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*This Translation was supported by the European Migration Network.*

## **Act 23/2007 of July 4, amended by Act 29/2012 of August 9**

### **CHAPTER I**

#### **General Provisions**

##### **Article 1**

##### **Purpose**

The present law establishes the conditions and procedures on the entry, stay, exit and removal of foreign citizens from Portuguese territory, as well as the long-term resident status.

##### **Article 2**

##### **Transposition of directives**

1. This act transposes into the internal legal system the following EU directives:
  - 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.
2. Simultaneously, it entrenches the transposition into national law of the following Community acts:
- 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 expulsion 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

For the purposes of this Act the following definitions shall apply:

- a) «Highly Qualified Activity», is the activity that requires technical and specialised competences, or competences of exceptional nature and thereby require adequate qualifications for its performance, such as higher education qualification;
- b) «Self-employed Activity», any activity carried out personally, under a contract for provision of services, relating to the activity carried out by the independent professional (liberal professions) or by way of a company;
- c) «Temporary work», the seasonal or short-term professional activity performed for a period not exceeding six months, except if it is performed under an investment Contract;
- d) «Investment activity», any activity carried out personally or by a company, in order to achieve, at least, one of the following situations in national territory and for a period of five years or more:
  - i) Capital transfers equal to, or more than, €1 million into Portugal;
  - ii) Creation of at least 30 new jobs;
  - iii) Investment in real estate equal to, or more than, €500.000;
- e) «EU Blue Card», the residence title that enables a third-country citizen to reside and take a highly-qualified employment in national territory;
- f) «Research Centre», any kind of public or private body, or a research and development unit either public or private, which conducts research activities in an officially recognized way;
- g) «Particularly exploitative working conditions», means working conditions, including those resulting from gender based or other discrimination, where there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, may affect workers' health and safety, and which offends against human dignity;
- h) «Implementing Convention», the Convention Implementing the Schengen Agreement of 14 June 1985, signed in Schengen in 19 June 1990;
- i) «Forced return decision», an administrative or judicial decision or act, stating or declaring that the stay of a third-country national is illegal and imposing an obligation to return, and therefore, leave national territory;



- j) «Educational Establishment», a public or private establishment, officially recognised and whose courses of study are sanctioned;
- k) «Third State », any State that is neither a member of the European Union, nor a party to the Implementing Convention, or on which this Convention is not being enforced;
- l) «Unremunerated Trainee», a third-country national who has been admitted in national territory for a training period without remuneration in accordance with national legislation;
- m) «University Student», a third-country national accepted by an establishment of higher education to pursue as his/her main activity a full-time course of study leading to a higher education qualification or certification officially recognised, including the possibility of attending a preparatory seminar for the main course as well as any research work for purposes of obtaining an academic degree;
- n) «school pupil», a third-country national admitted into national territory to follow a recognised programme of secondary education in the context of an exchange scheme operated by an organisation recognised for that purpose, or by individual admission;
- o) «External Borders», borders with third-countries, the airports for flights originating or with destination to territories of States which are not bounded by the Implementing Convention, as well as sea ports, except in what concerns the traffic between Portuguese shores, and the regular ferry connections between States Parties to the Implementing Convention;
- p) «Internal Borders», the common land borders with States Parties to the Implementing Convention, their airports for flights departing directly and exclusively originating from or heading to States which are Party to the Implementing Convention, as well as sea ports for regular ferry connections exclusively originating from or heading to States Parties to the Implementing Convention, not calling at any ports outside these territories;
- q) «Researcher», a third-country national holding an appropriate higher education qualification, who is selected by a research centre for carrying out a research project for which the above qualification is normally required ;
- r) «Voluntary Service Scheme», means a programme of activities of practical solidarity, based on a State or a Community scheme, pursuing objectives of general interest;
- s) «International Protection», means the recognition by a Member State of a third-country national or stateless person as a refugee or person in need of subsidiary protection;

- t) «Higher professional qualifications», means qualifications attested by evidence of higher education qualifications or attested by at least five years of professional experience of a level comparable to higher education qualifications and which is relevant in the occupation or sector specified in the work contract or binding job offer;
- u) «Return», the return of a third-country national to his/her country of origin or provenance, whether in voluntary compliance with an obligation to return, or in accordance with Community or bilateral readmission agreements or other arrangements enforced, or to another third-country, to which the third-country national concerned voluntarily decides to return to and in which he or she will be accepted;
- v) «Legal Resident», a foreign citizen holding a Portuguese residence title, with a period of validity of one year or more;
- w) «Company», companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, except non-profit organisations;
- x) «Residence Permit», the document issued according to the rules and the adopted uniform format in the European Union, to a third-country national holding a residence permit;
- y) «Airport Transit», transit for the purposes of removal by air, of a third-country national and, if necessary his / her escorting, through the airport premises;
- z) «Carrier», any natural or legal person that provides air, sea or land transportation services, on a professional basis;
  - aa) «Port or Airport International Zone», the area between the embarkation and disembarkation points and the place where the documentary check of passengers is carried out;
  - bb) «Centre equated to detention facility», facility created in the international areas of Portuguese airports designed to accommodate passengers non-admitted into national territory who are waiting to be returned.

#### **Article 4**

##### **Scope**

1. The provisions of the present Act shall apply to all foreign and stateless persons.
2. Without prejudice to its subsidiary application and unless expressly provided otherwise, this Act shall not apply to:



- a) Nationals of an EU Member State, of a State Party to the European Economic Area or of a third-country with which the European Union has concluded an agreement on the free movement of persons;
- b) Third-country nationals residing in national territory as refugees or beneficiaries of subsidiary protection under the ruling 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 covered by the preceding sub-paragraphs.

