the purposes of this law.

## Article 91-A

### Higher education student mobility

1 — Higher education students who are holders of residence authorisation from a European Union Member State subject to a European Union or multilateral programme with mobility measures, or to an agreement between two or more higher education institutions, shall be authorised to enter and remain in Portuguese territory to complete part of their studies, including the undertaking of a professional activity pursuant to article 97, for a maximum of 360 days, provided that they notify the SEF at least 30 days prior to starting the mobility period.

2 — The notice referred to in the above paragraph must be accompanied by proof of status, in accordance with the following conditions:

- a) Possession of a valid passport and residence authorisation issued by another European Union Member State, valid for the entire period referred to in (1);
- b) Possession of health insurance, together with sufficient means of subsistence not obtained through the social security system's Social Citizenship Protection System;
- c) Payment of tuition, if applicable;

3 — The SEF may deny entry or stay when the interested party constitutes a threat to public order, public safety or public health.

4 — The entry and stay of third-country nationals not subject to the programmes or agreements referred to in (1) shall comply with the provisions of articles 52, 62 and 91.

5 — The SEF shall deny mobility under the following circumstances:

- a) When the conditions referred to in (1) have not been met;
- b) When the conditions referred to in (2) have not been met;
- c) When the conditions referred to in article 95 have been met;
- d) When the maximum period of 360 days referred to in (1) has been exceeded.

6 — The denial referred to in the above paragraph shall be conveyed in writing to the interested party, and to the authorities of the Member State which granted residence authorisation, within 30 days of receiving the notice referred to in (1), stating that the interested party is not authorised to remain in Portuguese territory for the purposes of higher education studies.

7 — If the SEF does not deny mobility pursuant to the above paragraphs, it shall issue a statement attesting that the higher education student is authorised to remain in Portuguese territory and enjoy the rights provided for by law.

8 — Students with residence authorisation issued pursuant to article 91 may enter and remain in Portuguese territory, if no longer meeting the mobility conditions in a European Union Member State, at its request, and when their residence authorisation in Portuguese territory has expired or been cancelled during the mobility period in this Member State.

#### **Article 91-B**

##### **Residence authorisation for researchers**

1 — Researchers with a residence visa granted pursuant to article 62 shall be granted residence authorisation provided that, in addition to the conditions of article 77, they are admitted to work at an officially recognised research centre through an employment agreement, service provision agreement, scientific research grant or host agreement.

3 — The recognition of research centres pursuant to the above paragraph shall be granted upon request, preceded by a favourable opinion from the SEF, with a validity of five years.

4 — Recognition shall be withdrawn, or not renewed, whenever the research centre ceases its activities in Portuguese territory, has obtained approval in a fraudulent manner or admits researchers or higher education students in a fraudulent or negligent manner.

5 — The government member in charge of science and higher education shall keep, at the SEF, an updated list of research centres and institutions approved for the purposes of this law.

6 — Residence authorisation granted to researchers shall be valid for one year, renewable pursuant to article 78, provided that the initial conditions for its granting are upheld.

7 — Residence authorisation granted to researchers subject to European Union or multilateral programmes including mobility measures shall be for two years, or equivalent to the duration of the host agreement (if shorter), except for researchers failing to meet the conditions of article 62 on the date of granting, in which case its duration shall be one year.

8 — The host agreement shall expire if the researcher is not admitted in Portuguese territory, or if the legal relationship between the centre/institution and the researcher is terminated.

9 — Researchers who have legally entered Portuguese territory shall be exempt from the residence visa issued pursuant to article 62.

10 — Researchers with residence authorisation issued pursuant to this article shall be entitled to family reunification pursuant to sub-section IV.

#### **Article 91-C**

##### **Researcher mobility**

1 — Third-country nationals with a "researcher" or "researcher mobility" residence permit granted by a European Union Member State shall be authorised to enter and remain in Portuguese territory to conduct part of their research at a recognised host entity in Portuguese territory, and to teach, for a maximum of 180 days per 360-day period in each Member State, with their family members entitled to accompany them, based on the residence authorisation granted by this Member State, when in possession of a valid passport, with no other required formalities, and when not included in the Schengen Information System for the purposes of denial of entry and stay.

2 — Notwithstanding the provisions of the above paragraph, third-country nationals with "researcher" or

"researcher mobility" residence permit granted by a European Union Member State who wish to remain in Portuguese territory to conduct research at a recognised host entity in Portuguese territory, including teaching activities, for more than 180 days, must submit a request for residence authorisation for long-term mobility to the SEF pursuant to the provisions of this article.

3 — The request referred to in the above paragraph and, when applicable, the residence authorisation request for the purposes of family reunification must be submitted within 30 days following entry into Portuguese territory or, if the researcher benefits from the provisions of (1), 30 days before the end of the 180-day time period provided for therein, accompanied by documentation proving possession of valid residence authorisation issued by another Member State and fulfilment of the conditions provided for in articles 77 and 91-B.

4 — For the purposes of submitting the request and while proceedings are pending, the authorisation's applicant shall be authorised to:

- a) remain in Portuguese territory, with exemption from the visa obligation;
- b) conduct part of his/her research until a final decision is made on the long-term mobility request, provided that the 180-day limit for short-term mobility or the expiry date of the residence permit issued by another Member State is not exceeded;

5 — In the case of renewal, the residence authorisation for long-term mobility shall be effective even if the residence permit issued by another Member State has expired.

6 — Decisions handed down on requests submitted pursuant to (3) shall be notified to the applicant, in writing, within 90 days of their submission date, and to the authorities of the other Member State which issued the residence authorisation, preferably by electronic means.

7 — Renewals of residence authorisations for long-term mobility shall comply with the provisions of article 78 and this sub-section.

8 — Requests to grant or renew long-term mobility authorisation may be denied:

- a) if the provisions of article 91-A (3) are not fulfilled, or if the provisions of article 95 apply;
- b) if the holder is considered a threat to public order, public safety or public health, or if the residence permit issued by the other Member State has expired or been cancelled while the request is being analysed;

9 — Decisions to cancel or not renew residence authorisations for long-term mobility shall be subject to the provisions of article 85 (1) and article 95 (2).

10 — Decisions to deny the granting or renewal of, or to cancel, residence authorisations for long-term mobility for researchers shall be subject to the provisions of article 96 (4) and (6).

11 — Researchers whose residence authorisation for long-term mobility requests are approved pursuant to this article shall be issued a residence permit using the uniform format provided for in Council Regulation (EC) No 1030/2002 of 13 June 2002, with "researcher mobility" written in the item "type of permit".

12 — Family members of researchers whose long-term mobility requests have been approved shall be granted residence authorisation for the purposes of family reunification, pursuant to this law, with the ability to submit both requests simultaneously under the same process.

13 — For the purposes of the provisions of (1), and whenever a residence authorisation has been issued by a Member State which does not apply the Schengen acquis in full, the SEF may require the researcher to provide a statement from the host entity specifying the mobility conditions, and may require family members to possess valid residence authorisations and proof that they are accompanying the researcher.

14 — Researchers with residence authorisation issue pursuant to article 91-B, and their family members with residence authorisation, may enter and remain in Portuguese territory, if no longer meeting the mobility conditions in a European Union Member State, at its request, and when their residence authorisation in Portuguese territory has expired or been cancelled during the mobility period in this Member State.

## **Article 92**

### **Residence authorisation for students**

1 — Secondary education students with a residence visa issued pursuant to article 62 who meet the general conditions of article 77 shall be granted residence authorisation, provided that they are enrolled in an educational establishment, comply with the provisions of article 62 (6) and are covered by the National Health Service or health insurance.

2 — The residence authorisation's validity may not exceed one year, subject to renewal for equal time periods, if the initial conditions for its granting continue to be met.

3 — Residence authorisation may be granted to secondary education students without a residence visa issued pursuant to article 62, provided that they have entered and remained in Portuguese territory legally and comply with the provisions of this article.

4 — The provisions of the above paragraphs shall apply to third-country nationals admitted to attend qualification level 4 or 5 courses in the National Qualifications Framework (NQF), or training courses taught by educational or vocational training establishments, provided that they meet the requirements in article 62 (1)(a) and (b).

### **Article 93**

#### **Residence authorisation for trainees**

1 — Trainees with a residence visa issued pursuant to article 62, who meet the general conditions of article 77, shall be granted residence authorisation, provided that they are covered by the National Health Service or health insurance and comply with the provisions of article 62 (7).

2 — Residence authorisation granted to trainees shall be valid for six months, or for the duration of the traineeship programme (when longer), not subject to renewal.

3 — Residence authorisation may be granted to trainees without a residence visa issued pursuant to article 62, provided that they have entered and remained in Portuguese territory legally and comply with the provisions of this article.

### **Article 94**

#### **Residence authorisation for volunteers**

1 — Volunteers with a residence visa issued pursuant to article 62, who meet the general conditions of article 77, shall be granted residence authorisation, provided that they are covered by the National Health Service or health insurance and comply with the provisions of article 62 (8).

2 — Residence authorisation granted pursuant to the above paragraph shall be valid for one year, or for the duration of the volunteer programme, and is not subject to renewal.

3 — *(Revoked.)*

4 — *(Revoked.)*

5 — *(Revoked.)*

### **Article 95**

#### **Denial and cancellation**

1 — Notwithstanding the provisions of article 77, residence authorisation requests based on the provisions of this section shall be denied if:

a) the applicant does not meet the conditions of article 62, together with those of 90 to 94, based on the applicant's applicable category;

b) the documents submitted have been obtained fraudulently, or are falsified or forged;

c) the host entity has been established or operates for the main purpose of facilitating the entry of third-country nationals, or has been penalised, pursuant to national legislation, for undeclared work and/or illegal employment; or

d) the host entity has not complied with its legal obligations concerning social security, taxation, labour rights or working conditions, is being or has been wound up or declared insolvent pursuant to national legislation, or has no recorded economic activity.

2 — Notwithstanding the provisions of article 78, residence authorisation renewal requests based on the provisions of this section shall be denied, as applicable, if:

a) the applicant no longer meets the conditions of article 62, together with those of 90 to 94, based on the applicant's applicable category;

b) the applicant is residing in Portuguese territory for reasons other than those for which the residence was authorised;

c) the applicant is carrying out a professional activity in breach of the provisions of article 97;

d) the applicant is failing in his/her academic studies;

e) the documents submitted have been obtained fraudulently, or are falsified or forged;

f) any of the situations referred to in (c) and (d) of the above paragraph have occurred.

3 — Notwithstanding the provisions of article 85 (1), residence authorisation shall be cancelled under any of the circumstances in the above paragraph.

4 — Decisions to deny the granting or renewal of authorisation, or to cancel authorisation, shall take the case's specific circumstances into account, and shall follow the proportionality rule.

5 — Whenever a researcher or higher education student is residing in the territory of another Member State under the provisions of mobility, and the SEF is aware of this, it shall notify the authorities of this Member State of the residence authorisation's cancellation pursuant to (3).

## **Article 96**

### **Procedure, access to information and procedural guarantees**

1 — Requests to grant or renew residence authorisation pursuant to this sub-section must be submitted by the third-country national to the main office or regional office of the SEF in his/her area of residence.

2 — Requests must be accompanied by documents proving that the applicant meets the conditions of this sub-section.

3 — Applicants shall be provided information on legally required documentation for the procedures in this sub-section, the rules for entry and stay in Portuguese territory, associated rights, obligations and procedural guarantees, contentious or non-contentious, including, if applicable, with regard to family members, together with information on the resources needed to cover study or training costs and applicable fees.

4 — If the information or documentation submitted by the applicant are insufficient, the request's assessment shall be suspended, with a request for the necessary supplementary information or documents, which must be submitted within 10 days.

5 — Decisions on requests to grant or renew residence authorisations shall be made and notified to applicants within a time period not impeding the undertaking of the activity in question, and within a maximum of 90 days from the request's submission, or 60 days in the case of higher education students or researchers admitted to a host entity officially recognised pursuant to articles 91 and 91-B.

6 — Decisions to deny the granting or renewal of residence authorisations under this sub-section, together with decisions on their cancellation, shall be notified to applicants in writing, specifying the justifying grounds, the right to judicial review, the respective term and court of jurisdiction.

7 — Holders of a residence authorisation granted pursuant to this sub-section shall be issued a residence permit using the uniform residence permit format for third-country nationals in Council Regulation (EC) No 1030/2002 of 13 June 2002, with "researcher", "higher education student", "secondary education student", "trainee" or "volunteer", as applicable, written in the item "type of permit".

8 — When a researcher has been given residence authorisation under a specific European Union or multilateral programme which includes mobility measures, the residence permit must include the note "mobility-researcher".

## **Article 97**

### **Performance of professional activity**

1 — Secondary education students, trainees and volunteers with residence authorisations granted pursuant to this sub-section shall be prohibited from carrying out employed or independent remunerated professional activities.

2 — Higher education students with residence authorisation granted pursuant to this sub-section may carry out employed or independent professional activities, provided that they provide notification to the SEF, accompanied by the employment agreement signed pursuant to the law, or a declaration of start of business with the tax administration, together with proof of enrolment in social security.

3 — Researchers with residence authorisation granted pursuant to this sub-section may carry out teaching activities, pursuant to the law.

## **Article 97-A**

### **Equal treatment**

1 — Notwithstanding the provisions of article 97, holders of residence authorisation for the purposes of higher education study and research shall enjoy equal treatment in relation to Portuguese citizens pursuant to article 83 (2), including in labour-related matters, when applicable.

2 — Holders of residence authorisation for secondary education studies, traineeships or volunteer work shall enjoy equal treatment to that of Portuguese citizens, namely with regard to the following:

- a) Recognition of diplomas, certificates and other professional qualifications;
- b) Access to public goods and services under the same conditions as those of Portuguese citizens.

## **Article 97-B**

### **National Point of Contact**

For the purposes of cooperation provided for in article 37 of Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016, the SEF is hereby established as the Portuguese point of contact.

## **Article 97-C**

### **Statistics**

1 — The SEF shall be responsible for preparing statistics on the issuance, renewal and cancellation of residence authorisations pursuant to this section, broken down by nationality and validity period, including residence authorisations for the family members of researchers under the right of family reunification.

2 — The statistics referred to in the above paragraph shall correspond to the calendar year, and shall be provided to the Commission within six months of the end of each calendar year, pursuant to Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007.

## **SUB-SECTION IV**

### **Residence authorisation for the purpose of family reunification**

## **Article 98**

### **Right to family reunification**

1 — Citizens with valid residence authorisation shall be entitled to be reunified with family members outside of Portuguese territory, who have lived with them in another country, are dependent on them or cohabit with them, regardless of whether the family ties come before or after the resident's entry.

2 — Under the circumstances referred to in the above paragraph, the right to family reunification shall also be recognised with family members who have legally entered Portuguese territory and who depend on or cohabit with the holder of a valid residence authorisation.

3 — Refugees, recognised pursuant to the law governing asylum, shall be entitled to family reunification with family members in or outside of Portuguese territory, notwithstanding the legal provisions acknowledging the status of refugee for family members.

## **Article 99**

### **Family members**

1 — For the purposes of the above article, the following shall be considered members of a resident's family:

- a) Spouse;
- b) Minor or incapacitated children in the custody of one or both spouses;
- c) Minors adopted by applicants when not married, by the applicant or by the spouse, for the purpose of a decision by the competent authority from the country of origin, provided that this country's law affords

adopted children with identical rights and obligations as those of biological kinship, and the decision is recognised by Portugal;

*d)* Adult children in the custody of one or both spouses, who are unmarried and studying at an educational establishment in Portugal;

*e)* Adult children in the custody of one or both spouses, who are unmarried and studying, whenever the holder of the family reunification right has residence authorisation granted pursuant to article 90-A;

*f)* First degree next of kin ancestors of the resident or resident's spouse, when in their custody;

*g)* Minor siblings, when in the resident's custody, in accordance with a decision handed down by a competent authority from the country of origin, and provided that this decision is recognised by Portugal.

2 — The following are also considered family members of unaccompanied minor refugees for the purposes of family reunification:

*a)* First degree direct ancestors;

*b)* His/her legal guardian, or any other family member, if the refugee has no direct ancestors, or if they cannot be located.

3 — Only those referred to in (1)(a) to (c) shall be considered family members for the purposes of family reunification for holders of residence authorisation for study, non-remunerated professional traineeships or volunteer work.

4 — Family reunification with a minor or incapacitated child of one of the spouses shall require authorisation from the other parent, or a decision from a competent authority, in accordance with which the child has been entrusted to them.

5 — For the purposes of (2), unaccompanied minor shall mean a third-country national or stateless person under 18 years of age who:

*a)* has entered Portuguese territory unaccompanied, and is not in the custody of a responsible adult, whether by law or by custom; or

*b)* has been abandoned after entering Portuguese territory.

## **Article 100**

### **De facto union**

1 — Family reunification may be authorised with:

*a)* A partner who maintains, in or outside Portuguese territory, a de facto union with a resident foreign citizen, duly proven pursuant to the law;

*b)* Minor or incapacitated unmarried children, including the adopted children of a de facto partner, with the existence of legal guardianship.