## Article 5

### Special Regulations

1. The provisions of this Act shall not affect the special regulations listed in:
  - a) Bilateral or multilateral agreements between the European Community, or between the European Union and its Member States, on the one hand, and with one or more third States, on the other;
  - b) International Conventions of which Portugal is a Party to, or by which Portugal is bound, especially those entered into force or to be signed with Portuguese-speaking countries or under the Community of Portuguese-Speaking Countries;
  - c) Protocols and Memoranda of Understanding between Portugal and third-countries.
2. The provisions of this Act shall not prejudice the obligations arising from the Convention Relating to the Status of Refugees, adopted in Geneva on 28 July 1951, and amended by the Additional Protocol to the Convention Relating to the Refugee Status, adopted in New York, on 31 January 1967, from international conventions on human rights and from international conventions on matters of extradition of persons that Portugal has subscribed or is ruled by.

## CHAPTER II

### Entry to and exit from national territory

#### SECTION I

##### Border Crossing

##### Article 6

##### Border Control

1. Entry into and exit from Portuguese territory shall take place in the recognised border posts during working hours, without prejudice to the provisions set out in the Implementing Convention.
2. All persons who enter national territory or exit from it shall be subject to border control, whenever they come from or head to States that are not Parties to the Schengen Implementing Convention.
3. The provisions of the preceding paragraph shall equally apply to those individuals travelling in a flight that does internal stopovers yet departed from or heads to States that are not Parties to the Schengen Implementing Convention.
4. Border check can be carried out on board ships, while travelling, following request of the ship's captain or of the shipping agent and on payment of a fee.
5. After performing the exit check of a ship or vessel is carried out, the Portuguese Immigration and Borders Service, from now on designated as SEF, issues an exit clearance, without which the ship may not leave the harbour.
6. On grounds of public policy and national security, after consulting the other States Parties to the Schengen Agreement, document control at internal borders may, on exceptional circumstances and for a limited period, be temporarily reintroduced.

##### Article 7

##### International Zone of ports

1. The international zones of ports correspond to fenced quays under the jurisdiction of the ports administration, and to embarking and disembarking points in the areas of free quays.
2. The international zones of ports also comprise SEF's bureaus.

## **Article 8**

### **Access to international zones of ports and airports**

1. Access to international zones of ports and airports, for stopover or transfer in international connections, by foreign citizens who are required to hold a transit visa, in accordance with this act, is conditional upon ownership of that visa.
2. Access to the international zone of a port is restricted and subject to a permit granted by SEF.
3. Access permits for the international zone of a port may be granted for certain purposes by the person in charge of the sea border post, including visits or provision of onboard services.
4. A fee is charged for issuing permits granting access to the international zone of a port and for boarding vessels.
5. Crew members and passengers may be granted permits to come ashore at border posts for the duration of their stay in the port.
6. The permit enables its holder to circulate in the area adjoining the port, and it is granted by SEF upon request of the shipping agent accompanied by a formal declaration.
7. Short stay visas may be granted at sea border posts, in accordance with the provisions of this Act.

## **SECTION II**

### **General conditions of entry**

## **Article 9**

### **Travel documents and replacement documents**

1. To enter into or depart from Portuguese territory foreign citizens must hold a recognised and valid travel document.
2. The period of validity of the travel document must exceed the duration of stay, exception made to foreign residents who are re-entering the country.
3. The following foreign citizens are also entitled to enter or leave Portugal:
  - a) Nationals of States with which Portugal has signed international conventions and therefore may enter the country with an identity card or equivalent document;
  - b) Those covered by relevant conventions between the States Parties to the North Atlantic Treaty;

- c) Holders of a *laissez-passer* issued by authorities of their home countries or of the countries that represent them;
  - d) Holders of a flight licence or a crew membership certificate as provided for in Annexes 1 and 9 of the Convention on International Civil Aviation or other documents that replace them when on duty;
  - e) Holders of a seafarer's identity document as provided for in Convention number 108 of the Labour International Organisation when on duty;
  - f) Those who are nationals of States with which Portugal has international conventions under which entry is permitted with a maritime identity card, when on duty.
4. The *laissez-passer* referred to in sub-paragraph (c) of the preceding paragraph is valid solely for transit, and, when issued in Portuguese territory, only allows its holder to exit the country.
5. Nationals of States with which Portugal has international Conventions in this regard are allowed to enter or leave Portugal with an expired passport.
6. Foreign citizens may also leave Portuguese territory if in possession of a safe-conduct or when holding a travel document for purposes of expulsion of a third-country national.

#### **Article 10**

##### **Entry Visa**

1. In order to enter national territory, foreign citizens must hold a valid visa which is adequate to the purpose of the visit, granted under this Act, or by the competent authorities of the States Parties to the Implementing Convention.
2. The visa enables its holder to come to a border post and request entry into the Country.
3. The following may, nonetheless, enter the Country without holding a visa:
  - a) Foreign citizens holding a valid residence permit, an extension of stay or an identity card as referred to in paragraph 2 of Article 87;
  - b) Citizens who are entitled to do so in accordance with International Conventions to which Portugal is a party.
4. A visa may be annulled by the issuing authority abroad, or by SEF in national territory, or at border posts, when the visa holder has been subject of an alert for purposes of refusal of entry in the Schengen Information System (SIS), in SEF's Integrated Information System, or if he/she has provided false information in his/hers visa application.

5. The cancellation of visas by SEF in accordance with the preceding paragraph shall be immediately transmitted to the issuing authority.
6. The annulment decision is communicated by electronic means to the High Commissioner for Immigration and Intercultural Dialogue [*Alto Comissariado para a Imigração e Diálogo Intercultural, I.P.*], henceforth referred to as ACIDI, and to the Advisory Council for Immigration Affairs [*Conselho Consultivo para os Assuntos da Imigração*], henceforth referred to as “Advisory Council”, together with a statement listing the grounds for the decision.

## Article 11

### Means of subsistence

1. Foreign citizens are not allowed to enter the country if they do not hold sufficient means of subsistence, both for the period of the intended stay and for the return trip to the country in which his/ her admission is guaranteed, or if they are not in a position to obtain such means lawfully.
2. For the purposes of entering and staying in the country, foreign citizens shall possess funds *per capita*, equal to the amount fixed by joint regulatory order of the members of the government responsible for internal affairs, work and social security. Foreign citizens who are able to prove that their maintenance and accommodation are guaranteed for the duration of their stay may be exempted from this requirement.
3. The amounts established in accordance with the preceding paragraph shall be automatically updated based on the percentage increases in the national minimum wage.

## Article 12

### Letter of sponsorship

1. For the purposes given in the preceding Article, the third-country national may, alternatively, deliver a letter of sponsorship subscribed by a national citizen or by a foreign citizen entitled to legally stay in Portuguese territory.
2. The acceptance of the abovementioned letter of sponsorship is conditional on proof of the subscriber's financial standing and compulsorily includes the commitment to ensure:
  - a) The necessary conditions for staying in national territory;
  - b) The refunding of removal costs, in the event of an illegal stay.

3. The provisions of the preceding paragraph do not exclude the responsibilities of bodies mentioned in Articles 198 and 198-A, provided that the respective requirements are met.
4. The letter of sponsorship is a binding document for the requirement stated in paragraph 2 (b).

### **Article 13**

#### **Purposes and conditions of stay**

Whenever deemed necessary to prove the objective and conditions of stay, border authorities may require adequate proof from the foreign citizen.

## **SECTION III**

### **Declaration of entry and accommodation form**

### **Article 14**

#### **Declaration of entry**

1. Foreign citizens entering the Country from another Member State by way of a border not subject to control shall be required to report this fact within three working days after the date of entry.
2. The declaration of entry shall be submitted to SEF, under the provisions to be determined by regulatory order of the member of the government responsible for internal affairs.
3. The provisions of the preceding paragraphs shall not apply to foreign citizens who:
  - a) Are residents or are authorised to stay in the country for more than six months;
  - b) Immediately after entering the Country, stay in hotels or in other kind of accommodation units to which the provisions of Article 16, paragraph 1, apply;
  - c) Are covered by the EU legal framework or equivalent arrangements.

### **Article 15**

#### **Accommodation form**

1. The purpose of the accommodation form is to enable the control of foreign citizens within national territory.



2. Each foreign citizen, including nationals of other European Union Member States, shall fill in and sign one accommodation form. The accommodation form's model is approved by regulatory order of the member of the government responsible for internal affairs.
3. It is not compulsory for both spouses and accompanying minors to fill in and sign a form, as it is not compulsory for all members of a group travelling together. This requirement may be fulfilled by one of the spouses or by one of the members of the abovementioned travel group.
4. With the purpose of simplifying the process of submitting the accommodation forms, hotels and other accommodation units must be registered at SEF's Accommodation Forms Information System [SIBA – *Sistema de Informação de Boletins de Alojamento*], so that they may be safely delivered by electronic means.
5. The paper forms and their duplicates, as well as the replacement electronic forms mentioned in the preceding paragraph, shall be filed in and stored for one year to be counted from the day after the date when the departure of the foreign national was reported.

#### Article 16

##### Notification of accommodation

1. Hotel operators, complementary tourist accommodation or tourist resorts, as well as those units supplying accommodation to foreign citizens in return of payment, shall inform SEF within three days, by means of an accommodation form. Alternatively, in those regions where there are no SEF bureaux, they shall submit the abovementioned form to the National Guard [*Guarda Nacional Republicana*], or to the Public Security Police [*Polícia de Segurança Pública*].
2. The departure of foreign citizen from the aforementioned accommodation unit shall be communicated to the authorities within the same time period (three days) referred to in the preceding paragraph.
3. The accommodation forms, once completed in accordance with paragraph 4 of the preceding Article, shall be delivered safely, under the procedures to be established by regulatory order of the member of the government responsible for internal affairs.

## SECTION IV

### Travel Documents

#### SUBSECTION I

#### Travel documents issued to foreign citizens by Portuguese Authorities

##### Article 17

##### Travel documents

1. Portuguese authorities may issue the following documents to foreign citizens:
  - a) Passport for foreign citizens;
  - b) Travel document for refugees;
  - c) *Laissez-passer*;
  - d) Travel document for forced removal or judicial expulsion of third-country nationals;
  - e) Travel list for students.
2. Travel documents issued to foreign citizens by Portuguese authorities are not acceptable as evidence of the holder's nationality.

##### Article 18

##### Passport for foreign citizens

The procedures for granting passports to foreign citizens meet the provisions of specific legislation.

##### Article 19

##### Travel document for refugees

1. Foreign citizens residing in Portugal as refugees, in accordance with the provisions of the Asylum Act, as well as refugees covered by the provisions of paragraph 11 of the Annex to the Convention Relating to the Status of Refugees, adopted in Geneva on 28 July 1951, may obtain a travel document based on a model to be approved by regulatory order of the member of the government responsible for internal affairs.