2 — Family reunification pursuant to the above paragraph shall be subject, with the necessary adaptations, to provisions concerning the exercising of the family reunification right.

## **Article 101**

### **Conditions for exercising the family reunification right**

1 — To exercise the family reunification right, the applicant must have:

*a)* Accommodation;

*b)* Means of subsistence as defined in the order referred to in article 52 (1)(d).

2 — The provisions of the above paragraph shall not apply to the family reunification of refugees.

## **Article 102**

### **Competent authority**

The SEF National Director shall be responsible for deciding on family reunification requests, with the power

to delegate.

### **Article 103**

#### **Family reunification requests**

1 — The holder of the family reunification right shall be responsible for requesting entry and residence for his/her family members from the SEF whenever they are outside of Portuguese territory.

2 — Whenever family members are in Portuguese territory, family reunification may be requested by them or by the holder of the right.

3 — Requests must be accompanied by:

- a) Documents proving the existence of relevant family ties or the de facto union;
- b) Documents proving compliance with the conditions for exercising the family reunification right;
- c) Certified copies of the family members' or the de facto partner's travel documents.

4 — When a refugee is unable to submit official documents proving kinship, other types of proof of kinship must be taken into consideration.

### **Article 104**

#### **Assessment of request**

1 — The SEF may, if necessary, conduct interviews with the family reunification applicant and his/her family members, and carry out other research deemed necessary.

2 — In analysing the request for a person in a de facto union with a family reunification applicant, the SEF must take factors into account such as the existence of a common child, prior cohabitation, registry of the de facto union or any other reliable means of proof.

### **Article 105**

#### **Term**

1 — The SEF shall notify the applicant in writing of its decision as soon as possible, and always within a maximum of three months.

2 — Under exceptional circumstances associated with analysing complex requests, the term referred to in the above paragraph may be extended by three months, with notice of the extension to the applicant.

3 — The absence of a decision within six months shall correspond to tacit approval.

4 — The SEF shall certify tacit approval, at the interested party's request, with notification, within 48 hours, to the Directorate-General of Consular Affairs and Portuguese Communities, for the purposes of issuing a residence visa pursuant to article 64.

### **Article 106**

#### **Denial of request**

1 — Family reunification requests may be denied under the following circumstances:

- a) When the conditions for exercising the family reunification right have not been met;
- b) When a family member is prohibited from entering Portuguese territory;
- c) When a family member's presence in Portuguese territory constitutes a threat to public order, public safety or public health.

2 — When the decision to approve a family reunification request is impaired by reasons of public order or public safety, the seriousness or type of offence to public order or to public safety committed by the family member, or the hazards which may arise from the person's stay in Portuguese territory, should be taken into consideration.

3 — Prior to handing down a decision to deny a family reunification request, the nature and soundness of the person's family ties, his/her length of residency in Portugal and the existence of family, cultural or social ties with the country of origin shall be taken into consideration.

4 — The denial of a request submitted by a refugee cannot be based solely on the lack of documents proving kinship.

5 — A copy of request denials shall be sent, with the justifying grounds, to the High Commissariat for Immigration and Intercultural Dialogue (ACIDI, I. P.) and to the Advisory Board, notwithstanding applicable norms concerning personal data protection.

6 — Decisions of denial shall be notified to the applicant, specifying the justifying grounds, and including the right to judicial review and the respective term.

7 — Decisions to deny family reunification requests shall be subject to judicial review, with non-staying effects, before the administrative courts.

8 — When family members are already in Portuguese territory and the decision of denial is based solely on the failure to meet the conditions in (1)(a), the judicial review shall have a suspensory effect.

## **Article 107**

### **Residence of family members**

1 — Family members in possession of a visa issued pursuant to article 64, or who are in Portuguese territory, whose family reunification request has been approved shall be issued a residence authorisation with a duration identical to that of a resident.

2 — Family members of a holder of a permanent residence authorisation shall be issued a renewable residence authorisation, valid for two years.

3 — Two years after the issuance of the first residence authorisation referred to in the above paragraphs, and insofar as the family ties persist or, regardless of this time period, whenever the holder of the family reunification right has minor children residing in Portugal, the family members shall be entitled to autonomous authorisation.

4 — Under exceptional circumstances, namely the legal separation of persons and assets, divorce, widowhood, death of an ancestor or descendent, accusation by the Public Prosecutor of the crime of domestic violence, upon reaching legal adult age, an autonomous residence authorisation may be granted prior to the time period referred to in the above paragraph.

5 — The first residence authorisation granted to a spouse under family reunification shall be autonomous whenever the spouse has been married to the resident for more than five years.

## **Article 108**

### **Residence authorisation cancellation**

1 — Notwithstanding the provisions of article 85, residence authorisation issued under the right to family reunification shall be cancelled when the sole purpose of the marriage, de facto union or adoption was to allow the interested party to enter or reside in the country.

2 — Inquiries and specific controls may be carried out when justified signs exist of fraud or of a marriage, de facto union or adoption of convenience, as defined in the above paragraph.

3 — Prior to handing down a decision to cancel a residence authorisation under family reunification, the nature and soundness of the person's family ties, his/her length of residency in Portugal and the existence of family, cultural or social ties with the country of origin shall be taken into consideration.

4 — The cancellation decision shall be handed down after hearing the foreign citizen, which shall be considered a hearing of the interested party for all purposes.

5 — The cancellation decision shall be notified to the interested party, specifying the justifying grounds, and including the right to judicial review and the respective term.

6 — The cancellation decision shall be notified electronically to the High Commissariat for Immigration and Intercultural Dialogue (ACIDI, I. P.) and to the Advisory Board, notwithstanding applicable norms concerning personal data protection.

7 — Decisions to cancel the authorisation of family members on the grounds referred to in (1) shall be subject to judicial review, with suspensory effect, before the administrative courts.

## **SUB-SECTION V**

### **Residence authorisation for victims of human trafficking or the assisting of unlawful immigration**

## **Article 109**

### **Residence authorisation**

1 — Foreign citizens who are or have been victims of criminal infractions tied to human trafficking or the assisting of unlawful immigration, even when having entered the country illegally, or when failing to meet the eligibility conditions for residence authorisation, shall be granted residence authorisation.

2 — The residence authorisation referred to in the above paragraph shall be granted after the end of the reflection period referred to in article 111, provided that:

*a)* the interested party's stay in Portuguese territory must be extended, bearing in mind the interest that his/her presence represents for legal proceedings and investigations;

*b)* the interested party shows a clear desire to cooperate with authorities in investigating and repressing human trafficking or the assisting of unlawful immigration;

*c)* the interested party has severed his/her past relationships with the presumed offenders referred to in the above paragraph.

3 — Residence authorisation may be granted before the end of the reflection period referred to in article 111 if it is deemed that the interested party unequivocally meets the criteria of *(b)* above.

4 — Residence authorisation may also be granted after the end of the reflection period referred to in article 111 to foreign citizens identified as victims of human trafficking, pursuant to special legislation, with exemption from the conditions referred to in *(2)(a)* and *(b)*.

5 — Residence authorisation granted pursuant to the above paragraphs shall be valid for one year, subject to renewal for equal time periods, if the conditions in *(2)* continue to be met, or if continued protection is required for the person identified as a victim of human trafficking, pursuant to special legislation.

## **Article 110**

### **Information to victims**

Whenever public authorities or associations involved in the protection of victims of crime believe that a foreign citizen may be subject to the provisions of the above article, they shall inform the person in question of the possibility of benefiting from the provisions of this section.

## **Article 111**

### **Reflection period**

1 — Prior to issuing the residence authorisation referred to in article 109, the SEF shall give the interested party a reflection period to recuperate and escape from the influence of the offenders in question.

2 — The reflection period referred to in the above paragraph shall have a duration of at least 30 days and at most 60 days from the time that the competent authorities request cooperation, from the time that the interested party expresses a desire to cooperate with the authorities in charge of the investigation, or from the time that the person in question is identified as a victim of human trafficking pursuant to applicable special legislation.

3 — During the reflection period, the interested party shall be entitled to the treatment referred to in article 112, and shall be exempt from the enforcement of any removal measure.

4 — The reflection period shall not entitle the interested party to residence under the provisions of this section.

## **Article 112**

### **Rights of victims prior to granting residence authorisation**

1 — Prior to the granting of residence authorisation, persons identified as victims of human trafficking or the assisting of unlawful immigration, and lacking sufficient resources, shall be provided with subsistence and access to appropriate and urgent medical treatment.

2 — For the purposes of the above paragraph, the specific needs of more vulnerable persons shall be taken into consideration, including the use of psychological care if necessary.

3 — The persons referred to in (1) shall also be afforded security and protection.

4 — Whenever necessary, the persons referred to in (1) shall be provided translation and interpretation assistance, together with legal protection pursuant to Law no. 34/2004 of 29 July, with exemption from the provisions of article 7 (2) of this law.

### **Article 113**

#### **Rights of residence authorisation holders**

1 — The provisions of the above article, with the necessary adaptations, shall apply to holders of residence authorisation granted pursuant to article 109 who lack sufficient resources.

2 — Holders of residence authorisation granted pursuant to article 109 who lacks sufficient resources and have specific needs, such as pregnant women or minors, disabled persons and victims of sexual or other forms of violence, shall be afforded the necessary medical and social assistance.

3 — Holders of residence authorisation granted pursuant to article 109 shall be given access to existing official programmes aimed at the resumption of a normal social life, including courses to enhance professional skills or to prepare for assisted return to their country of origin.

### **Article 114**

#### **Minors**

1 — The application of articles 109 to 112 shall take the child's higher interest into consideration, using procedures suited to the child's age and maturity.

2 — The reflection period referred to in article 111 (2) may be extended if so dictated by the child's interests.

3 — Minors who are victims of human trafficking or the assisting of unlawful immigration shall have access to the educational system under the same conditions as those of Portuguese citizens.

4 — All measures shall be taken to determine the identity and nationality of an unaccompanied minor, as defined in article 99 (5), to locate his/her family as quickly as possible and to ensure his/her legal representation, including, if necessary, within the scope of criminal proceedings, pursuant to the law.

### **Article 115**

#### **Residence authorisation cancellation**

1 — Notwithstanding the provisions of article 85, residence authorisation granted under this section may be cancelled at any time if:

*a)* the holder has proactively and voluntarily resumed contact, on his/her own initiative, with the alleged offenders in human trafficking or the assisting of unlawful immigration; or

*b)* the competent authority believes that his/her cooperation is fraudulent, or that the victim's claim is unfounded or fraudulent; or

*c)* the victim ceases to cooperate.

2 — (1)(c) above shall not apply to the holders of residence authorisation granted pursuant to article 109 (4).

## **SUB-SECTION VI**

### **Residence authorisation to holders of long-term resident status in another European Union Member State**

#### **Article 116**

#### **Residence right of holders of long-term resident status in another European Union Member State**

1 — Third-country nationals with long-term resident status in another European Union Member State who

remain in Portuguese territory for more than three months shall be entitled to residence, provided that:

- a) they carry out employed professional activity; or
- b) they carry out independent professional activity; or
- c) they attend an academic or vocational training programme; or
- d) they have a justified reason to establish residence in Portuguese territory.

2 — The provisions of the above paragraph shall not apply to long-term residents remaining in Portuguese territory as:

- a) Salaried employees posted by a service provider for the provision of cross-border services;
- b) Cross-border service providers.

3 — The provisions of this article shall not prejudice the application of pertinent community legislation on social security in relation to third-country nationals.

4 — Third-country nationals subject to (1) shall be provided residence authorisation, provided that they have:

- a) Means of subsistence;
- b) Accommodation.

5 — For the purposes of assessing compliance with the requirement in (a) of the above paragraph, the nature and regularity of resources should be evaluated, bearing in mind the level of minimum wages and pensions.

6 — The provisions of article 88 (1) shall apply to the granting of residence authorisation to third-country nationals subject to (1)(a).

7 — The provisions of article 89 (1) shall apply to the granting of residence authorisation to third-country nationals subject to (1)(b).

8 — The granting of residence authorisation to third-country nationals subject to (1)(c) shall depend on the interested party's submission of proof of enrolment at an officially recognised higher educational establishment, or admission to an establishment or company providing officially recognised vocational training.

## **Article 117**

### **Residence authorisation request**

1 — The long-term residents referred to in the above article must submit a residence authorisation request to the SEF within three months of their entry into Portuguese territory.

2 — The request referred to in the above paragraph must be accompanied by documents proving that the applicant meets the conditions for exercising his/her right of residence referred to in the above article.

3 — The request must also be accompanied by a long-term residence permit and valid travel document, or certified copies of these.

4 — Decisions on residence authorisation requests submitted pursuant to the above article shall be made within three months.

5 — The time period referred to in the above paragraph may be extended for up to three months, with notice of the extension to the applicant, if the request is not accompanied by the documents referred to in (2) and (3), or under exceptional circumstances associated with analysing complex requests.

7 — Any lack of a decision within six months shall be considered approval of the residence authorisation request.

8 — The granting of residence authorisation to long-term residents and their family members shall be notified by the SEF to the competent authorities of the Member State which granted long-term resident status.

## **Article 118**

### **Family reunification**

1 — Residence authorisation in Portuguese territory shall be granted to family members of a holder of residence authorisation granted pursuant to article 116 residing with the holder in the Member State which initially granted long-term resident status.

2 — For the purposes of the above paragraph, family members shall mean those referred to in article 99 (1), together with the persons referred to in article 100 (1).

3 — The submission of residence authorisation requests shall be governed by the provisions of the above article.

4 — The interested party must attach the following to the residence authorisation request:

a) Long-term EU residence permit or residence authorisation and a valid travel document, or certified copies of these;

b) Proof of prior residence in the Member State which initially granted long-term resident status as a family member or de facto partner of a long-term resident;

c) Proof of means of subsistence and coverage by the National Health Service or health insurance.

5 — For the purposes of assessing the means of subsistence referred to in (c) of the above paragraph, their nature and regularity should be taken into consideration, together with the level of minimum wages and pensions.

6 — The provisions of Chapter VI, Section IV shall apply if the family is not already established in the Member State which initially granted long-term resident status.

7 — Family members subject to the above paragraphs shall be granted residence authorisation with a validity identical to that granted to long-term residents, subject to the provisions of (8) of the above article.

#### **Article 119**

##### **Public order, public safety and public health**

1 — Residence authorisation requests submitted pursuant to this section may be denied when the person in question represents a threat to public order or public safety.

2 — Decisions of denial pursuant to the above paragraph should consider the seriousness or type of offence to public order or public safety committed by the long-term resident or by his/her family member, or the hazards which may arise from the person's stay in Portuguese territory.

3 — The decision referred to in (1) should not be based on economic reasons.

4 — Residence authorisation requests from long-term residents or their family members may also be denied when the person in question represents a threat to public health, pursuant to article 77 (3).

5 — The provisions of article 77 (4) and (5) shall apply to the situations of the above paragraph.

#### **Article 120**

##### **Cancellation and non-renewal of residence authorisation**

1 — Notwithstanding the provisions of article 85, provided a holder of residence authorisation granted under this section has not obtained long-term resident status in Portuguese territory, he/she may be subject to a decision of cancellation or non-renewal of the residence authorisation in the following cases:

a) For reasons of public order or public safety, taking into account the seriousness or type of offence committed against public order or public safety, or the hazards which may arise from the person's stay in Portuguese territory, together with the duration of residence and existence of connections to the country;

b) When the conditions in articles 116 and 118 are no longer met.

2 — The cancellation or non-renewal of residence authorisation to long-term residents and their family members shall be notified by the SEF to the competent authorities of the Member State which granted long-term resident status.

#### **Article 121**

##### **Procedural guarantees**

1 — The decision to deny a residence authorisation request, a decision of non-renewal or a decision to cancel residence authorisation granted under this section shall be notified to the interested party, specifying the justifying grounds, the right to judicial review and the respective term.

2 — The decisions referred to in the above paragraph shall be notified electronically to the High Commissariat for Immigration and Intercultural Dialogue (ACIDI, I. P.) and to the Advisory Board.

## **SUB-SECTION VII**

### **"EU Blue Card" residence authorisation**

#### **Article 121-A**

##### **"EU Blue Card" beneficiaries**

1 — An "EU Blue Card" is a residence permit allowing its holder to reside and carry out a highly qualified activity in Portuguese territory, pursuant to and in accordance with the provisions of this section.

2 — "EU Blue Card" beneficiaries shall be entitled to family reunification pursuant to section IV.