2. The travel document for refugees is valid for a one-year period, may be extended, and can be used for an unlimited number of journeys, enabling the return of its holder within its validity period.
3. The travel document for refugees may include one single person or the holder and his/her children or adopted children under the age of ten.
4. Additional endorsements are not allowed in any travel document after its issuing, except in what concerns the extension of the validity period provided for in paragraph 2.

#### **Article 20**

##### **Authorities responsible for granting a travel document for refugees**

The following authorities are competent to grant and extend the validity of a travel document for refugees:

- a) In national territory, SEF's National Director, personally or by delegation of powers;
- b) Abroad, the consular or diplomatic authorities, following SEF's approval.

#### **Article 21**

##### **Issuing and control of a travel document for refugees**

1. Travel document for refugees shall be granted by the competent authorities for that purpose.
2. SEF is responsible for controlling and keeping a national register of the issued travel documents.

#### **Article 22**

##### **Conditions of validity of the travel document for refugees**

1. The travel document for refugees is only valid when filled in legibly and fully filled in with all indispensable data, and with blank inapplicable spaces crossed out.
2. No corrections or erasures of any kind shall be allowed.
3. The photographs shall be recent, in colour with a plain contrasting background, and easily identifiable.
4. The holder's photograph and the signature of the issuing body are authenticated by affixing the service's embossed seal.
5. The travel document has to be personally signed by its holder, except if in the appropriate place it is declared by the issuing authority that the document's holder cannot or is unable to sign.



### Article 23

#### Application for a travel document for refugees

1. The application for a travel document for refugees shall be completed by the applicant.
2. The application for a travel document for refugees for a minor may be completed by:
  - a) Either parent, if within wedlock;
  - b) By the parent who holds parental responsibilities over the minor, according to court decision;
  - c) By a third person who, in the absence of parents, has legally recognised parental power over the minor.
3. As regards individuals who have been restrained from exercising their rights or were declared incapacitated to manage their affairs, the application shall be made by whoever holds their guardianship or trusteeship.
4. SEF's National Director may, in duly substantiated cases, accomplish by internal order the actions provided for in paragraphs 2 and 3.

### Article 24

#### Restrictions on the use of a travel document for refugees

The refugee who, making use of a travel document for refugees issued in accordance with this Act, has been in a country in relation to which he/she becomes covered by any of the situations provided for in paragraphs 1 to 4 of Section C, Article 1 of the Geneva Convention Relating to the Status of Refugees, of 28 July 1951, must hold a travel document issued by that country.

### Article 25

#### Unlawful use of a travel document for refugees

1. Any travel document for refugees which is not in strict conformity with the Law will be seized by the authorities to whom it is presented to and subsequently forwarded to SEF.
2. Travel documents that contain distorted information on the identity data of those concerned may be refused.

## Article 26

### *Laissez-passer*

1. Foreign citizens who do not reside in the country and prove the impossibility or difficulty in leaving Portuguese territory may be entitled to a *laissez-passer*.
2. In exceptional cases, on grounds of reasons of national interest or to comply with international obligations, a *laissez-passer* may be issued to foreign citizens that do not reside in Portugal, provided that they prove that are unable to obtain other travel document.
3. The issuing of a *laissez-passer* to the exclusive purpose of allowing departure from the country is of the competence of SEF's National Director, personally or by delegation of powers.
4. The issuing of a *laissez-passer* with the exclusive purpose of allowing the entry into the Country is of the competence of the Portuguese embassies and permanent consular posts, following SEF's approval.
5. The model for a *laissez-passer* is approved by regulatory order of the member of the government responsible for internal affairs.

## Article 27

### Travel Document for removal or expulsion of third-country nationals

1. Any third-country national who has been subject to a forced removal or expulsion measure and does not hold a travel document, will be issued a document for that purpose.
2. The document provided for in the preceding paragraph is valid for one single journey.
3. The format of that same document is approved by regulatory order of the member of the government responsible for internal affairs.

## SUB-SECTION II

### Travel documents issued by foreign authorities

## Article 28

### Control of travel documents

Non-resident foreign citizens holding travel documents issued in Portuguese territory by foreign diplomatic missions or consular posts shall present those documents to SEF within three days of the issuing date, in order to validate them.

## SECTION V

### Entry and departure of third-country students

#### Article 29

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

1. Students who are third-country nationals and reside in territory of other European Union Members may enter and temporarily stay in national territory without a visa, provided that they are travelling in the context of a school trip properly organised by an officially recognised educational establishment.
2. For the purposes of the preceding paragraph, the students shall:
  - a) Be accompanied by a teacher of the educational establishment;
  - b) Be included in the list of students participating in the school trip, issued by the respective educational establishment, which shall bear the identification of the students as well as the purpose and circumstances of the trip.
  - c) Hold a valid travel document.
3. The requirement specified in sub-paragraph (c) of the preceding paragraph does not apply whenever the students are registered in a travel list for students, duly validated by an official and qualified department of the Member State where the journey started, containing the following items:
  - a) Recent photographs of the students;
  - b) Confirmation of their resident status;
  - c) Re-entry permit.

#### Article 30

##### Departure of students residing in Portugal

Third-country students residing in national territory may equally travel to other European Union Member States, provided they meet the conditions specified in the preceding paragraph. SEF is the body responsible for the validation of the afore-mentioned travel list for students.

## SECTION VI

### Entry and exit of minors

#### Article 31

#### Entry and exit of minors

1. Without prejudice to types of tourism or youth exchange programmes, the competent authority must refuse entry into the country to foreign citizens who are less than 18 years old when not accompanied by whoever holds parental responsibility over them, or when there is no one in Portugal who has been duly authorized by the legal representative of the minor to take responsibility for the duration of his / her stay.
2. Excluding duly justified and exceptional cases, foreign minors are not admitted in Portugal if whoever holds parental responsibility or is in charge of him/her is not authorized to enter the Country.
3. If the foreign minor is not accepted into national territory, the entry of the accompanying adult must also be refused.
4. The departure from Portuguese territory will be refused to those foreign minors residing in the country when traveling unaccompanied by whoever holds parental responsibility, or by someone that does not hold a legally certified authorisation granted by the person who holds parental responsibility.
5. Unaccompanied minors awaiting a decision on their admission into national territory or on their repatriation shall be granted all material support and assistance necessary to meet their basic needs of food, hygiene, accommodation and medical assistance.
6. Unaccompanied minors may only be returned to their country of origin or to a third-country which is willing to receive them provided that there is a guarantee that upon arrival they will be given appropriate care and assistance.

## Section VII

### Refusal of entry

#### Article 32

##### Refusal of entry

1. Admission into Portuguese territory is refused to foreign citizens who:
  - a) Do not cumulatively fulfill all legal requirements for entering the country; or
  - b) Have been subject to an alert in the Schengen Information System for the purposes of refusing entry; or
  - c) Have been to an alert in SEF's Integrated Information System for purposes of refusing entry; or
  - d) Represent a danger or serious threat to public order, national security, and national health or to the international relations of European Union Member States, as well as to those of States that have adopted the Implementing Convention.
2. The refusal of entry on grounds of public health may only be based on diseases that have been defined in the applicable instruments of the World Health Organization, or on other infectious or contagious parasitic diseases which have been object to protection measures in national territory.
3. A medical exam may be required to a third-country national in order to establish that he/she does not have any of the abovementioned diseases, as well as to determine any adequate medical measures.

#### Article 33

##### Alert for refusal of entry

1. Alerts for purposes of refusing entry are entered into SEF's Integrated Information System, regarding foreign citizens:
  - a) Who have been subject to a forced return or expulsion measure;
  - b) Who have been returned into another Country under a readmission agreement;
  - c) In relation to whom there are strong evidences of having committed serious criminal acts;

- d) In relation to whom there are clear indications that they intend to commit serious criminal acts or pose a serious threat to the public order, national security or to the international relations of a European Union Member State, as well as to those of States that have adopted the Implementing Convention;
  - e) Who have been escorted to the border in accordance with Article 147.
2. Alerts are also entered into SEF's integrated Information System for purposes of refusing entry regarding citizens benefiting from assisted voluntary return programmes, according to the provisions of Article 139. The alert is cancelled in the case provided for in paragraph 3 of that Article.
  3. Alerts may also be issued to citizens who have been sentenced through a final and binding decision to imprisonment for more than one year, even if such sentence has not been served; or who have been subject to identical punishment more than once, even if the enforcement of the penalty has been suspended.
  4. Entry ban measures that are not conditional upon the time limits established in accordance with this Act shall be periodically reviewed, with a view to either maintain or withdraw them.
  5. Entry ban measures that have not been enacted by judicial decision and which are subject to the time limits defined pursuant to this Act may be reviewed at any time, at the initiative of SEF's National Director on humanitarian grounds as well as for reasons of national interest, with a view to their cancellation.
  6. Alerts in the Schengen Information System concerning foreign citizens are conditional upon the decision delivered by the competent authorities of a State Party to the Implementing Convention.
  7. SEF's National Director is competent to issue alerts concerning foreign citizens in the Schengen Information System, or in SEF's Integrated Information System for purposes of refusing entry.

#### **Article 34**

##### **Seizure of Travel Documents**

When the refusal of entry is grounded on the presentation of a travel document that is false, forged, someone else's, or fraudulently obtained, it will be seized and forwarded to the national or foreign competent authority, in accordance with the applicable provisions.



### **Article 35**

#### **Checking the validity of documents**

When in doubt as to the authenticity of documents issued by Portuguese Authorities, SEF may access the information available in the application that led to the issuing of a passport, identity card, or any other document used for crossing the borders.

### **Article 36**

#### **Limits on the refusal of entry**

Exception made to the cases referred to in paragraphs 1 (a), (c) and (d) and 3 of Article 33, entry shall not be refused to foreign citizens who:

- a) Were born in Portuguese territory and here reside regularly;
- b) Have children effectively under their charge who are minors and of Portuguese nationality, in accordance to the specifications of paragraph 1 (c) of Article 122;
- c) Have custody of minor children with Portuguese or foreign nationality, the latter legally residing in Portugal, over whom they effectively hold parental responsibilities and to whom they provide maintenance and education.

### **Article 37**

#### **Competence to refuse entry**

Refusal of entry into national territory is under the responsibility of SEF's National Director, personally or by delegation of powers.

### **Article 38**

#### **Decision and notification**

1. The decision on refusal of entry is issued following a hearing of the foreign citizen, which represents, for all purposes and effects, a hearing of the interested party, and shall be immediately reported to the diplomatic or consular representation of that person's country of origin.

2. The decision on refusal of entry shall be notified to the applicant, in a language that he/she presumably understands, with the indication of the grounds that lead to such decision, as well as information regarding the right to appeal and the respective time limit for that action.
3. The respective carrier is also notified for purposes of the provisions of Article 41.
4. Whenever the removal of the foreign citizen is not possible within forty eight hours of the issuing of the decision on refusal of entry, the fact shall be communicated to the judge of the lower criminal court [*juízo de pequena instância criminal*] of the respective area of jurisdiction, with a view to determine the detention of the citizen in a detention facility or in a centre equated to detention facility.