3 — "EU Blue Cards" shall not be provided to third-country nationals who:

*a)* are authorised to reside in a Member State under temporary protection, or have requested residence authorisation for this reason and are awaiting a decision on their status, together with the beneficiaries of the protection granted under Law no. 27/2008 of 30 June, or who have requested this protection and are awaiting a final decision on their status;

*b)* are family members of European Union citizens, pursuant to Law no. 37/2006 of 09 August;

*c)* have requested or are holders of residence authorisation for research activities, pursuant to article 90 (1);

*d)* benefit from long-term resident status in another EU Member State, pursuant to article 116 (1)(*a*) and (*b*);

*e)* remain in Portugal for reasons of a temporary nature to carry out commercial activities, related to investment, as seasonal workers or posted within the scope of service provision;

*f)* benefit from free movement rights equivalent to those of European Union citizens under an agreement between the European Union the third country of nationality;

*g)* have their deportation suspended for reasons of fact or law.

#### **Article 121-B**

##### **Conditions for granting "EU Blue Card"**

1 — "EU Blue Cards" shall be granted for the purposes of carrying out highly qualified activities to third-country nationals who, in addition to the conditions of article 77, with the exception of article 77 (1)(*e*), meet all of the following requirements:

*a)* Submit an employment agreement compatible with carrying out a highly qualified activity with a duration of at least one year, corresponding to annual remuneration of at least 1.5 times the nation's average gross annual salary or, under the circumstances of article 61-A (2), at least 1.2 times the nation's average gross annual salary;

*b)* Possession of health insurance or proof of coverage under the National Health Service;

*c)* Enrolment in Social Security;

*d)* In the case of unregulated professions, documentary proof of higher professional qualifications for the activity or sector specified in the employment agreement or promissory employment agreement;

*e)* In the case of a regulated profession indicated in the employment agreement or promissory employment agreement, documentary proof of professional certification, if applicable.

2 — Applicants with a valid residence right in Portuguese territory may be exempt from the requirement referred to in article 77 (1)(*a*).

3 — The provisions of article 61-A (3) and (4) shall apply for the purposes of (1)(*d*).

4 — Requests for an "EU Blue Card" shall be denied under the following circumstances:

- a) When the employer has been penalised for the use of illegal foreign workers in the past five years;
- b) For reasons of public order, public safety or public health.

#### **Article 121-C**

##### **Responsibility**

The following shall be in charge of the decisions provided for in this section:

- a) The government member in charge of internal administration shall be responsible for cancellation, with the ability to delegate to the SEF National Director;
- b) In other cases, the SEF National Director, with the power to delegate.

#### **Article 121-D**

##### **Procedure**

1 — The "EU Blue Card" request must be submitted by the third-country national, or by his/her employer, to the main office or regional office of the SEF in his/her area of residence.

2 — Requests must be accompanied by documents proving that the applicant meets the conditions of article 121-B.

3 — If the information or documentation submitted by the applicant are insufficient, the request's assessment shall be suspended, with a request for the necessary supplementary information or documents, which must be submitted within a deadline of no less than 20 days, as determined by the SEF.

4 — The decision on the request shall be notified to the applicant in writing within 60 days.

5 — Decisions to deny the granting or renewal of "EU Blue Cards", together with decisions on their cancellation, shall be notified in writing to applicants or to their employers, specifying the justifying grounds, the right to judicial review and the respective term.

#### **Article 121-E**

##### **Validity, renewal and issuance of "EU Blue Cards"**

1 — "EU Blue Cards" shall have an initial validity of one year, subject to renewal for consecutive two-year periods.

2 — Interested parties must request the renewal of "EU Blue Cards" at least 30 days prior to their expiry.

3 — "EU Blue Cards" shall be issued using the uniform residence permit format for third-country nationals pursuant to Ministerial Order no. 1432/2008 of 10 December, with "EU Blue Card" written in the item "type of permit".

4 — The provisions of article 212 shall apply to the issuance of "EU Blue Cards".

#### **Article 121-F**

##### **Cancellation or denial of renewal of "EU Blue Cards"**

1 — "EU Blue Cards" shall be cancelled whenever:

a) They have been granted based on false or misleading statements, counterfeit, falsified or modified documents, or through the use of fraudulent means;

b) There is proof that their holder has committed serious punishable offences, or when there is strong evidence of such offences or an intent to commit them, within the European Union;

c) Reasons exist involving public order, public safety or public health.

2 — The renewal of "EU Blue Cards" shall be only be approved when all of the following conditions have been met:

a) The holder meets, or continues to meet, the conditions for entry and residence provided for in this section, or when the conditions allowing the document's issuance have been upheld;

b) The holder has sufficient means of subsistence, pursuant to terms defined by order of the government members in charge of internal administration and social security, namely without the use of social security support, with the exception of unemployment benefits;

c) The holder has not been convicted of a felonious crime with an individual or combined prison sentence exceeding one year;

d) No issues exist involving public order, public safety or public health.

#### **Article 121-G**

##### **Access to job market**

1 — During the first two years of legal employment in Portuguese territory, "EU Blue Card" holders' access to the job market shall be limited to remunerated activities meeting the conditions of article 121-B.

2 — During the first two years of legal employment in Portuguese territory, "EU Blue Card" holders shall communicate any changes affecting the conditions for its granting, in writing, if possible in advance, to the SEF.

#### **Article 121-H**

##### **Equal treatment**

1 — Holders of an "EU Blue Card" shall enjoy treatment equivalent to that of nationals with regard to the following:

a) Working conditions, including remuneration, dismissal and health and occupational safety requirements;

b) Freedom of association, affiliation and membership to an organisation representing employees or workers, or any organisation whose members are dedicated to a given occupation, including the advantages provided by these types of organisations, notwithstanding national provisions concerning public safety and order;

c) Vocational training and education, pursuant to the requirements of applicable legislation;

d) Recognition of diplomas, certificates and other professional qualifications, in accordance with applicable legislation;

e) Applicable provisions related to social security;

f) Payments to old age pensions, acquired based on income, at the applicable rate;

g) Access to goods, services and the supply of goods and services to the public, including the formalities of obtaining housing, together with information and advice provided by employment services;

h) Free access to the entire Portuguese territory.

2 — The right to equal treatment pursuant to (1) shall not prejudice the right to cancel or deny an "EU Blue Card" pursuant to article 121-F.

3 — Equal treatment may be limited in the situations provided for in (1), with the exception of subparagraphs (b) and (d), when the holder of an "EU Blue Card" from another Member State travels to Portuguese territory, pursuant to article 121-L, without a positive decision having been made on the granting of an "EU Blue Card" in Portugal.

4 — When the decision referred to in the above paragraph has not yet been made, and the applicant has been authorised to work, equal treatment shall apply in full.

#### **Article 121-I**

##### **Long-term resident status for holders of "EU Blue Cards"**

1 — The provisions of articles 125 to 133, with the adaptations provided for in the following paragraphs, shall apply to holders of "EU Blue Cards" wishing to benefit from long-term resident status.

2 — Long-term resident status may be granted to the holder of an "EU Blue Card" acquired in Portugal, pursuant to article 121-B, provided that all of the following conditions have been met:

a) Five years of uninterrupted legal residence in the European Union territory as an "EU Blue Card" holder;

b) Uninterrupted legal residence in Portuguese territory as an "EU Blue Card" in the two years immediately

preceding the submission of the respective request in Portugal.

3 — For the purposes of calculating the period of uninterrupted legal residence in this article, times of absence from the European Union territory shall not interrupt the period referred to in (2)(a), provided that they are less than 12 consecutive months and do not exceed 18 months in total.

4 — The provisions of the above paragraph shall also apply to cases where third-country nationals have only resided in Portuguese territory as "EU Blue Card" holders.

5 — The provisions of article 131, with the necessary adaptations with regard to the term referred to in article 131 (1)(c), which shall be extended to 24 consecutive months, shall apply to the loss of long-term resident status for former "EU Blue Card" holders.

#### **Article 121-J**

##### **Long-term residence authorisation**

1 — "EU Blue Card" holders who meet the conditions of the above article to obtain long-term resident status shall be issued a long-term EU residence permit.

2 — "Former 'EU Blue Card' holder" shall be written in the "comments" item of the residence permit referred to in the above paragraph.

#### **Article 121-K**

##### **Residence authorisation for holders of "EU Blue Cards" in another Member State**

1 — "EU Blue Card" holders who have resided at least 18 months as an "EU Blue Card" holder in the Member State which initially granted it may travel to Portugal for the purposes of carrying out a highly qualified activity, and be accompanied by his/her family members.

2 — Requests for an "EU Blue Card" in Portuguese territory and, when applicable, for residence authorisation for the purposes of family reunification, must be submitted within 30 days of the entry into Portuguese territory of the holder of an "EU Blue Card" from another Member State.

3 — The request referred to in the above paragraph must be accompanied by documents proving the status referred to in (1) and fulfilment of the conditions in article 121-B (1), following the other procedures for filing and deciding on the request.

4 — The request may be denied pursuant to article 121-B (4), or if the "EU Blue Card" issued by another Member State has expired or been cancelled while the request is being assessed.

5 — If the request is denied, and notwithstanding the provisions of the following paragraph, the third-country national and his/her employer shall be jointly liable for expenses involving the return and readmission of the "EU Blue Card" holder and his/her family members.

6 — The employer shall be solely responsible for the expenses referred to in the above paragraph when the request is denied pursuant to article 121-B (4)(a).

7 — Decisions handed down on requests submitted pursuant to this article shall be communicated, in writing, by the SEF to the authorities of the Member State of origin of the "EU Blue Card" holder, preferably by electronic means.

### **SUB-SECTION VIII**

#### **Residence authorisation in special situations**

##### **Article 122**

##### **Residence authorisation with residence visa exemption**

1 — The following third-country nationals shall not require a visa to obtain temporary residence authorisation:

- a) Minors, children of foreign citizens holding residence authorisation, born in Portuguese territory;
- b) Minors, born in Portuguese territory, who have remained here and are attending preschool or primary, secondary or vocational education;

- c) Children of holders of residence authorisation who have reached legal adult age and have habitually remained in Portuguese territory since 10 years of age;
  - d) Persons of legal adult age, born in Portuguese territory, who have not been absent from the country or have remained here since before 10 years of age;
  - e) Minors subject to mandatory custody pursuant to the Civil Code;
  - f) Persons who no longer benefit from the right to asylum in Portugal due to the cessation of the reasons providing the initial basis for this protection;
  - g) Persons suffering from an illness requiring prolonged medical assistance precluding their return to the country, for the purpose of avoiding risks to their health;
  - h) Persons who have completed actual military service in the Portuguese Armed Forces;
  - i) Persons who, after losing Portuguese nationality, have remained in Portuguese territory in the past 15 years;
  - j) Persons who have not been absent from Portuguese territory and whose right of residence has expired;
- l) Diplomatic and consular agents or their respective spouses, dependent ancestors and descendants who have been accredited in Portugal for no less than three years;
- m) Persons who are, or have been, victims of a serious or very serious criminal or administrative infraction with regard to labour relationships, pursuant to (2) of this article, for which evidence exists from the inspection department of the ministry in charge of labour, provided that the infraction has been reported to the competent authorities, and that they cooperate with these authorities;
- n) Persons who have benefited from residence authorisation granted pursuant to article 109;
- o) Persons who, having benefited from residence authorisation for secondary education students granted pursuant to article 92, or residence authorisation for first-cycle higher education students granted pursuant to article 91, have completed their studies and wish to carry out employed or independent professional activity in Portuguese territory, except when such authorisation has been issued within the scope of cooperation agreements with no justifying reasons of national interest;
- p) Persons who, having benefited from residence authorisation to study at a higher education institution pursuant to article 91, or residence authorisation for research pursuant to article 91-B, have completed the studies or research in question and wish to benefit from the maximum period of one year to seek employment or create a company compatible with their qualifications in Portuguese territory;
- q) Persons who, having benefited from a temporary stay visa to carry out research or highly qualified activities, wish to carry out research activities, teaching activities at a higher education establishment or highly qualified, employed or independent activities in Portuguese territory:
- r) Persons who provide proof of investment activities, pursuant to article 3 (d).
- 2 — For the purposes of (m) of the above paragraph, only infractions entailing social abandonment, salary or schedule exploitation under particularly exploitative working conditions or involving the use of illegal child labour shall be considered.
- 3 — The provisions of articles 88, 89 or 90 shall apply, as applicable, with the necessary adaptations, to the situations in (1)(n), (o) and (p).
- 4 — Residence authorisation with visa exemption shall also be granted to the first degree direct ancestors of a foreign citizen subject to (1)(b), over whom they have parental responsibilities, with the ability to make simultaneous requests.
- 5 — Temporary residence authorisation granted pursuant to (1)(b) and (4) shall be cancelled or not renewed when a minor, without justifiable grounds, no longer attends preschool or primary education.
- 6 — Temporary residence authorisation granted pursuant to (1)(b) and (4) shall be cancelled or not renewed when a minor, without justifiable grounds, no longer attends secondary or vocational education.
- 7 — The holders of residence authorisation with visa exemption granted pursuant to the above paragraphs shall enjoy the rights provided for by article 83.

### **Article 123**

#### **Exceptional scheme**

- 1 — Under extraordinary circumstances not subject to the provisions of article 122, and in the case of

residence authorisation for humanitarian reasons under the law governing the right to asylum, by proposal of the SEF National Director or at the initiative of the government member in charge of internal administration, temporary residence authorisation may be granted, on an exceptional basis, to foreign citizens not meeting the requirements provided for in this law:

- a) for reasons of national interest;
- b) for humanitarian reasons;
- c) for reasons of public interest arising from the undertaking of a relevant scientific, cultural, athletic, economic or social activity.

2 — The situations of children and young people of foreign nationality hosted in a public, cooperative, social or private institution with cooperation agreement with the State, following a process of promotion and protection, are included in the provision pursuant to article 58 (1) (k) of the Law on the Protection of Children and Young People in Danger, approved in an annex to Law no. 147/99 of 1 September.

3 — Decisions by the government member in charge of internal administration on residence authorisation requests under the exceptional scheme provided for in this article shall be made on duly justified grounds.

#### **Article 123-A**

##### **Special scheme for company relocation**

1 — Residence authorisation shall be granted to the owners, managers or workers of companies that have their registered office, or principal or secondary establishment, in a state of the European Economic Area or in a state defined by order of the government members in charge of foreign affairs and internal administration, which establish their registered office or principal or secondary establishment in Portuguese territory, provided that they meet the following conditions:

- a) Possession of residence authorisation or a valid residence permit in the state of the European Economic Area where the company's registered office or principal or secondary establishment was located;
- b) They do not constitute a threat to public order or public safety;
- c) They fulfil the conditions of article 77 (g) to (j).

2 — Provided that the conditions of the above paragraph have been met, the foreign residence permit shall be recognised, with the issuance of a similar residence permit valid in Portuguese territory.

3 — The same scheme shall apply to the family members of the worker or employee benefiting from the provisions of this article.

#### **Article 124**

##### **Foreign minors born in the country**

1 — Foreign minors born in Portuguese territory shall benefit from the same resident status as that granted to either of their parents.

2 — For the purposes of issuing a residence permit, either of the parents must submit a request within six months of registering the minor's birth.

3 — At the end of the time period referred to in the above paragraph, any citizen may still request that the Children's Public Defender replace the parents for the purpose of requesting the granting of this status for the minors.

4 — Children and young people of foreign nationality who are hosted by a public, cooperative, social or private institution with a cooperation agreement with the State, following a process of promotion and protection, shall benefit from the resident status pursuant to article 123 (1) (b) and Article 123 (2).

#### **SUB-SECTION IX**

##### **Residence authorisation for "ICT" workers transferred within the company**

**and for long-term "ICT mobile" mobility**

**Article 124-A**

**Residence authorisation for workers  
transferred within  
the company — "ICT Residence Authorisation"**

1 — Residence authorisation for intra-corporate transferees enables its holders to reside and work in Portuguese territory within the scope of an intra-corporate transfer (ICT) in a company or company group.

2 — The provisions of this sub-section shall not apply to third-country nationals who:

- a) have requested or are holders of residence authorisation for research, pursuant to article 91-B;
- b) benefit from free movement rights equivalent to those of European Union citizens under agreements signed between the European Union and its Member States with the person's third country of origin or in whose territory the person's company of employment is established;
- c) are posted pursuant to Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996;
- d) are independent workers;
- e) are parties to an agreement signed with temporary employment agencies or any other agencies providing professional workers under third-party supervision and direction;
- f) have residence authorisation for the purposes of short-term traineeships or studies integrated into curricular programmes.

3 — The SEF National Director shall be responsible for the decisions provided for in this sub-section, with the power to delegate.

**Article 124-B**

**Granting of residence authorisation for intra-corporate transferees**

1 — Notwithstanding the provisions of article 77, residence authorisation shall be granted to intra-corporate transferees pursuant to article 3 (ii) to carry out the professional activity of manager, specialist or trainee, provided that:

- a) they prove that the host company and the company established in the third country belong to the same company or company group;
- b) they prove that they have worked at the same company or same company group for at least 3 to 12 consecutive months as a manager or specialist, or 3 to 6 consecutive months as a trainee, immediately prior to the date of transfer;
- c) they have an employment agreement with the company or company group to which the host company belongs, specifying their position as a manager, specialist or trainee;
- d) they submit a document issued by the employer specifying the host company, remuneration and other conditions of employment during the transfer period;
- e) they prove that they have professional experience and qualifications compatible with the duties of manager or specialist to be performed at the host company, or the appropriate higher education diploma in the case of trainees;
- f) they prove, in the case of a regulated profession, that they meet the conditions for practising the profession under national legislation;
- g) they have a valid travel document, whose validity covers the planned duration of the intra-corporate transfer;
- h) they prove that they have requested health insurance, under conditions applicable to Portuguese citizens, for periods in which they do not benefit from this type of coverage, or have corresponding payments related to or resulting from the work to be carried out;
- i) they provide a guarantee, by the host company, of compliance with legislation, during the transfer, concerning work conditions and the payment of remuneration not less than that paid to Portuguese workers with identical employment duties.

2 — The residence visa pursuant to article 77 (1)(a) shall not be required of applicants, provided that they have entered Portuguese territory legally.

3 — Workers transferred within a company to a host company belonging to the same company or company group, certified by order of the government members in charge of internal administration and the economy for the purposes of this law's application, shall be exempt from submitting documents proving the conditions referred to in (1)(b), (c), (e), (h) and (i), with the issuance of a visa allowing their entry into Portuguese territory.

4 — The certification referred to in the above paragraph shall be valid for 5 years, subject to cancellation under any of the circumstances referred to in (1), or if the host company is in breach of legislation concerning work conditions and the payment of lower remuneration compared to that paid to Portuguese workers with identical employment duties.

5 — The host company shall notify the ministry in charge of the economy, within 30 days, of any changes to the conditions of certification, under penalty of its revocation.

6 — The ministry in charge of the economy shall keep an updated list of the companies certified pursuant to (3) with the SEF and Directorate-General of Consular Affairs and Portuguese Communities.

7 — Residence authorisation for intra-corporate transferees shall be valid for one year, or for the duration of the transfer to Portuguese territory, subject to renewal for equal time periods, up to a maximum of three years for managers and specialists and one year for trainees, provided that the conditions for its granting are upheld.

8 — Holders of residence authorisation for intra-corporate transferees shall be issued a residence permit using the uniform residence permit format for third-country nationals in Council Regulation (EC) No 1030/2002 of 13 June 2002 and national legislation, with "ICT" written in the item "permit".

#### **Article 124-C**

##### **Denial and cancellation**

1 — Notwithstanding the provisions of article 77 and 78, requests to grant or renew residence authorisation for intra-corporate transferees shall be denied if:

- a) the applicant does not meet, or no longer meets, the conditions of article 124-B (1);
- b) the documents submitted have been obtained fraudulently, or are falsified or forged;
- c) the host company has been created for the main purpose of facilitating the entry of intra-corporate transferees;
- d) the host company has been penalised for undeclared work or illegal employment;
- e) the host company does not comply with legislation in force concerning social security, taxation, labour rights or working conditions, or is wound up, declared bankrupt or has no business activities;
- f) the maximum limit of stay of three years for managers and specialists or one year for trainees is reached;
- g) the host company becomes insolvent or has no recorded business activities;
- h) the host company's recognition has been cancelled pursuant to 124-B (4);
- i) for reasons of public order, public safety or public health.

2 — Notwithstanding the provisions of article 85 (1), residence authorisation granted under this sub-section may be cancelled whenever:

- a) any of the circumstances provided for in (1) occur;
- b) the intra-corporate transferee is residing in Portuguese territory for reasons other than those for which the residence was granted.

3 — Decisions of denial or cancellation shall take the case's specific circumstances into account, and shall follow the proportionality rule.

4 — Decisions to cancel residence authorisation for intra-corporate transferees shall be notified to the Member State where the mobility is being exercised.

#### **Article 124-D**

##### **Procedures, procedural guarantees and access to information**

1 — Requests to grant or renew residence authorisation for an intra-corporate transfer pursuant to this sub-section must be submitted by the third-country national, or by the host company, to the main office or regional office of the SEF in his/her area of residence.

2 — At the time of the request, information shall be provided to the applicant on entering and staying in Portuguese territory, together with the documentation legally required for the procedures in this sub-section and the associated rights, obligations and guarantees of the holder and, if applicable, his/her family members.

3 — Residence authorisation renewals for intra-corporate transferees must be requested by the interested party within 30 days prior to their expiry, subject to the provisions of article 78 (7).

4 — Requests must be filed with documents proving that the applicant meets the conditions of this sub-section for the purposes of granting or renewing residence authorisation.

5 — If the information or documentation submitted by the applicant are insufficient, the request's assessment shall be suspended, with a request for the necessary supplementary information or documents, which must be submitted within 10 days.

6 — Decisions to grant or renew residence authorisations shall be made within 90 and 30 days, respectively, or within half of these time limits whenever the host company is certified pursuant to article 124-B (3).

7 — Approvals of residence authorisation requests pursuant to this sub-section shall be notified to the competent consulate, for the purposes of immediately issuing a visa, if the holder is outside of the European Union territory and needs a visa to enter Portuguese territory.

8 — The decision to deny a residence authorisation request, a decision of non-renewal or a decision to cancel residence authorisation pursuant to this sub-section shall be notified to the applicant, in writing, specifying the justifying grounds, the right to judicial review, the respective term and court of jurisdiction.

9 — The decision to cancel residence authorisation issued pursuant to this sub-section shall also be notified in writing to the host company, specifying the justifying grounds.

10 — Holders of a residence authorisation for intra-corporate transfer shall notify the SEF, within 15 days, of any changes to the conditions of granting pursuant to article 124-B.

## **Article 124-E**

### **Mobility of intra-corporate transferees**

1 — Third-country nationals holding an ICT residence permit granted by another European Union Member State shall be authorised to carry out professional activities in Portuguese territory, for up to 90 days in any 180-day period, with authorisation for his/her entry and stay, together with the members of his/her family, based on the residence authorisation granted by this Member State, with no other required formalities, when in possession of a valid passport and not included in the Schengen Information System for the purposes of denial of entry and stay.

2 — Third-country nationals holding an ICT residence permit granted by another European Union Member State wishing to reside and carry out a professional activity at a host company based in Portuguese territory, for a period exceeding 90 days, shall be granted residence authorisation for long-term mobility pursuant to the following paragraphs.

3 — Requests for residence authorisation for long-term mobility in Portuguese territory and, when applicable, for residence authorisation for the purposes of family reunification, must be submitted within 30 days of entering Portuguese territory, or 20 days before the end of the short-term mobility referred to in (1).

4 — The request referred to in the above paragraph must be accompanied by documents proving possession of ICT residence authorisation granted by another Member State, and fulfilment of the conditions of article 124-B.

5 — For the purposes of submitting the request and while proceedings are pending, the applicant shall be authorised to:

- a) remain in Portuguese territory, with exemption from the visa obligation;
- b) work in Portuguese territory until a decision is made on the request, provided that the time period referred to in (1) is not surpassed, and the ICT residence authorisation issued by another Member State does not expire.

6 — Holders of residence authorisation for long-term mobility shall be issued a residence permit using the uniform format provided for in Council Regulation (EC) No 1030/2002 of 13 June 2002, with "ICT mobile"

written in the item "type of permit".

7 — Residence authorisations shall be valid for one year, or for the duration of the transfer to Portuguese territory, subject to renewal for equal time periods, up to a maximum of three years for managers and specialists and one year for trainees, provided that the conditions for their granting are upheld.

8 — The host company shall notify the SEF of any changes affecting the initial conditions for granting authorisation for long-term mobility.

9 — The granting of residence authorisation for long-term mobility shall be notified to the authorities of the Member State which issued the ICT residence authorisation.

10 — Notwithstanding the provisions of (5), the denial of requests to grant or renew residence authorisation for long-term mobility, or to cancel it, shall be subject to the provisions of article 124-C.

11 — The provisions of article 124-D shall apply to residence authorisation for long-term mobility.

#### **Article 124-F**

##### **Rights of intra-corporate transferees and equal treatment**

1 — Holders of residence authorisation granted pursuant to articles 124-B or 124-E shall be entitled to enter and remain in the entire Portuguese territory, and to carry out professional activities as a manager, specialist or trainee at any host company belonging to the company or company group.

2 — Holders of the residence authorisation referred to in the above paragraph shall be guaranteed the right of family reunification, pursuant to sub-section IV, with family members benefiting from the provisions of article 83.

3 — Holders of residence authorisation granted pursuant to article 124-B and their family members shall be entitled to enter Portuguese territory whenever a European Union Member State has denied a long-term mobility request or cancelled an "ICT mobile" residence permit granted and requested from the SEF.

4 — Intra-corporate transferees under articles 124-B or 124-E shall be ensured equal treatment in relation to domestic workers pursuant to article 83 (2), including with regard to the working conditions and remuneration of other workers with comparable duties, professional categories, seniority and qualifications at the company.

#### **Article 124-G**

##### **Penalties**

1 — Notwithstanding the provisions of article 198-C, the SEF, within the scope of its powers, shall carry out assessments and inspections to gauge compliance with the scheme for the entry and stay of intra-corporate transferees.

2 — Notwithstanding applicable penalties for failure to comply with labour, tax and social security legislation, the provisions of articles 185-A and 198-A shall apply to the employers of third-country national intra-corporate transferees without residence authorisation pursuant to this sub-section.

3 — The host company shall be responsible for the expenses of the stay and removal of employed foreign citizens in breach of this sub-section, in the following situations:

*a)* If the conditions providing the basis for the mobility's authorisation have changed, without notification from the host company of this change, pursuant to this sub-section;

*b)* If the authorisations granted under this sub-section have been used for purposes other than those for which they were issued;

*c)* If the host company has been penalised for the breach of its legal obligations in relation to labour, social security or taxes;

*d)* If the host company has been declared insolvent, or has no business activity.

4 — The SEF shall provide host companies with information on the provisions of this article.

#### **Article 124-H**

##### **National Point of Contact**

1 — The SEF is designated the Portuguese point of contact for the purposes of cooperation and exchanging

information on the mobility scheme for intra-corporate transferees, together with notifications on the mobility of intra-corporate transferees.

2 — The SEF shall notify other Member States' national points of contact of the competent authority for receiving and issuing residence authorisations for intra-corporate transferees and the procedure applicable to the mobility of workers with residence authorisation as intra-corporate transferees to Portuguese territory.

#### **Article 124-I**

##### **Statistics**

1 — The SEF shall be responsible for preparing statistics on the issuance, renewal and cancellation of residence authorisations for intra-corporate transferees and long-term mobility authorisations issued pursuant to this sub-section, broken down by nationality and validity period, including by economic sector and category of transferred worker.

2 — The provisions of article 56-G (2) shall apply to the statistics referred to in the above paragraph.

#### **CHAPTER VII**

##### **Long-term resident status**

#### **Article 125**

##### **Beneficiaries**

1 — Third-country nationals legally residing in Portuguese territory and meeting the requirements for the granting of long-term resident status may benefit from this status.

2 — Long-term resident status shall not be afforded to third-country nationals who:

*a)* have residence authorisation for studies, non-remunerated professional traineeships or volunteer work;  
*b)* are authorised to reside in Portuguese territory under temporary protection, or have requested residence authorisation for this purpose and are awaiting a decision on their status;

*c)* *(Revoked.)*

*d)* *(Revoked.)*

*e)* are staying in Portugal exclusively for reasons of a temporary nature as seasonal workers, workers posted by a service provider to provide cross-border services, or providers of cross-border services;

*f)* benefit from a legal status under the Vienna Convention on Diplomatic Relations of 18 April 1961, or the Vienna Convention on Consular Relations of 24 April 1963.

#### **Article 126**

##### **Conditions for acquiring long-term resident status**

1 — Long-term resident status shall be granted to third-country nationals who:

*a)* have resided legally and on an uninterrupted basis in Portuguese territory during the five years immediately preceding the request's submission or, in the case of beneficiaries of international protection, since the submission date of the request resulting in international protection;

*b)* have steady, regular means of subsistence for themselves and their family members, without use of the welfare sub-system;

*c)* have health insurance;

*d)* have accommodation;

*e)* demonstrate fluency in basic Portuguese.

2 — The periods of residence for the reasons referred to in (2)(*e*) and (*f*) of the above article shall not be taken into account in calculating the period referred to in (*a*) of the above paragraph.

3 — In the cases subject to (2)(*a*) of the above article, whenever the third-country national has obtained residence authorisation allowing him/her to benefit from long-term resident status, the period in which he/she had residence for the purpose of studies, non-remunerated vocational training or volunteer work shall be taken into account, by half, in calculating the period referred to in (1)(*a*).

4 — Periods of absence from Portuguese territory shall not interrupt the period referred to in (1)(a), and shall be included in its calculation, provided that they are less than 6 consecutive months and do not exceed, in total, 10 months within the time period referred to in (1)(a).

5 — Periods of absence due to posting for work-related purposes, namely the provision of cross-border services, shall be taken into consideration in calculating the period referred to in (1)(a).

6 — For the purposes of (1)(b), means of subsistence shall be assessed by their nature and regularity, bearing in mind the level of minimum wages and pensions prior to the long-term resident status request.

7 — The uninterrupted periods of stay in Portuguese territory under a work visa or authorisation of stay, issued pursuant to the above legislation, shall be included in calculating the time period referred to in (1)(a).

## **Article 127**

### **Public order and public safety**

1 — Long-term resident status may be denied for reasons of public order or public safety, taking into account the seriousness or type of offence committed against public order or public safety, or the hazards which may arise from the person's stay in Portuguese territory, together with the duration of residence and existence of connections to the country.

2 — The denial referred to in the above paragraph should not be based on economic reasons.

3 — Notwithstanding the provisions of the above paragraphs, long-term resident status based on international protection shall be denied whenever the protection is revoked, withdrawn or refused pursuant to article 41 (1)(a) and (b) of Law no. 27/2008 of 30 June, which establishes the conditions and procedures for granting asylum or subsidiary protection and the statuses of asylum seeker, refugee and subsidiary protection.

## **Article 128**

### **Competent authority**

The SEF National Director shall be responsible for granting or denying long-term resident status, with the power to delegate.

## **Article 129**

### **Procedure for acquiring long-term resident status**

1 — The regional office of the SEF in the applicant's area of residence shall be in charge of receiving requests for long-term resident status.

2 — The request must be accompanied by documents proving that the third-country national meets the conditions of article 126, together with a valid travel document or certified copy of it.

3 — Notwithstanding the above paragraph, requests for long-term resident status from third-country nationals also in possession of a long-term EU residence permit issued by another Member State shall be preceded by a consultation of this permit to determine whether the applicant continues to benefit from international protection.

4 — The applicant shall be notified in writing of the decision as soon as possible, and always within a maximum of six months.

5 — Under exceptional circumstances associated with analysing complex requests, the term referred to in the above paragraph may be extended by an additional three months, with notice of this extension to the applicant.

6 — Any lack of a decision within nine months shall be considered approval of the request.

7 — If the conditions of article 126 have been met, and the applicant represents no threat as defined in article 127, the status of long-term resident shall be granted.

8 — All applicants to long-term resident status shall be informed of their associated rights and obligations.

9 — Long-term resident status shall be permanent in nature, based on a renewable permit.

10 — The granting of long-term resident status to third-country nationals with residence authorisation granted pursuant to article 116 shall be notified by the SEF to the Member State which initially granted long-term resident status.

## Article 130

### Long-term EU residence permit

- 1 — Long-term residents shall be issued a long-term EU residence permit.
- 2 — Long-term EU residence permits shall be valid for a minimum of five years, subject to automatic renewal, by request, at the time of expiry.
- 3 — Long-term EU residence permits shall be issued following the rules and uniform format of the residence permit for third-country nationals in force in the European Union, with "long-term EU resident" written in the item "type of permit".
- 4 — When a long-term EU residence permit is issued to a third-country national who has benefited from international protection in another Member State, the following note must be written on the permit in question: "International protection granted by ... (identification of Member State) on ... (date)".
- 5 — If the international protection is transferred, this note must be modified via request from the Member State where the third-country national has benefited from protection.
- 6 — Long-term residence permits should be modified with the note in question as soon as possible, and always within a maximum of three months.