### Article 39

#### Appeal

The decision on refusal of entry may be subject to appeal with devolutive effect only, before the administrative courts.

### Article 40

#### Rights of citizens who were refused entry

1. During the stay in the international zone of an airport or sea port, in a detention facility or in a centre equated to detention facility, the foreign citizen whose entry has been refused may communicate with the diplomatic or consular representation of his/her country, or with any person of his/her choice. The citizen may also receive the assistance of interpreters, as well as health care, including medical visits, when necessary, and all material support to meet his/her basic needs.
2. The foreign citizen, whose entry in national territory has been refused, is timely provided with legal assistance by a lawyer, at his/her own expense, or when requested, access to legal protection. In this case, the provisions of Act 34/2004, of July 29, shall apply *mutatis mutandis* in the scheme provided to the appointment of a legal representative for the defendant in urgent matters.
3. For the purposes of the provisions of the preceding paragraph, the right to legal assistance to a foreign citizen whose entry has been refused may be established in a protocol to be jointly signed by the Ministry of Internal Affairs, the Ministry of Justice and the law Bar Association [*Ordem dos Advogados*].
4. Without prejudice to the protection granted by the Asylum Act, the provisions of Article 143 shall also apply, *mutatis mutandis*, to the foreign citizen whose entry has been refused.

### CHAPTER III

#### Obligations of carriers

#### Article 41

##### Responsibilities of carriers

1. Any carrier transporting into Portuguese territory by air, sea or land, a foreign citizen who does not meet the necessary entry requirements shall provide for his/her return, in the shortest possible time, into the territory where he/she began to use that means of transport, or, if that proves impossible, into the Country that issued the travel document, or, alternatively, into any other territory where his/her admission is guaranteed.
2. In the interim period and before embarking takes place, the passenger is under the charge of the carrier, and it is the carrier responsibility to cover for any expenses related with the period of stay of the passenger in a detention facility or in a centre equated to a detention facility.
3. Where appropriate, the foreign citizen who does not meet the necessary entry requirements will be removed from Portuguese territory, escorted by SEF.
4. The carrier shall also cover the expenses incurred by the escort, as well the payment of the respective fee.
5. The provisions of the preceding paragraphs shall also apply to foreign citizens in transit who have been refused entry, provided that:
  - a) The carrier which was supposed to take him/her aboard and supply transportation to the Country of final destination refuses to do so;
  - b) The authorities of the Country of destination have refused the citizen's entry and have sent him/her back to Portuguese territory.

#### Article 42

##### Data transmission

1. Air carriers transporting passengers have the obligation to convey, during the check in process and at SEF's request, all information related to passengers that they transport to a border post through which they will enter national territory.



2. The information referred to in the preceding paragraph shall include:
  - a) Number, type, issuing date and validity of the travel document used;
  - b) Nationality;
  - c) Full name;
  - d) Date of birth;
  - e) Border post of entry in national territory;
  - f) Transport code;
  - g) Departure and arrival time of the means of transport;
  - h) Total number of passengers carried;
  - i) Initial boarding point.
3. The transmission of the abovementioned data does not exempt carriers from their obligations and responsibilities provided for in the preceding Article.
4. Ship-owners and sea agents representing them, as well as captains of fishing vessels sailing in international waters, shall submit to SEF a list of their crew members and passengers, which must not be amended or in any other way deleted or modified in what concerns the elements that have been originally registered, and must communicate the presence of any concealed passengers, forty eight hours prior to arrival and up to two hours before leaving any national port.

### **Article 43**

#### **Data processing**

1. Carriers shall collect the data mentioned in the preceding Article and transmit them electronically to SEF or, in case of malfunction, by any other appropriate means, with the purpose of facilitating the enforcement of controls at the authorised border crossing post through which passengers will enter national territory.
2. SEF shall keep such data in a temporary file.
3. After the entry of passengers, the authority referred to in the preceding paragraph shall delete all data within twenty four hours as of the moment of their transmission, except if such data are necessary for legal actions to be carried out by the authorities responsible for carrying out control of passengers at external borders, in accordance with the law, and in compliance with Act 67/98, of October 26<sup>th</sup> on personal data protection.



4. Carriers shall delete the personal data they have collected and transmitted to SEF within twenty four hours of arrival of the means of transport.
5. Without prejudice to the provisions of Act 67/98, of 26 October, on personal data protection, all data referred to in the preceding paragraph may be used for implementing legal provisions on matters of security and public order.

#### **Article 44**

##### **Passenger information**

1. For the purposes of implementing the provisions of Article 42, carriers, when collecting personal data, shall supply the following information to passengers involved:
  - a) Identification of the person who is processing the relevant data;
  - b) Purposes for which the data is being collected;
  - c) Other information, considering the specific circumstances in which the personal data is being collected, which is essential to guarantee the passenger a loyal processing of data, as well as the final recipient or category of recipients of data, the mandatory nature of the answer, as well as possible consequences of failing to reply, the possible right of access to data that concerns them and the right to having them duly rectified.
2. Where data have not been obtained from the data subject, the person responsible for processing them, or his/her representative, shall at the time of undertaking the recording of personal data or no later than the time when the data are first disclosed, provide the data subject with the information mentioned in the previous paragraph.

## CHAPTER IV

### Visas

#### SECTION I

#### Visas granted abroad

##### Article 45

##### Types of visa granted abroad

The following visas may be issued abroad:

- a) Airport transit visa;
- b) *(Repealed)*;
- c) Short-stay visa;
- d) Temporary stay visa;
- e) Visa for obtaining a residence permit, hereinafter referred to as residence visa.