## Article 131

### Loss of status

- 1 — Long-term residents shall lose long-term resident status under the following circumstances:
  - a) Fraudulent acquisition of long-term resident status;
  - b) Adoption of a deportation measure pursuant to article 136;
  - c) Absence from the European Union territory for 12 consecutive months;
  - a) Acquisition of long-term resident status in another Member State;
  - e) Absence from Portuguese territory for 6 consecutive years.
- 2 — Absences from the European Union territory for more than 12 consecutive months which are justified by specific or exceptional reasons shall not imply the loss of status, namely when the long-term resident has remained in the country of origin to carry out a professional or business activity, or an activity of a cultural or social nature.
- 3 — Absences from Portuguese territory for more than 6 consecutive years which are justified by specific or exceptional reasons shall not imply the loss of status, namely when the long-term resident has remained in the country of origin to carry out a professional or business activity, or an activity of a cultural or social nature.
- 4 — Whenever the loss of status is due to any of the situations referred to in (1)(c) and (e), the interested party may reacquire long-term resident status upon request, provided that the conditions of article 126 (1)(b) to (d) have been met.
- 5 — Decisions on requests referred to in the above paragraph shall be handed down within three months.
- 6 — The expiry of a long-term EU residence permit shall not imply the loss of long-term resident status.
- 7 — The loss of long-term resident status shall result in cancellation of residence authorisation and seizure of the long-term EU residence permit.
- 8 — The government member in charge of internal administration shall be responsible for the cancellation of residence authorisation for long-term residents, with the ability to delegate to the SEF National Director.
- 9 — If the loss of long-term resident status results in the removal, from Portuguese territory, of a third-country national who has had a long-term EU residence permit pursuant to article 130 (4), such removal may only be carried out to the country referred to in the notes.
- 10 — Under the circumstances referred to in the above paragraph, if there are serious reasons to believe that the third-country national represents a hazard to national security or to public order, if the third-country national has been convicted by a final ruling of a felonious crime with a penalty of more than one year in prison, even if its enforcement has been suspended in the case of convictions for felonious crimes provided for in or in connection with this law or for crimes of terrorism, violent crimes or particularly violent or highly organised crimes, or if the third-country national's international protection granted by another Member State has been withdrawn, the removal may be carried out to a different country, in accordance with the principle

of non-refoulement.

11 — If the loss of long-term resident status does not result in removal, the person in question shall be granted residence authorisation with visa exemption.

## **Article 132**

### **Procedural guarantees**

1 — Decisions to deny long-term resident status requests, or the loss of this status, shall be notified to the interested party, specifying the justifying grounds, the right to judicial review and the respective term.

2 — Decisions to deny long-term resident status requests, or the loss of this status, shall be notified electronically to the High Commissariat for Immigration and Intercultural Dialogue (ACIDI, I. P.), specifying the justifying grounds.

3 — Decisions to deny long-term resident status requests, or the loss of this status, shall be subject to judicial review, with suspensory effect, before the administrative courts.

## **Article 133**

### **Equal treatment**

Beneficiaries of long-term resident status shall enjoy equal treatment in relation to Portuguese citizens, pursuant to the Constitution and the law, namely with regard to the following:

a) Access to independent or employed professional activities, provided that such activities do not entail the exercising of public authority, including on an exceptional basis, notwithstanding the special scheme applicable to nationals from Portuguese-speaking countries;

b) Access to employment and working conditions, including conditions for dismissal and remuneration;

c) Vocational training and education, including grants and scholarships in accordance with applicable legislation;

d) Recognition of professional diplomas, certificates and other titles, in accordance with the law and pertinent national procedures;

e) Social security, social assistance and social protection;

f) Tax benefits;

g) Health care;

h) Access to goods and services and the provision of goods and services available to the public, together with procedures for obtaining accommodation;

i) Freedom of association, affiliation and membership to an organisation representing employees or workers, or any organisation whose members are dedicated to a given occupation, including the advantages provided by these types of organisations, notwithstanding national provisions concerning public safety and public order;

j) Free access to the entire national territory.

## **CHAPTER VIII**

### **Removal from Portuguese territory**

#### **SECTION I**

#### **General provisions**

### **Article 134**

#### **Grounds for a forced removal measure or deportation**

1 — Notwithstanding the provisions of international conventions to which Portugal is a party or is bound, the following foreign citizens shall be subject to forced removal or judicial deportation from Portuguese territory:

- a) Foreign citizens who enter or remain illegally in Portuguese territory;
- b) Foreign citizens who endanger national security or public order;
- c) Foreign citizens whose presence or activities in the country constitute a threat to the interests or dignity of the Portuguese state or its citizens;
- d) Foreign citizens who interfere abusively in the exercising of political participation rights reserved to Portuguese citizens;
- e) Foreign citizens whose acts, if known by the Portuguese authorities, would have prohibited their entry into the country;
- f) Foreign citizens in relation to whom there are serious reasons to believe they have committed serious criminal acts, or intend to commit such acts, namely in the European Union territory;
- g) Foreign citizens with a valid residence permit, or other permit entitling them to remain in another Member State, who fail to meet the obligation of going immediately to this Member State;
- h) The provisions of the above paragraph shall not prejudice any criminal liability to which the foreign citizen is subject;
- i) Refugees shall be subject to the most beneficial scheme resulting from the law or international convention to which the Portuguese state is bound.

2 — The provisions of the above paragraph shall not prejudice any criminal liability to which the foreign citizen is subject.

3 — Refugees shall be subject to the most beneficial scheme resulting from the law or international convention to which the Portuguese state is bound.

## **Article 135**

### **Limits to deportation**

1 — The following foreign citizens may not be subject to forced removal or deportation from the country:

- a) Foreign citizens who were born in Portuguese territory and habitually reside there;
- b) Foreign citizens who have minor children of Portuguese nationality residing in Portugal in their custody;
- c) Foreign citizens who have minor children who are third-country nationals, residing in Portuguese territory, who they support and raise with parental responsibilities;
- d) Foreign citizens who have been in Portugal since before 10 years of age and reside in Portugal.

2 — The provisions of the above paragraph shall not apply in the case of justified suspicion of crimes of terrorism, sabotage or attacks against national security, or convictions for such crimes.

## **Article 136**

### **Long-term resident protection in Portugal**

1 — Decisions of judicial deportation for long-term residents may only be based on the fact that the resident represents a real and sufficiently serious threat to public order or public safety, and shall not be based on economic reasons.

2 — Prior to a decision of deportation for a long-term resident, the following shall be taken into account:

- a) The duration of residence in the territory;
- b) The age of the person in question;
- c) The consequences to the person and his/her family members;
- d) Ties to the country of residence, or lack of ties to the country of origin.

3 — Deportation decisions shall be subject to judicial review, with suspensory effect.

4 — Long-term residents without sufficient resources shall be given legal support, pursuant to the law.

## **Article 137**

### **Forced removal of long-term residents in a European Union Member State**

1 — Holders of long-term resident status granted by a European Union Member State may be subject to a forced removal measure if they remain illegally in Portuguese territory.

2 — Provided a third-country national with residence authorisation granted pursuant to article 116 has not obtained long-term resident status in Portuguese territory, forced removal measures may only be taken pursuant to article 136 (1) and (2), after consulting the European Union Member State who granted the status.

3 — In the case of forced removal to the territory of the European Union Member State which granted long-term resident status, the competent authorities of that state shall be notified of the decision by the SEF.

4 — The SEF shall take all measures to effectively execute the decision, and to notify the competent authorities of the European Union Member State which granted long-term resident status to the person in question of the measures adopted to implement the forced removal measure.

#### **Article 138**

##### **Voluntary departure from Portuguese territory**

1 — Foreign citizens who enter or remain illegally in Portuguese territory shall be notified by the SEF to voluntarily depart Portuguese territory within an established time period of 10 to 20 days.

2 — Foreign citizens whose residence authorisation has been cancelled shall be notified by the SEF to voluntarily depart Portuguese territory within an established time period of 10 to 20 days.

3 — The time period referred to in the above paragraphs may be extended by the SEF based on the duration of stay, the existence of children attending school and the existence of other family members and social ties, with notification of the extension to the foreign citizen.

4 — In the event of a decision to cancel residence authorisation pursuant to article 85, if there is a risk of flight, if an extension of stay request has been denied for being clearly unfounded or fraudulent, or if the person in question constitutes a threat to public order, public safety or national security, the citizen shall be notified to immediately depart Portuguese territory, under penalty of the crime of qualified disobedience.

5 — Compliance with the order to immediately depart Portuguese territory presumes the foreign citizen's use of the first means of available travel suited to the situation.

#### **Article 139**

##### **Support for voluntary return**

1 — The State may support the voluntary return of foreign citizens meeting the conditions required from the countries of origin, within the scope of cooperation programmes in place with international organisations, namely the International Organisation for Migration, or non-governmental organisations.

2 — Foreign citizens benefiting from the support granted pursuant to the above paragraph, when holders of residence authorisation, shall submit it at the border post at the time of departure.

3 — For three years after departing the country, beneficiaries of support for voluntary return may only be admitted into Portuguese territory with reimbursement of amounts received, plus interest at the legal rate in force.

4 — The provisions of the above paragraph shall not prejudice the ability to issue a short-stay visa on an exceptional basis, for humanitarian reasons, pursuant to article 68.

5 — Citizens who have benefited from a temporary protection scheme shall not be subject to the requirement in (3).

#### **Article 140**

##### **Competent authorities**

1 — Forced removal measures pursuant to this law may be taken by the SEF National Director, with the power to delegate.

2 — The SEF National Director shall be responsible for deciding on the closure of forced removal proceedings.

3 — Decisions of judicial deportation shall be made by the competent judicial authority.

4 — Deportation decisions shall take the form of an ancillary penalty, or may be made when the foreign citizen subject to the decision has entered or remained in Portugal on a regular basis.

## **Article 141**

### **Procedural jurisdiction**

1 — The SEF National Director, with the power to delegate, shall have jurisdiction to order the opening and advancement of forced removal proceedings, namely by sending them to the competent court.

2 — The SEF National Director shall also be responsible for deciding on the closure of such proceedings.

## **Article 142**

### **Coercive measures**

1 — Within the scope of deportation proceedings, in addition to the coercive measures laid out in the Code of Criminal Procedure, with the exception of remand in custody, the judge may, if there is a risk of flight, also enforce the following:

a) Periodic appearance at the SEF;

b) Obligation to remain at home using electronic surveillance means, pursuant to the law;

c) Placement of the individual at a waiting area or similar space, pursuant to the law.

2 — Judges from local criminal courts, and the local district courts where the foreign citizen is found, shall have jurisdiction to apply coercive measures.

## **Article 143**

### **Destination country**

1 — Forced removal and deportation may not be carried out to any country where the foreign citizen may be persecuted on grounds which, pursuant to the law, justify his/her right to asylum, or where the foreign citizen may undergo torture, inhumane treatment or degradation as defined in article 3 of the European Convention on Human Rights.

2 — The interested party must invoke a well-founded fear of persecution, and submit corresponding proof within the time period granted to him/her, to benefit from the guarantee in the above paragraph.

3 — In the cases referred to in the above paragraph, the interested party shall be routed to another country which will accept him/her.

## **Article 144**

### **Period of prohibition from entry**

Foreign citizens subject to a forced removal measure shall be prohibited from entering Portuguese territory for up to five years, or for more than five years if they constitute a serious threat to public order, public safety or national security.

## **SECTION II**

### **Forced removal determined by administrative authority**

## **Article 145**

### **Forced removal**

Notwithstanding the application of the readmission scheme, forced removal may only be decided by an administrative authority on the grounds of illegal entry or stay in Portuguese territory.

## **Article 146**

### **Procedures for a forced removal measure**

1 — Foreign citizens who enter or remain illegally in Portuguese territory shall be arrested by the police authorities and, whenever possible, handed over to the SEF, accompanied by the respective case record, and

must appear, within 48 hours of arrest, before the judge of the local criminal court in the area of jurisdiction, or local district court in other areas of the country, for the validation and potential application of coercive measures.

2 — If a decision is made to place the individual in a waiting area or similar space, the SEF shall be informed of this so that it may pursue competent proceedings for the foreign citizen's removal from Portuguese territory.

3 — The placement referred to in the above paragraph may not be prolonged for more time than that needed to execute the forced removal measure, without exceeding 60 days.

4 — If there is no decision to place the individual in a waiting area or similar space, the SEF shall likewise be notified for the purposes referred to in (2), with notice to the foreign citizen to appear at the respective department.

5 — No forced removal proceedings shall be brought against foreign citizens who:

a) Having entered Portuguese territory unlawfully, submit a request for asylum to any police authority within 48 hours of their entry;

g) Have a valid residence permit, or other permit entitling them to remain in another Member State, who meet their obligation of going immediately to this Member State;

c) Are readmitted or accepted at the request of another Member State, in accordance with international conventions or agreements signed in this regard, provided that they possess a permit allowing them to remain or legally reside in Portuguese territory;

d) Have a residence authorisation or other permit allowing them to legally remain on Portuguese territory, in accordance with legal provisions in force.

6 — Foreign citizens subject to a) of the above paragraph shall freely await a decision on their request, and shall be notified by the SEF of their rights and obligations, in accordance with the law governing the right to asylum.

7 — Authorities and authorised agents of the SEF, the National Republican Guard, the Public Security Police, the Judiciary Police and the Maritime Police shall have authority to make arrests pursuant to (1).

## **Article 146-A**

### **Conditions of arrest**

1 — Foreign citizens held at a waiting area or similar space shall be authorised, upon request, to contact their legal representatives, family members and competent consular authorities.

2 — Foreign citizens held at a waiting area or similar space shall be entitled to communicate with their attorney or defender in private.

3 — Foreign citizens held at a waiting area or similar space shall be entitled to receive urgent health care and basic treatment for illnesses, with special care for vulnerable persons, particularly minors, unaccompanied minors, disabled persons, the elderly, pregnant women, families with minor children and victims of torture, rape and other serious forms of psychological, physical or sexual violence.

4 — Within the scope of the SEF's management powers at temporary host facilities, protocols may be signed with national or international organisations with recognised work in the area of immigration to define associated means of authorisation and visitation conditions.

5 — Detained foreign citizens shall be provided a document describing the rules of the waiting area or similar space, together with his/her rights and obligations, namely the right to contact the entities referred to in (1).

6 — Detained families shall be kept at separate locations guaranteeing their privacy.

7 — Accompanied minors shall have the ability to participate in leisure activities, namely games and recreation activities suited to their age, together with access to education in accordance with the duration of their stay.

## **Article 147**

### **Dispatch to the border**

1 — Foreign citizens held pursuant to article 146 (1) who, during the judicial examination and after being informed of the provisions of (2) and (3), state their intent to depart Portuguese territory may, by decision of the competent judge and when duly documented, be handed over to the SEF's custody for the purposes of dispatch to the border post and removal as quickly as possible.

2 — Foreign citizens stating their intent to be dispatched to the border post shall be prohibited from entering Portuguese territory for one year.

3 — Dispatch to the border shall result in the foreign citizen's inclusion in the Schengen Information System and on the national list of non-admissible persons for the period of prohibition from entry.

## **Article 148**

### **Proceedings**

1 — During the filing of the proceedings, the person against whom the proceedings have been brought shall be heard, and shall benefit from all guarantees of defence.

2 — The hearing referred to in the above paragraph shall be considered a hearing of the interested party for all purposes.

3 — The investigating officer shall take all essential measures to determine the truth, and may deny, by reasoned order, those requested by the person against whom the proceedings have been brought, when the facts have been deemed sufficiently proven by that person.

4 — At the end of the filing, a report shall be drawn up in which the investigating officer shall describe and assess the facts determined, proposing a resolution deemed appropriate, with the proceedings then submitted to the competent authority for the handing down of a decision.

## **Article 149**

### **Forced removal measure**

1 — The SEF National Director shall be responsible for forced removal measures.

2 — Forced removal measures shall be notified electronically to the High Commissariat for Immigration and Intercultural Dialogue (ACIDI, I. P.) and to the Advisory Board, with notification to the person against whom the proceedings have been brought, specifying the justifying grounds, the right to judicial review and the respective term, together with his/her inclusion in the Schengen Information System or national list of non-admissible persons, notwithstanding applicable norms concerning personal data protection.

3 — Forced removal measures must contain the following:

- a) The justifying grounds;
- b) The legal obligations of the third-country national subject to the forced removal measure;
- c) The entry ban into Portuguese territory and respective time period;
- d) Specification of the country to which the foreign citizen benefiting from the guarantee in article 143 should not be routed.

## **Article 150**

### **Judicial review**

1 — Forced removal measures handed down by the SEF National Director shall be subject to judicial review, with non-staying effects, before the administrative courts.

2 — The provisions of the above paragraph shall not prejudice the foreign citizen's right to use urgent proceedings, or proceedings with suspensory effect, as provided for in the law of administrative procedure.

3 — Foreign citizens shall benefit from legal protection, upon request, subject to Law no. 34/2004 of 29 July, with the necessary adaptations, under the scheme for appointing a defendant for the interested party for urgent proceedings.

4 — Translation and interpretation services may be provided, at the interested party's request, for the purposes of judicial review referred to in (1) and (2).

### **SECTION III**

#### **Judicial deportation**

##### **SUB-SECTION I**

#### **Ancillary penalty of deportation**

##### **Article 151**

#### **Ancillary penalty of deportation**

1 — An ancillary penalty of deportation may apply to non-resident foreign citizens in the country who are convicted of a felonious crime with an effective prison sentence exceeding six months, or a fine in substitute of a prison sentence exceeding six months.

2 — The same may apply to foreign citizens residing in the country who are convicted of a felonious crime with a prison sentence exceeding one year, bearing in mind, in such case, the seriousness of the offender's actions, his/her status, repeat offences, his/her degree of social integration, special prevention and length of residence in Portugal.

3 — Notwithstanding the provisions of the above paragraph, an ancillary penalty of deportation may only be applied to a foreign citizen with permanent residence when his/her conduct constitutes a serious hazard or threat to public order, public safety or national defence.

4 — Once an ancillary penalty of deportation has been decreed, the enforcement judge shall order its execution upon completion of the following:

- a) Half of the sentence, for convictions of five years of prison or less;
- b) Two thirds of the sentence, for convictions of more than five years of prison.

5 — The enforcement judge may, by justified proposal of the director of the prison establishment, and without opposition of the offender, decide to advance enforcement of the ancillary penalty of deportation upon completion of one third of the penalty, for convictions of five years of prison or less, provided that the remainder of the penalty is completed in the destination country.

##### **SUB-SECTION II**

#### **Autonomous judicial deportation measure**

##### **Article 152**

#### **Competent court**

1 — The following shall have jurisdiction to apply autonomous deportation measures:

- a) Local criminal courts, in their area of jurisdiction;
- b) Local district courts, in other areas of the country.

2 — Territorial jurisdiction shall be determined by the foreign citizen's place of residence in Portugal or, in the absence thereof, the place where he/she is found.

##### **Article 153**

#### **Deportation proceedings**

1 — Whenever becoming aware of any fact which may constitute grounds for deportation, the SEF shall organise proceedings to gather proof to enable a decision.

2 — The deportation proceedings shall begin with the order for their filing, and shall include, in addition to the identification of the foreign citizen against whom the proceedings have been brought, all other corresponding relevant pieces of evidence, namely the individual's resident or non-resident status in the country and, in the former case, the length of residence.

3 — In the event of an additional accusation of the crime of disobedience for failing to immediately depart Portuguese territory pursuant to article 138 (4), this shall be judged under attached proceedings.

#### **Article 154**

##### **Judgement**

1 — Having received the proceedings, the judge shall schedule judgement within the following five days, ordering notification of the person against whom the proceedings have been brought, the witnesses specified in the record and the SEF Regional Director.

2 — The individual against whom the proceedings have been brought must be present at the hearing.

3 — The notification to the individual against whom the proceedings have been brought must also state that the individual may, at his/her discretion, lodge an objection at the judgement hearing and include witnesses and other pieces of evidence at his/her disposal.

4 — The purpose of the notification to the SEF Regional Director is to designate the departmental employee or employees who may provide the court with clarifications of interest to the decision.

5 — The provisions of article 382 (1) and (2), article 385 and article 389 of the Code of Criminal Procedure shall apply to the cases referred to in article 134 (1)(f).

#### **Article 155**

##### **Postponement of hearing**

1 — The judgement may only be postponed once, up to a maximum of 10 days of from its original scheduled date:

*a)* if the individual against whom the proceedings have been brought requests this time to prepare his/her defence;

*b)* if the individual against whom the proceedings have been brought is absent from the judgement;

*c)* if witnesses are absent from the judgement to discover the truth of the facts, which can foreseeably be made within this time period.

2 — The provisions of *(a)* to *(c)* of the above paragraph shall not apply to the cases referred to in article 134 (1)(f).

#### **Article 156**

##### **Secondary application of summary proceedings**

With the exception of the circumstances referred to in article 134 (1)(f), the provisions of the Code of Criminal Procedure concerning summary proceeding judgements shall apply, with the necessary adaptations.

#### **Article 157**

##### **Content of decision**

1 — Judicial deportation decisions must contain the following:

*a)* The justifying grounds;

*b)* The legal obligations of the individual to be deported;

*c)* The entry ban into Portuguese territory and respective time period;

*d)* Specification of the country to which the foreign citizen benefiting from the guarantee in article 143 should not be routed.

2 — The execution of the decision shall result in the individual's inclusion in the Schengen Information System and on the national list of non-admissible persons for the period of prohibition from entry.

3 — The SEF shall notify the individual of his/her inclusion in the Schengen Information System.

## **Article 158**

### **Appeal**

1 — Judicial decisions of deportation shall be subject to recourse at the Court of Appeal, with non-staying effect.

2 — The provisions of the Code of Criminal Procedure concerning ordinary appeals shall apply on a secondary basis.

## **SECTION IV**

### **Enforcement of forced removal and judicial deportation decisions**

## **Article 159**

### **Authority to enforce decision**

The SEF shall be responsible for enforcing forced removal and deportation measures.

## **Article 160**

### **Compliance with decision**

1 — Foreign citizens to whom a forced removal measure or judicial deportation has been handed down shall be granted a time period of 10 to 20 days to exit Portuguese territory.

2 — Under duly justified circumstances, namely specific and objective reasons leading to a belief of an intent to flee, whenever a third-country national uses counterfeit or falsified documents, in situations showing evidence of a crime, or when there are serious reasons to believe he/she has committed serious criminal acts or strong evidence of an intent to commit such acts, the foreign citizen shall be handed over to the SEF's custody for the purpose of enforcing the forced removal measure or judicial deportation.

3 — Provided the forced removal measure or judicial deportation has not been enforced and the time period referred to in (1) has not expired, a request may be made to the competent judge that the foreign citizen be subject to one of the following:

- a) Placement in a waiting area or similar space for up to a maximum of 30 days;
- b) Obligation to remain at home using electronic surveillance means;
- c) Periodic appearance at the SEF or police authorities;
- d) Payment of bail.

4 — The special needs of vulnerable people shall be taken into consideration during the time period granted, particularly minors, disabled persons, the elderly, pregnant women, single-parent families with minor children and victims of torture, rape or other serious forms of psychological, physical or sexual violence.

5 — During the time period granted for voluntary departure, foreigners shall be entitled to maintain family unity with family members present in Portuguese territory, receive urgent health care and basic treatment for illnesses and, in the case of minors, access to public education.

6 — The time period referred to in (3)(a) may be longer, although never exceeding three months, in the case of foreign citizens with strong evidence of having committed or intending to commit serious punishable offences, convicted of a felonious crime, or constituting a threat to public order, national security or the international relations of a European Union Member State or states subject to the Implementing Convention.

## **Article 161**

### **Non-compliance with decision**

1 — Foreign citizens failing to depart Portuguese territory within their established time period shall be arrested and dispatched to the border post for removal from Portuguese territory.

2 — If the forced removal or deportation decision cannot be enforced within 48 hours of arrest, notification shall be given to the judge of the petty criminal court having jurisdiction, or circuit court in other areas of the country, to determine whether the foreign citizen will be kept in a waiting area or similar space.

## **Article 162**

### **Notification of decision**

The enforcement of a forced removal measure or deportation shall be notified, by diplomatic channels, to the competent authorities of the foreign citizen's destination country.

## **SECTION V**

### **Readmission**

## **Article 163**

### **Concept of readmission**

1 — Pursuant to international conventions, foreign citizens found illegally in the territory of a state, coming directly from another state, may be readmitted by the latter via request from the former.

2 — Readmission is considered active when Portugal is the requesting state and passive when Portugal is the requested state.

## **Article 164**

### **Responsibility**

The SEF National Director, with the power to delegate, shall be responsible for approving requests for the readmission of persons on behalf of Portugal, as well as submitting readmission requests to other states.

## **Article 165**

### **Active readmission**

1 — Whenever a foreign citizen with an irregular status on Portuguese territory must be readmitted by another state, the SEF shall create the respective request pursuant to article 153, with the necessary adaptations

2 — During the filing of the readmission proceedings, the foreign citizen to be sent back to the requested state shall be heard, which shall be considered a hearing of the interested party for all purposes.

3 — If the request submitted by Portugal is approved, the competent authority shall decide to send the foreign citizen back to the requested state.

4 — If the request is denied, deportation proceedings shall be filed.

5 — The author of the readmission request shall have authority to decide on sending back the foreign citizen to the requested state.

6 — The sending back of the foreign citizen to the requested state shall result in his/her inclusion on the national list of non-admissible persons and in the Schengen Information System, if the requested state is a third country.

## **Article 166**

### **Appeal**

A decision to send a foreign citizen back to a requested state shall be subject to appeal to the government member in charge of internal administration, to be lodged within 30 days, with non-staying effect.

## **Article 167**

### **Prohibition from entry**

Foreign citizens resent to another state under an international convention shall be prohibited from entering the country for three years.

## **Article 168**

### **Passive readmission**

1 — Foreign citizens readmitted to Portuguese territory who fail to meet the legal requirements to remain in the country shall be subject to a removal measure from Portuguese territory pursuant to this chapter.

2 — The following third-country nationals shall be readmitted to Portuguese territory immediately and without formalities:

*a)* Third-country nationals who have acquired long-term resident status in Portugal, together with their family members, whenever they have been subject to a forced removal measure from the Member State where they were exercising their right of residence;

*b)* Third-country nationals with a residence authorisation ("EU blue card"), issued pursuant to articles 121-A and following, together with their family members, even when the card has expired or been cancelled while analysing the request, whenever they have been subject to a forced removal measure from the Member State to which they travelled for the purposes of highly qualified work;

*c)* Third-country nationals who are subject to an approval request from another Member State, under agreements or conventions in this regard, provided that they hold permits allowing them to legally reside or remain on Portuguese territory.

3 — The readmission obligation referred to in the above paragraph shall not prejudice the ability of a long-term resident and his/her family members to move to a third Member State.

## **SECTION VI**

### **Mutual recognition of deportation decisions**

#### **Article 169**

##### **Recognition of a forced removal measure against a third-country national**

1 — Removal made by a competent administrative authority of a European Union Member State or a state which is a party to the Implementing Convention against a third-country national in Portuguese territory shall be recognised and executed pursuant to the provisions of this section, provided that the forced removal measure is based on:

*a)* a serious current threat to the public order or national security of the state making the decision;

*b)* breach, by the third-country national in question, of regulations concerning the entry and stay of foreign citizens in the state making the forced removal measure.

2 — A forced removal measure based on the provisions of *(a)* of the above paragraph shall only be recognised when made under the following circumstances:

*a)* Conviction of the third-country national, by the state making the forced removal, for an infraction subject to a prison sentence of at least one year;

*b)* Existence of serious reasons to believe that the third-country national has committed serious punishable acts, or the existence of actual evidence of an intent to commit such acts, in the territory of a European Union Member State or state which is a party to the Implementing Convention.

3 — If a person subject to the above paragraph has residence authorisation issued in Portuguese territory, the recognition and enforcement of the removal measure may only be decided by a judicial authority, pursuant to articles 152 to 158.

4 — Notwithstanding the provisions of article 25 (2) of the Implementing Convention, whenever a person subject to a forced removal measure referred to in (1) and (2) has residence authorisation issued by a European Union Member State or a state which is a party to the Implementing Convention, the SEF shall consult the competent authorities of this state for the purposes of potential cancellation of the residence authorisation pursuant to legal provisions in force in that state, together with the state taking the forced removal measure.

5 — Forced removal measures pursuant to (1) and (2) shall only be recognised when not postponed or suspended by the state taking the forced removal measure.

6 — The provisions of this article shall apply, notwithstanding provisions on the determination of responsibility of European Union Member States for analysing an asylum request and readmission agreements signed with European Union Member States.

#### **Article 170**

##### **Responsibility**

1 — The SEF shall be responsible for enforcing the removal measures referred to in the above article.

2 — Whenever a forced removal measure issued by a competent national authority is enforced by a European Union Member State or state which is a party to the Implementing Convention, the SEF shall provide the competent authority of the state of enforcement with all documents needed to prove that the enforceability of the removal measure is permanent in nature.

3 — The SEF shall be authorised to create and maintain a file of personal data for the purposes provided for in this section, notwithstanding compliance with constitutional and legal rules concerning data protection.

4 — The SEF shall also be responsible for cooperating and exchanging pertinent information with the competent authorities of other European Union Member States or states which are parties to the Implementing Convention to recognise and enforce decisions of removal pursuant to the above article.

#### **Article 171**

##### **Enforcement of removal**

1 — A forced removal measure recognised pursuant to article 169 shall only be enforced in compliance with article 135, and following a prior analysis of the situation of the person in question, for the purpose of ensuring that neither the Constitution, pertinent international conventions nor the law prohibit its enforcement.

2 — Third-country nationals who remain illegally in Portuguese territory, and who are subject to a decision pursuant to article 169, shall be arrested by the police authorities and handed over to the SEF's custody, accompanied by the respective record, and dispatched to the border.

3 — Decisions to enforce removal shall be subject to judicial review, with non-staying effects, before the administrative courts.

4 — Foreign citizens subject to a decision made pursuant to article 169 (3) shall be handed over to the SEF's custody for the purposes of dispatch to the border and removal as soon as possible.

5 — Whenever removal cannot be enforced within 48 hours of arrest, the third-country national shall be presented to the judge of the petty criminal court having jurisdiction, or of the competent circuit court, for validation of the arrest and the potential application of coercive measures.

6 — The order to validate the arrest and handing over to the SEF's custody shall be subject to appeal pursuant to article 158.

7 — After enforcing the removal measure, the SEF shall notify the competent authority of the Member State taking the forced removal measure.

#### **Article 172**

##### **Financial compensation**

Financial compensation for costs incurred for enforcing the removal of third-country nationals shall be made in accordance with criteria approved by the Council of the European Union.

### **SECTION VII**

#### **Support for removal by air during airport transit**

##### **Article 173**

##### **Preference for direct flight**

The possibility of using a direct flight to the destination country must always be analysed whenever

removing a third-country national by air.

#### **Article 174**

##### **Airport transit request in the territory of a Member State**

1 — If a direct flight cannot be used, an airport transit request may be made to the competent authorities of another Member State, provided that it does not entail a change of airport in the territory of the requested Member State.

2 — Airport transit requests, with or without an escort, and their associated support measures, namely those referred to in article 177 (2), shall be notified in writing to the requested Member State as quickly as possible, and always at least two days in advance of transit.

3 — The SEF National Director shall be responsible for making airport transit requests, with the power to delegate.

4 — Airport transit may not begin without authorisation from the requested Member State, except in cases where there is no response to the request referred to in (1) within the time periods to which the requested Member State is bound, with the ability to initiate transit through simple notification.

5 — For the purposes of handling the request referred to in (1), the information in the airport transit authorisation and request form, contained in an annex to Council Directive 2003/110/EC of 25 November, shall be sent to the requested Member State.

6 — The SEF shall take the appropriate measures to ensure that transit occurs as quickly as possible, and always within twenty-four hours.

7 — Third-country nationals shall be immediately readmitted to Portuguese territory under the following circumstances:

- a) If airport transit authorisation has been denied or revoked; or
- b) During transit, the third-country national has entered the requested Member State without authorisation; or
- c) The enforcement of a third-country national's removal measure to another transit country or destination country, or boarding of a connecting flight, has not been possible; or
- d) Airport transit is not possible for any other reason.

8 — The SEF shall pay expenses needed for the readmission of third-country nationals.

9 — Charges for the airport transit support measures referred to in article 177 (2), taken by the requested Member State, shall be paid by the SEF.

#### **Article 175**

##### **Airport transit support in Portuguese territory**

1 — Airport transit may be authorised by request of the competent authorities of a Member State in the process of removing a third-country national, whenever necessary.

2 — Airport transit may be denied if:

- a) The third-country national has been accused of a criminal infraction, or his/her arrest has been ordered to serve a sentence, pursuant to applicable legislation; or
- b) Transit through other states or admission to the destination country are not enforceable; or
- c) The removal measure entails a change of airport in Portuguese territory; or
- d) The requested support cannot be provided, at any given moment, for practical reasons; or
- e) The third-country national's presence in Portuguese territory constitutes a threat to public order, public safety or public health, or to the international relations of the Portuguese state.

3 — In the case of (d) of the above paragraph, a date shall be indicated as quickly as possible to the requesting Member State, as close as possible to the initially requested date, on which airport transit support may be given if all other requirements have been met.

4 — Previously granted airport transit authorisations may be revoked if facts subsequently become known which justify the denial of transit pursuant to (2).

5 — The SEF shall notify the competent authorities of the requesting Member State, without delay, of the denial or revocation of airport transit authorisation, pursuant to (2) of the above paragraph, or the impossibility of airport transit for any other reason, with justification for the decision.

## **Article 176**

### **Decision to grant airport transit support**

1 — The SEF National Director shall be responsible for decisions to authorise or deny airport transit, with the power to delegate.

2 — Decisions to authorise or deny airport transit shall be notified to the competent authorities of the requesting Member State within 48 hours, subject to extension for an equivalent time period on duly justified grounds.

3 — If no decision has been made within the time period referred to in the above paragraph, the requested transit may begin with simple notification from the requesting Member State.

## **Article 177**

### **Airport transit support measures**

1 — In accordance with mutual consultations with the requesting Member State, within available means and in line with applicable international norms, all necessary support measures shall be provided to ensure that the third-country national has departed.