##### Article 46

##### Territorial validity of visas

1. Airport transit and short-stay visas may be valid for one or more States Parties to the Implementing Convention.
2. The temporary stay and residence visas are only valid in Portuguese territory.

##### Article 47

##### Individual visa

1. The individual visa shall be affixed either to an individual or family passport.
2. *(Repealed)*.
3. Visas granted abroad are issued in individual form.
4. *(Repealed)*.
5. *(Repealed)*.

#### **Article 48**

##### **Authorities responsible for granting visas**

1. The following authorities are competent to issue visas:
  - a) Portuguese embassies and permanent consular posts, for airport transit or short-stay visas applied by holders of diplomatic, service, official and special passports, or travel documents issued by international organisations;
  - b) Permanent consular posts and consular sections, in all other cases.
2. The authorities mentioned in the preceding paragraph shall request the necessary assessment, information and complementary elements which are necessary for processing the applications.

#### **Article 49**

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

1. The purpose of the airport transit visa is to allow the passage of its holder through an airport of a State Party to the Implementing Convention, when making an international connection.
2. The holder of an airport transit visa only has access to the international zone of the airport, and therefore must continue travelling either in the same or another aircraft, according to his/her air ticket.
3. Nationals of States defined by regulatory order of the members of the government responsible for internal affairs and foreign affairs, or the holders of travel documents issued by those States are required to hold an airport transit visa.
4. The order referred to in the preceding paragraph determines the exceptions on the requirement of this type of visa.

#### **Article 50**

*(Repealed)*

## Article 51

### Short-stay visas

1. The short-stay visa enables its holder to enter Portuguese territory for purposes that, whilst acceptable to the relevant authorities, do not justify the granting of another type of visa, including transit, tourism and visiting or accompanying family members who hold a temporary stay visa.
2. The visa may be granted with a validity period of one year and for one or more entries, provided that neither the length of a continuous stay nor the total length of successive stays exceeds ninety days in any one hundred and eighty days to be counted from the date of first entry through an external border.
3. In duly substantiated cases, and when it serves the best interests of the Country, a multiple-entry visa valid for one year or more may be granted to certain people by regulatory order of the members of the government responsible for internal affairs and foreign affairs.

## Article 52

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

1. Without prejudice to the special conditions for granting each type of visa and to the special arrangements set out in agreements, protocols or similar instruments, treaties and international conventions to which Portugal is Party to, residence, temporary stay and short-stay visas shall only be granted to third-country nationals who meet the following requirements:
  - a) Are not the subject of a removal measure and are now in the period following the time when they were refused to enter in national territory;
  - b) Are not the subject of an alert in the Schengen Information System (SIS) by any of the Contracting Parties for purposes of refusing entry;
  - c) Are not the subject of an alert in SEF's Integrated Information System for purposes of refusing entry, in accordance with the provisions of Article 33;
  - d) Hold sufficient means of subsistence, as defined by regulatory order of the members of the government responsible for internal affairs and solidarity and social security;
  - e) Hold a valid travel document;
  - f) Are covered by travel insurance;

2. In order to be granted a residence visa for purposes of pursuing professional activities as an employed or self-employed person, residence visa for study, students exchange schemes, traineeship or voluntary scheme purposes, and temporary and short-term visa, the third-country national shall also hold a ticket ensuring his/her return.
3. The issuing of a temporary stay or residence visa is refused to any third-country national who has been convicted of a crime which according to the Portuguese legal framework is punishable by imprisonment for one year or more, even if the sentence has not been served, or who has been given the same sentence on more than one occasion, even if its execution has been suspended.
4. The issuing of a visa may be refused to any person that may represent a serious threat to the public order, safety or health.
5. Whenever the granting of a visa is refused on the grounds provided for in paragraph 1 (b) and (c), the applicant is informed on the possibility of requesting amendment of any errors in personal data.
6. Where the applicant is the subject of a refusal of entry issued by a State Party or Associated to the Schengen Implementing Convention, the reporting State shall be previously consulted and its interests taken into account, in accordance with Article 25 of that Convention.

### **Article 53**

#### **Preliminary procedures for visa granting**

1. For purposes of visa granting, a prior opinion issued by SEF is mandatory in the following situations:
  - a) When the application concerns residence and temporary stay visas;
  - b) When such is determined on grounds of national interest, for internal security reasons, or for preventing illegal immigration and related crimes.
2. In what concerns the visa applications mentioned in the preceding paragraph, a negative opinion shall be issued whenever the applicant has been sentenced in Portugal through a court final and binding decision with a sentence of imprisonment for more than one year, even if the sentence has not been served, or if the applicant has been given the same sentence on more than one occasion, even though it has been suspended.
3. In urgent and duly substantiated cases, a prior consultation may be waived, more specifically when it regards applications for residence visa for purposes of carrying out employed or self-employed activities.

4. Granting of visa requires a prior consultation to the Information and Security Services if it is determined by reasons of national security or regarding compliance with approved procedures under the European common security policy.
5. SEF is responsible for requesting and obtaining from other authorities opinions, information and other necessary data to establish compliance with the provisions of this Act on matters of granting of residence and temporary stay visa.
6. If the opinion necessary for granting a visa is negative, it becomes binding and shall be issued within seven days in the case short-stay visas, or within twenty days for all the other cases. After this period, the absence of a reply corresponds to an approval.