2 — The support measures referred to in the above paragraph include:

*a)* Receiving the third-country national in the aircraft and escorting him/her within the area of the transit airport, namely to the connecting flight;

*b)* Providing emergency medical care to the third-country national and, if necessary, to his/her escort;

*c)* Providing food to the third-country national and, if necessary, to his/her escort;

*d)* Receiving, keeping and transmitting travel documents, namely in the case of removal measures without an escort;

*e)* In the case of transit without an escort, notifying the requesting Member State of the third-country national's location and time of departure from Portuguese territory;

*f)* Notifying the requesting Member State of any serious incidents occurring during the third-country national's transit.

3 — The mutual consultations pursuant to (1) to provide the support measures referred to in (*b*) of the above paragraph shall not be necessary.

4 — Notwithstanding the readmission of a third-country national, when transit operations cannot be carried out, despite the support provided in accordance with (1) and (2), all necessary support measures may be taken, at the request of and in consultation with the requesting Member State, to carry out the transit, which may be done within 48 hours.

5 — The requesting Member State shall be provided with information on the charges for the services in (2)(*b*) and (*c*), together with criteria for quantifying other charges actually paid, as referred to in (2).

6 — Support for requesting Member States' readmission of third-country nationals shall be provided whenever it occurs.

## **Article 178**

### **International conventions**

1 — The beginning of transit by simple notification may be subject to international conventions signed with one or more Member States.

2 — The international conventions referred to in the above paragraph shall be notified to the European Commission.

## **Article 179**

### **Central authority**

- 1 — The SEF shall be the central authority for receiving requests for airport transit support.
- 2 — The SEF National Director shall designate, for all pertinent transit airports, points of contact available during all transit operations.

#### **Article 180**

##### **Escort**

- 1 — For the purposes of applying this section, "escort" shall mean persons from the requesting Member State who accompany the third-country national during airport transit in Portuguese territory, including medical care providers and interpreters.
- 2 — During transit, the powers of escorts shall be limited to self-defence.
- 3 — When national police officers are unavailable to provide assistance, escorts may react in a reasonable manner proportional to an immediate and serious risk that the third-country national may flee, injure himself/herself, injure third parties or cause property damages.
- 4 — Escorts shall comply under all circumstances with national legislation.
- 5 — Escorts may not be armed, and must wear civilian attire, during airport transit.
- 6 — Escorts must exhibit suitable means of identification, including transit authorisation or, when applicable, the notification referred to in article 176 (3).

#### **Article 180-A**

##### **Implementation of removal decisions**

- 1 — The SEF National Director shall be responsible for decisions on the Portuguese State's organisation of, or participation in, shared flights of two or more Member States for the removal of third-country nationals subject to a forced removal measure or judicial deportation.
- 2 — The decision in question shall be guided by principles of efficacy through the sharing of existing resources and, in particular, compliance with international agreements or conventions on human rights which are binding to Member States.
- 3 — The following must be ensured whenever the decision is made to organise a joint operation of removal by air, open to the participation of other Member States:
  - a) Essential information to the competent national authorities of the other Member States, to ascertain their interest in participating in the operation;
  - b) Implementation of measures needed to properly carry out the joint operation, specifically bearing in mind the provisions of article 4 of Council Decision 2004/573/EC of 29 April, and its respective annex.
- 4 — For the purposes of the above paragraph, the organising national authority undertakes, in accordance with common guidelines on safety provisions contained in the above-mentioned annex, to:
  - a) take measures so that third-country nationals are in possession of valid travel documents, together with entry visas, if necessary, for the country or countries of transit or destination of the shared flight;
  - b) provide adequate medical, medicinal and linguistic assistance, together with escort services, in compliance with the principles of need, proportionality and identification pursuant to article 180;
  - c) monitor each operation of joint removal, using oversight by the appropriate entity, to be designated by order of the government member in charge of internal administration;
  - d) prepare an internal confidential report on the operation of joint removal, preferentially including, when they exist, statements on incidents or the application of coercive or medical measures and partial reports from other participating Member States.
- 5 — Notwithstanding compliance with Council Decision 2004/573/EC and its respective annex, the Portuguese State's participation in joint operations organised by other Member States shall be subject, with the necessary adaptations, to the scheme laid out in this article.

#### **CHAPTER IX**

##### **Criminal provisions**

## **Article 181**

### **Illegal entry, stay and transit**

1 — The entry of foreign citizens in Portuguese territory in breach of the provisions of articles 6, 9 and 10 and article 32 (1) and (2) shall be considered illegal.

2 — The stay of foreign citizens in Portuguese territory, when not authorised pursuant to the provisions of this law or the law governing the right to asylum, or in the event of illegal entry pursuant to the above paragraph, shall be considered illegal.

3 — The transit of foreign citizens in Portuguese territory without the guarantee of admission in the destination country shall be considered illegal.

## **Article 182**

### **Civil and criminal liability of legal persons and comparable entities**

1 — Legal persons and comparable entities shall be held liable, pursuant to general legal terms, for the crimes provided for in this law.

2 — The entities referred to in (1) shall be jointly liable, pursuant to civil law, for penalties, fines, compensation and other payments for which the perpetrators of the infractions provided for in this law have been convicted.

3 — In addition to criminal liability, the crimes referred to in articles 183 to 185-A shall also be subject to civil liability for all expenses involving the stay and removal of the foreign citizens involved, including the costs of sending amounts resulting from wages to the country of origin.

## **Article 183**

### **Assisting of unlawful immigration**

1 — Those who encourage or facilitate, in any manner, the illegal entry or transit of foreign citizens in Portuguese territory shall be punished with a prison sentence of up to three years.

2 — Those who encourage or facilitate, in any manner, the illegal entry, stay or transit of foreign citizens in Portuguese territory, with the intent to profit, shall be punished with a prison sentence of one to five years.

3 — When these actions are carried out by transporting or keeping foreign citizens under inhumane or degrading conditions, jeopardising their lives, causing serious harm to their physical integrity or causing death, the offender shall be punished with a prison sentence of two to eight years.

4 — Attempts at such acts shall also be subject to punishment.

5 — The penalties applicable to the entities referred to in article 182 (1) shall be a fine, whose minimum and maximum limits shall be doubled, or prohibition from exercising professional activity for one to five years.

## **Article 184**

### **Association for assisting of unlawful immigration**

1 — The sponsors or founders of groups, organisations or associations whose purpose or activity is aimed at committing the crimes provided for in the above article shall be punished with a prison sentence of one to six years.

2 — Those who act on behalf for such groups, organisations or associations, or who support or assist them in recruiting new members, shall be subject to the same penalty.

3 — Those who lead or manage the groups, organisations or associations referred to in the above paragraphs shall be punished with a prison sentence of two to eight years.

4 — Attempts shall also be subject to punishment.

5 — The penalties applicable to the entities referred to in article 182 (1) shall be a fine, whose minimum and maximum limits shall be doubled, or prohibition from exercising professional activity for one to five years.

## **Article 185**

### **Solicitation of illegal labour**

1 — Those who, with the intent to profit on their own behalf or on behalf of third parties, attract or solicit foreign citizens without residence authorisation or a visa enabling them to carry out a professional activity for the purpose of adding them to the labour market, shall be punished with a prison sentence of one to five years.

2 — Repeat offenders of the acts provided for in the above paragraph shall be punished with a prison sentence of two to six years.

3 — Attempts at such acts shall also be subject to punishment.

#### **Article 185-A**

##### **Use of labour of illegal foreign citizens**

1 — Those who habitually employ the labour of foreign citizens without residence authorisation or a visa allowing legal stay in Portugal shall be punished with a prison sentence of up to one year, or a fine of up to 240 days.

2 — Those who, in the cases provided for in the above paragraph, simultaneously employ the labour of a significant number of illegal foreign citizens shall be punished with a prison sentence of up to two years, or a fine of up to 480 days.

3 — Those who employ the labour of illegal foreign citizens who are minors, even when permitted to carry out work pursuant to the Labour Code, shall be punished with a prison sentence of up to two years, or a fine of up to 480 days.

4 — If the actions referred to in the above paragraphs occur under particularly exploitative or degrading working conditions, the offender shall be punished with a prison sentence of one to five years, if a more serious penalty does not apply pursuant to other legal provisions.

5 — Those who employ or use the labour or services of illegal foreign citizens, who are known to be victims of criminal infractions connected to human trafficking, shall be punished with a prison sentence of two to six years, if a more serious penalty does not apply pursuant to other legal provisions.

6 — The limits of penalties shall be increased, pursuant to general legal terms, in the case of repeat offences.

7 — The penalties applicable to the entities referred to in article 182 (1) shall be a fine, whose minimum and maximum limits shall be doubled, together with the potential declaration of prohibition from exercising professional activity for three months to five years.

#### **Article 186**

##### **Marriage or union of convenience**

1 — Those who marry or live in a de facto union for the sole purpose of obtaining or allowing the attainment of a visa, residence authorisation or "EU blue card", or defrauding legislation in force concerning the acquisition of nationality, shall be punished with a prison sentence of one to five years.

2 — Those who, on a repeated or organised basis, encourage or create conditions for committing the offences provided for in the

above paragraph, shall be punished with a prison sentence of two to six years.

#### **Article 187**

##### **Breach of entry ban**

1 — Foreign citizens who enter Portuguese territory during the period in which their entry is prohibited shall be punished with a prison sentence of up to two years, or a fine of up to 100 days.

2 — In the event of conviction, the court may also rule, by duly justified judicial decision, that the foreign citizen be deported, pursuant to article 135.

3 — Notwithstanding the provisions of (1), the foreign citizen may be removed from Portuguese territory to complete the remainder of the entry ban period, in accordance with the proceedings deciding upon his/her removal.

## **Article 188**

### **Investigation**

1 — In addition to the competent authorities, the SEF shall be responsible for investigating the crimes referred to in this chapter, and other related crimes, namely human trafficking.

2 — The undercover actions carried out by the SEF, within the scope of preventing and investigating crimes related to illegal immigration involving criminal associations, shall comply with the terms of Law no. 101/2001 of 25 August.

## **Article 189**

### **Forfeiture of items**

1 — Items seized by the SEF and declared forfeited to the State shall be allocated to it when:

*a)* involving documents, arms, ammunition, vehicles, telecommunications equipment, computer equipment or other items of interest to the institution;

*b)* resulting from the fulfilment of international conventions, and related to illegal immigration.

2 — The utility of the items referred to in *(a)* of the above paragraph shall be proposed by the SEF in the final report of the respective criminal proceedings.

3 — The items referred to in *(1)(a)* may be used by the SEF on a provisional basis, from the time of their seizure until their declaration of forfeiture or return, by order of the SEF National Director, to be conveyed to the authority overseeing the proceedings.

## **Article 190**

### **Ancillary penalties and coercive measures**

The crimes referred to in this law may be subject to the ancillary penalties of prohibiting or suspending the performance of public duties provided for in the Criminal Code, together with the coercive measures provided for in the Code of Criminal Procedure.

## **Article 191**

### **Delivery of rulings**

The courts shall send the following to the SEF as soon as possible in electronic format:

*a)* Certificates of convictions handed down in criminal proceedings against foreign citizens;

*b)* Certificates of decisions handed down in proceedings brought for crimes of assisting unlawful immigration and the solicitation of illegal labour;

*c)* Certificates of decisions handed down in deportation proceedings;

*d)* Certificates of decisions handed down in extradition proceedings for foreign citizens.

## **CHAPTER X**

### **Administrative offences**

## **Article 192**

### **Illegal stay**

1 — The illegal stay of foreign citizens in Portuguese territory beyond their authorised periods shall constitute administrative offence punishable with the following fines:

*a)* From €80 to €160, if the length of stay does not exceed 30 days;

*b)* From €160 to €320, if the length of stay exceeds 30 days but does not exceed 90 days;

*c)* From €320 to €500, if the length of stay exceeds 90 days but does not exceed 180 days;

*d)* From €500 to €700, if the length of stay exceeds 180 days.

2 — The same fine shall apply when the infraction provided for in the above paragraph is detected at the time of departing the country.

#### **Article 193**

##### **Unauthorised access to international port zone**

1 — Access to the international port zone by individuals not authorised by the SEF shall constitute an administrative offence punishable with a fine of €300 to €900.

2 — Access on board vessels by individuals not authorised by the SEF shall constitute an administrative offence punishable with a fine of €500 to €1,000.

#### **Article 194**

##### **Transport of person not authorised to enter the country**

The transport, into Portuguese territory, of a foreign citizen without a valid travel document or visa, by a carrier or any person in carrying out their professional activity, shall constitute an administrative offence punishable, per foreign citizen transported, with a fine of €4,000 to €6,000 (in the case of legal persons) or €3,000 to €5,000 (in the case of natural persons).

#### **Article 195**

##### **Lack of airport transit visa**

Carriers and all other persons who, in carrying out their professional activity, transport foreign citizens to a domestic airport without an airport transit visa when they are required to have one, shall be subject to a fine of €4,000 to €6,000 (in the case of legal persons) or €3,000 to €5,000 (in the case of natural persons) per foreign citizen transported.

#### **Article 196**

##### **Breach of data communication obligation**

Carriers who have not transmitted the mandatory information pursuant to articles 42 and 43, who have transmitted incorrect, incomplete or false information or have provided it after the deadline specified, shall be punished, per journey, with a fine of €4,000 to €6,000 (in the case of legal persons) or €3,000 to €5,000 (in the case of natural persons).

#### **Article 197**

##### **Lack of declaration of entry**

Infractions to the provisions of article 14 (1) shall constitute an administrative offence punishable with a fine of €60 to €160.

#### **Article 198**

##### **Performance of unauthorised professional activity**

1 — The exercising of independent professional activity by foreign citizens without proper residence authorisation, when required, shall constitute an administrative offence punishable with a fine of €300 to €1,200.

2 — The administrative offences referred to in the above paragraph may be subject to the ancillary penalties provided for in articles 21 and following of the General Administrative Offence Scheme.

3 — *(Revoked.)*

4 — *(Revoked.)*

5 — *(Revoked.)*

- 6 — *(Revoked.)*
- 7 — *(Revoked.)*
- 8 — *(Revoked.)*
- 9 — *(Revoked.)*
- 10 — *(Revoked.)*

## **Article 198-A**

### **Use of labour of illegal foreign citizens**

1 — Those who employ the labour of foreign citizens without residence authorisation or a visa authorising the undertaking of employed professional activity shall be subject to one of the following fines:

- a) From €2,000 to €10,000, when employing 1 to 4 citizens;
- b) From €4,000 to €15,000, when employing 5 to 10 citizens;
- c) From €6,000 to €30,000, when employing 11 to 50 citizens;
- d) From €10,000 to €90,000, when employing more than 50 citizens.

2 — The administrative offences referred to in this article may be subject to the following ancillary counties:

- a) Those provided for in articles 21 and following of the General Administrative Offence Scheme;
- b) The obligation to reimburse some or all public subsidies, assistance or benefits, including European Union funding, granted to the employer up to 12 months prior to detecting the employment of foreign citizens with illegal status, when the administrative offence was committed during or as a result of the activity for which the subsidy was granted;
- c) Publication of the conviction decision.

3 — The penalties referred to in article 21 (1)(b) to (g) of the General Administrative Offence Scheme, when applied pursuant to the above paragraph, shall have a maximum duration of five years.

4 — The ancillary penalty referred to in (2)(c) of this article shall entail:

- a) Publication, at the offender's expense, of a statement identifying the offender, infraction, breached regulation and applicable penalty on the SEF website, in a newspaper with national distribution and in a periodic regional or local publication from the area where the offender is located;
- b) Sending of the statement referred to in the above sub-paragraph to the competent administrative authority, whenever the practice of, or access to, the offender's activity requires administrative permissions such as permits, licences, authorisations, validations, authentications, certifications and acts issued following prior communications and registrations.

5 — Employers, users of labour under a service provision/sporadic assignment/temporary work agreement and general contractors shall be jointly liable:

- a) for paying the fines in the above paragraphs and wages from employment agreements, or amounts due for their breach or termination;
- b) for penalties arising from the breach of labour legislation;
- c) for penalties arising from the failure to declare income subject to tax and social security withholdings for illegal work done by foreign workers;
- d) for paying necessary expenses for the stay and removal of foreign citizens involved;
- e) for paying any expenses arising from the sending of funds, originating from wages, to the country to which the foreign citizen has returned on a voluntary or forced basis.

6 — Project owners who fail to obtain, from the other party, a statement of compliance with legal obligations with regard to foreign employed workers, shall also be held jointly liable pursuant to the above paragraph.

7 — When the project owner is the Public Administration, any breach of the above paragraph shall be subject to disciplinary liability.

8 — For the purpose of calculating wages and income subject to tax and social security withholdings, it shall be assumed that, notwithstanding the provisions of labour and tax legislation, the minimum level of remuneration corresponds to the monthly minimum wage guaranteed by law, in collective bargaining agreements or in accordance with common practices in the business sectors in question, and that the employment relationship has a duration of at least three months, unless proven otherwise by the employer, user of the labour or worker.

9 — Any breach of the obligations provided for in (5) and (6) shall constitute a serious administrative offence, pursuant to labour legislation.

10 — In the event of failure to pay amounts due for wages resulting from work actually provided, together with the necessary expenses for the stay and removal of foreign citizens involved, the notice of settlement produced in the case in question shall be considered enforceable, subject to the norms of common procedure for the enforcement of proper payments.

11 — If the offender is a legal person or comparable entity, its administrators, managers or directors shall be held jointly liable for payment of the fine.

### **Article 198-B**

#### **Support to third-country nationals whose activity has been used illegally**

1 — Trade unions and immigrant associations whose representation is recognised, pursuant to the law, by the High Commissariat for Immigration and Intercultural Dialogue (ACIDI, I. P.), and other entities with immigrant integration duties or activities, may lodge complaints against employers or users of labour from illegal foreign citizens, at the inspection department of the ministry in charge of employment, under the following circumstances:

- a) Failure to pay wages;
- b) Existence of an employment relationship with conditions of social abandonment, salary exploitation, the exploitation of working hours or particularly exploitative working conditions;
- c) Illegal use of child labour.

2 — Notwithstanding the provisions of the above paragraph, organisations whose purpose is the defence or promotion of immigrant rights and interests, namely against the use of labour from illegal foreign citizens, the use of child labour or discrimination involving access to employment, training or conditions for providing independent or employed work, shall have the ability to lawfully intervene by representing or assisting the interested party, provided that all of the following conditions are met:

- a) The defence of the interests in question are expressly included in their duties or in the objectives of their by-laws;
- b) There is express authorisation from the interested party.

3 — The voluntary or forced removal, to the country of origin, of a third-country national whose labour has been used illegally shall not prejudice the provisions of the above paragraphs.

4 — Third-country nationals whose labour has been used illegally, who are subject to a forced removal measure from Portuguese territory, shall be informed of the rights provided by this article at the time of notification of the forced removal measure, pursuant to article 149.

### **Article 198-C**

#### **Inspections**

1 — The SEF shall be responsible for carrying out regular inspections to control the use of labour from third-country nationals with irregular status on Portuguese territory, pursuant to article 181 (2).

2 — The inspections referred to in (1) shall be carried out taking into consideration the SEF's assessment of the existing risk on Portuguese territory of employing the labour of illegal third-country nationals, by business sector.

3 — Before the end of May each year, the SEF shall transmit, a final report on the inspections carried out pursuant to the above paragraphs and in reference to the preceding year to the government member in

charge of internal administration, who shall then notify the European Commission before 01 July.

#### **Article 199**

##### **Failure to submit travel document**

Infractions to the provisions of article 28 shall constitute an administrative offence punishable with a fine of €60 to €120.

#### **Article 200**

##### **Failure to request residence permit**

Infractions to the provisions of article 124 (2) shall constitute an administrative offence punishable with a fine of €60 to €120.

#### **Article 201**

##### **Failure to renew residence authorisation in a timely manner**

Requests to renew temporary residence authorisation submitted after the deadline referred to in article 78 (1) shall constitute an administrative offence punishable with a fine of €75 to €300.

#### **Article 202**

##### **Failure to observe specific obligations**

1 — Infractions to the communication obligations provided for in article 86 shall constitute an administrative offence punishable with a fine of €45 to €90.

2 — Infractions to the obligation provided for in article 6 (1) shall constitute an administrative offence punishable with a fine of €200 to €400.

3 — The boarding and disembarkation of foreign citizens outside of border posts qualified for this purpose, and in breach of the provisions of article 6 (1), shall constitute an administrative offence punishable with a fine of €50,000 to €100,000.

4 — The carrier company and its representatives in Portuguese territory shall be jointly liable for paying the fines referred to in the above paragraph.

#### **Article 203**

##### **Failure to notify accommodation**

1 — Any omission of the electronic record for foreign citizens pursuant to article 15 (4), or any failure to submit the record of accommodation pursuant to article 16 (1) or (2), shall constitute an administrative offence punishable with the following fines:

- a) From €100 to €500, for the omission of 1 to 10 records or citizens;
- a) From €200 to €900, for the omission of 11 to 50 records or citizens;
- c) From €400 to €2,000, for the omission of 51 or more records or citizens.

2 — In the case of negligent breach of the deadline for notifying accommodation or the departure of a foreign citizen, the applicable fine's minimum and maximum limit shall be reduced to one fourth.

#### **Article 204**

##### **Negligence and voluntary payment**

1 — Negligence shall be punishable at all times with regard to the administrative offences provided for in the above articles.

2 — In the case of negligence, the fine's minimum and maximum amounts shall be reduced by one half.

3 — In the case of voluntary payment, the fine's minimum and maximum amounts shall be reduced by one half.

## **Article 205**

### **Failure to pay fine**

When an extension of stay is permitted by law, the extension shall not be granted without proof of payment of the applicable fine following administrative offence proceedings for the infractions referred to in articles 192, 197, 199, 198 (1) and 202 (2).

## **Article 206**

### **Allocation of fines**

Revenues from applicable fines pursuant to this law shall be allocated as follows:

- a) 60 % to the State;
- b) 40% to the SEF.

## **Article 207**

### **Authority to apply fines**

1 — The SEF National Director shall have authority to apply the fines and ancillary penalties provided for in this chapter, with the power to delegate, notwithstanding the specific powers attributed to other entities pursuant to article 198-A (9).

2 — For the purposes of the above paragraph, the SEF shall organise an individual record, notwithstanding applicable legal norms concerning personal data protection.

## **Article 208**

*(Revoked.)*

## **CHAPTER XI**

### **Fees and other charges**

## **Article 209**

### **Applicable scheme**

1 — The fees to be charged for the issuance of visas by consular posts shall be those shown on the Consular Fees Table.

2 — Fees and other charges for the administrative procedures provided for in this law shall be determined by order of the government member in charge of internal administration.

3 — Fees, to be determined by order of the government member in charge of internal administration, shall be charged for the escorting of foreign citizens whose removal from Portuguese territory is the responsibility of carriers, together with the placement of passengers not admitted to temporary detention facilities or similar spaces, pursuant to article 41.

4 — Revenues from fees and other charges pursuant to (2) and (3) shall be allocated to the SEF.

## **Article 210**

### **Fee reduction or exemption**

1 — Notwithstanding the provisions of the above article, the SEF National Director may, on an exceptional basis, grant exemption from, or reductions to, the fees due for the procedures provided for in this law.

2 — The following shall be exempt from fees:

- a) Visas to be granted pursuant to articles 48 (1)(a), 57 and 61;
- b) Visas and extensions of stay granted to foreign citizens with diplomatic, service, official and special passports or travel documents issued by international organisations;
- c) Visas granted to the descendants of residence authorisation holders pursuant to provisions of family reunification;
- d) Visas and residence authorisations granted to foreign citizens benefiting from scholarships granted by the

Portuguese State;  
e) Special visas.

3 — Third-country nationals shall benefit from fee reductions or exemptions when, in their countries of origin, Portuguese citizens are ensured identical treatment.

## **CHAPTER XII**

### **Final provisions**

#### **Article 211**

##### **Change of nationality**

1 — The Central Registry Office shall notify the SEF, electronically whenever possible, of the changes of nationality it registers for individuals residing on Portuguese territory.

2 — The notice referred to in the above paragraph shall be given within 15 days of registry.

#### **Article 212**

##### **Identification of foreigners**

1 — With a view to determining or confirming the identity of foreign citizens, the SEF may use the civil means of identification provided for by law and by Community regulations applicable to the issuance of identity cards and visas, namely by obtaining facial images and fingerprints, using biometrics and expert assessments whenever possible.

2 — Personal data shall be recorded in an integrated information system (hereinafter called "SII/SEF"), whose management and responsibility shall fall under the SEF, in accordance with the following rules and characteristics:

a) The collection of data for automated processing within the scope of the SII/SEF shall be limited to that strictly needed for controlling the entry, stay and departure of foreign citizens, preventing specific hazards or repressing a criminal infraction within the domain of its duties and powers;

b) The different categories of data collected shall be differentiated, to the extent possible, by their degree of accuracy or reliability, with a distinction between factual data and data requiring a qualitative assessment;

c) The SII/SEF shall be comprised of personal data and data related to legal assets, including information within the scope of powers entrusted to it regarding:

i) Foreigners, European Union Member State nationals, stateless persons and national citizens, related to the control of transit at land, maritime and air borders, together with their stay and activities on Portuguese territory;

ii) The identification and whereabouts of foreign citizens or European Union Member State nationals regarding the suspected practice or practice of assisting unlawful immigration, or criminal association for this purpose;

d) In addition to those referred to in the above paragraph, the personal data collected for processing within the scope of the SII/SEF shall be as follows:

i) Name, parents, nationality, country of birth, place of birth, marital status, gender, date of birth, date of death, professional status, illnesses constituting a hazard or serious threat to public health pursuant to this law, names of persons belonging to the household, addresses, signature, references from natural or legal persons on Portuguese territory, and the number, location and date of issuance and validity of identification and travel documents;

ii) Judicial decisions notified to the SEF pursuant to the law;

iii) Participation or evidence of participation in illegal activities, together with data related to any specific, objective physical characteristics not subject to change, aliases, signs that the person in question is armed or violent, the reason for highlighting the person in question and procedure to be adopted;

iv) With regard to legal persons and comparable entities, in addition to the above-mentioned data, the following data is also collected: name, company or trade name, domicile, address, legal entity identification

number or taxpayer identification number, and the nature, start and end of business activities.

3 — With a view to prohibiting the consultation, modification, deletion, addition, destruction or disclosure of SII/SEF data in a manner not permitted by this law and pursuant to article 15 of Law no. 67/98 of 26 October on personal data protection, the necessary technical measures shall be adopted and periodically updated to ensure the security of the following:

a) Data media and respective transport, to prohibit them from being read, copied, modified or deleted by any person or unauthorised means;

b) Data entry, to avoid the unauthorised addition, disclosure, modification or deletion of personal data;

c) Automated data processing systems, to avoid use by unauthorised persons, through data transmission facilities;

d) Data access, so that authorised persons only have access to data applicable to the exercising of their legal powers;

e) Data transmission, to ensure that its use is limited to authorised entities;

f) Entry of personal data in automated processing systems, to verify that data has been entered, when and by whom.

4 — Data may be disclosed within the scope of international and European Community conventions to which Portugal is bound, and within the scope of domestic or international cooperation, to security forces and services and public services, within the scope of the legal powers of the requesting entity and only with regard to data pertinent to the purpose of their disclosure.

5 — Personal data shall be kept for the time period strictly necessary for the purpose which justified its recording in the SII/SEF, and in accordance with this purpose, with records subject to verification of their need to be kept, 10 years after the last issuance of documents related to the data owner, after which the data may be kept in a historical file for 20 years after the document date.

6 — The provisions of the above paragraphs shall not prohibit the automated processing of information for statistical or analytical purposes, provided that the persons to whom the information refers cannot be identified.

7 — The number appearing on the identification card referred to in (1) shall also be used for identification purposes for Public Administration, namely in the domains of taxes, social security and health.

8 — Transmissions to the competent judicial authority, or other holders of the right to access any part of the SEF's electronic workflow to exercise its powers provided for by law, shall always be done in electronic format.

9 — With a view to facilitating procedures for issuing permits, citizens shall be exempt from submitting certificates or other documents providing proof of data found in Public Administration information systems, which shall be obtained by the SEF from the tax, social security and labour departments and attached to the proceedings.

## **Article 213**

### **Expenses**

1 — Expenses needed for removal from the country which cannot or should not be paid by a foreign citizen, pursuant to the special schemes provided for in international conventions, nor paid by the entities referred to in article 41, shall be paid by the State.

2 — The State may also pay expenses needed for voluntary departure from the country for the following:

a) Dependent members from the household of a foreign citizen subject to a forced removal measure or judicial deportation, provided that they cannot pay these charges;

b) Foreign citizens lacking means of subsistence, provided that they are unable to obtain the necessary support from the diplomatic offices of their countries.

3 — The SEF shall have the necessary budgetary allocation to cover the charges resulting from the application of this law.

## **Article 214**

### **Obligation of cooperation**

1 — All Public Administration departments and bodies shall be obliged to ensure that counterparties to their administrative agreements receive no labour provided by illegal foreign citizens.

2 — The above-mentioned departments and bodies may terminate, on justified grounds, any existing agreements if, on a date after their signing, the private entities have received labour provided by illegal foreign citizens.

3 — Public Administration bodies and the persons in charge of vessels shall have the special obligation of notification under the following circumstances:

- a) When the seizure or detention of a vessel has been decreed, and when such measures cease;
- b) When an evacuation occurs for reasons involving the health of the vessel's crew or passengers;
- c) In the event of disappearance of the vessel's passengers or crew members;
- d) When a vessel has been denied clearance to exit a port;
- e) When the vessel's passengers or crew members have been arrested;
- f) When emergency plans have been activated at national ports;
- g) When the competent authority, namely the Maritime Police, has removed passengers or crew members from the vessel at the request of the vessel's captain.

## **Article 215**

### **Obligation of communication**

When issuing a permit legalising the status of a foreign citizen on Portuguese territory, pursuant to this law, the SEF shall provide the tax, social security and labour departments with the necessary data for enrolment, if this has not already occurred.

## **Article 216**

### **Regulation**

1 — The instrument governing this law and the orders provided for herein shall be approved within 90 days.

2 — The special legislation referred to in article 109 shall be approved within 120 days.

## **Article 217**

### **Transitional provisions**

1 — For all legal purposes, the holders of a work visa, authorisation of stay, temporary stay visa with authorisation to carry out employed professional activity, extension of stay to carry out employed professional activity and study visas granted pursuant to Decree Law no. 244/98 of 08 August, as amended by Law no. 97/99 of 26 July, Decree Law no. 4/2001 of 10 January and Decree Law no. 34/2003 of 25 February, shall be considered holders of a residence authorisation, whose permits shall be replaced with residence permits at the end of their validity, subject, as applicable, to the provisions of temporary residence authorisation renewal or the granting of permanent residence authorisation.

2 — For the purposes of article 80 (1)(a), the period of legal stay under the permits referred to in the above paragraph shall be used.

3 — Extension of stay requests for carrying out a professional activity pursuant to article 71 of Regulatory Decree no. 6/2004 of 26 April shall be converted into residence authorisation requests for carrying out employed or independent professional activity pursuant to this law, with visa exemption.

4 — The stay of foreign citizens subject to article 71 of Regulatory Decree no. 6/2004 of 26 April shall be extended for three months, for the purposes of obtaining the necessary employment agreement or proof of the existence of an employment relationship by a trade union, an association with a seat on the Advisory Board or the Labour Conditions Authority, for the purposes of granting residence authorisation pursuant to the above paragraph.

5 — Work visa requests pursuant to article 6 (2) of the Agreement between the Portuguese Republic and the Federative Republic of Brazil on the Reciprocal Employment of Nationals of 11 July 2003 shall be converted into residence authorisation requests, with visa exemption.

6 — Until the determination of the quota of employment opportunities provided for in article 59, the Employment and Vocational Training Institute (Instituto do Emprego e da Formação Profissional, I. P.) or, in

the autonomous regions, the respective departments, shall publish all employment opportunities not filled within 30 days by Portuguese nationals, nationals from European Union Member States, the European Economic Area, third countries with which the European Union has signed an agreement for the free movement of people or third-country nationals with legal residence in Portugal.

7 — Residence visas to obtain residence authorisation for carrying out employed professional activity may be issued up to the limit of the employment opportunities referred to in the above paragraph, provided that other legal conditions have been met.

8 — Holders of a residence authorisation issued pursuant to legislation preceding this law shall replace the permit in their possession with the card referred to in article 212 (1), per the terms and time periods to be established under regulatory legislation.

### **Article 218**

#### **Revocation**

1 — The following are hereby revoked:

*a)* Article 6 of Law no. 34/94 of 14 September;

*b)* Law no. 53/2003 of 22 August;

*c)* Decree Law no. 244/98 of 08 August, as amended by Law no. 97/99 of 26 July, Decree Law no. 4/2001 of 10 January and Decree Law no. 34/2003 of 25 February.

2 — Until expressly revoked, Regulatory Decree no. 6/2004 of 26 April, together with the orders approved under Decree Law no. 244/98 of 08 August, as amended by Law no. 97/99 of 26 July, Decree Law no. 4/2001 of 10 January and Decree Law no. 34/2003 of 25 February shall remain in force, to the extent compatible with the scheme laid out in this law.

### **Article 219**

#### **Autonomous regions**

The provisions of the above articles shall not affect the powers entrusted to the regional departments and bodies of the Autonomous Regions of the Azores and Madeira, who shall remain duly coordinated with the departments of the Portuguese Republic and European Union involved in the procedures provided for in this law.

### **Article 220**

#### **Entry into force**

This law shall enter into force 30 days after its date of publication.