#### **SUBSECTION I**

#### **Temporary stay visa**

#### **Article 54**

#### **Temporary stay visa**

1. The temporary stay visa enables the entry of its holder into Portuguese territory for the purposes of:
  - a) Receiving medical treatment in official or officially recognised health establishments;
  - b) Transferring citizens who are nationals of States Parties to the World Trade Organization, within the scope of providing services or taking part in vocational training in Portuguese territory;
  - c) Carrying out an employed or self-employed activity, of temporary nature which duration does not exceed, as a rule, a six-month period;
  - d) Conducting, in national territory, scientific research in research centres, a teaching activity in a higher education establishment, or a highly qualified activity for less than one year;
  - e) Undertaking, in national territory, an amateur sporting activity certified by the respective federation, provided that the club or sports association provides accommodation and health care;

- f) Staying in national territory for periods of more than three months, in certain exceptional and duly substantiated cases, including for purposes of pursuing a course of study in an education establishment, a pupil exchange scheme, an unremunerated professional internship or a voluntary service scheme during one year or less, or for purposes of compliance with international agreements in the framework of the World Trade Organization, and those arising from international conventions and agreements of which Portugal is a Party, with freedom to provide services;
  - g) Accompanying a family member subject to medical treatment in accordance to sub-paragraph (a) above.
2. The temporary stay visa is valid for four months and for multiple entries in national territory without prejudice to the provisions of paragraph 4 of Article 56.
  3. The maximum period for reaching a decision regarding a temporary stay visa is 30 days, from the beginning of the examination of the visa application.

#### **Article 55**

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

The granting of temporary stay visas to citizens who are nationals of States Parties to the World Trade Organization, and who have been transferred for purposes of providing services or take part in vocational training in Portuguese territory, is conditional on compliance with the following requirements:

- a) The transfer must be done between branches of the same company or group of companies; and the branch located in Portuguese territory must provide the same services as those provided by the company from which they were transferred;
- b) The transfer only covers partners or employees who have been, for at least one year, in a branch located in another State Party to the World Trade Organisation, and who fall into one of the following categories:
  - i) Those who hold decision- making competences, hold senior positions and act as managers of an branch or department, under general guidance from the administration board;
  - ii) Those that hold specific technical knowledge crucial to the activity, its research equipment or the techniques or management thereof;
  - iii) Those who must receive vocational training in a branch located in national territory.

## Article 56

### Temporary stay visa for taking up temporary employment

1. A temporary stay visa may be granted to third-country nationals who intend to take up a temporary employment, provided that they have an actual or promised employment contract.
2. The Employment and Vocational Training Institute [IEFP - *Instituto do Emprego e Formação Profissional*] keeps an information system, accessible to the public, listing all temporary employment vacancies, and which have not been taken by nationals of European Union Member States, or of the European Economic Space, or by third-country nationals who legally reside in Portugal. Those vacancies are disclosed on IEFP's own initiative or at the request of the employing entities or of the associations that are members of the Advisory Council, on the Portuguese Embassies and permanent consular posts.
3. For the purposes of the provisions of the preceding paragraphs, the autonomous regions of the Azores and Madeira Islands maintain an information system on job offers in those regions.
4. The temporary stay visa for purposes of taking up a temporary employment is granted for the period of the duration covered by the employment contract.
5. Exceptionally, a temporary stay visa for purposes of taking up a temporary employment for a period exceeding six months may be granted, provided that the activity falls within an investment contract and up to the time limit of its implementation.

## Article 57

### Temporary stay visa for conducting research or a highly qualified activity

The temporary stay visa may be granted to third-country nationals who intend to conduct research, a teaching job in a university or equivalent high level teaching institution or a highly qualified activity for a period of less than one year provided that:

- a) They are admitted for purposes of taking part in a research centre which is duly recognized by the Ministry of Education and Science, specifically by means of an actual or promised employment contract, an actual or promised contract for the provision of services, or a research grant for scientific purposes; or
- b) They hold an actual or promised employment contract, or a written job offer, or a contract for provision of services for purposes of teaching in a higher education establishment, or carrying out a highly qualified activity in national territory.

## **SUBSECTION II**

### **Residence visa**

#### **Article 58**

##### **Residence visa**

1. The residence visa enables its holder to enter Portuguese territory with a view to apply for a residence permit.
2. The residence visa is valid for two entries in Portuguese territory and enables its holder to remain there for a period of four months.
3. Without prejudice to the application of specific conditions, when assessing the residence visa application, the final purposes for taking up residency in Portugal will be particularly taken into consideration.
4. Without prejudice to shorter time limits established in this Act, the period to issue a decision on the application for a residence visa is 60 days.

#### **Article 59**

##### **Residence visa for taking up an employment**

1. The granting of a visa for obtaining a residence permit for purposes of taking up employment is conditional upon the existence of job opportunities that have not been taken by Portuguese nationals, by workers who are nationals of European Union Member States, by workers who are nationals of the European Economic Space, by workers who are nationals of third States with which the European Union has signed an Agreement on the free movement of persons, as well as by workers who are third-country nationals and legally reside in Portugal.
2. For the purposes of the preceding paragraph, the Council of Ministers, following a prior opinion of the Standing Commission for Social Consultation [*Comissão Permanente da Concertação Social*] approves, on an annual basis, a global quota which indicates the availability of employment opportunities, which are presumed not to have been taken by the workers referred to in the preceding paragraph, and may exclude specific sectors or activities that do not require further workers, if justified by the circumstances of the labour market.

3. In the global quota mentioned in the preceding paragraph there will be specific quotas for each of the autonomous regions, in accordance with the respective needs and regional particularities.
4. The Employment and Vocational Training Institute, as well as its respective branches in each autonomous region, keeps an information system permanently updated and accessible to the public in the Internet, containing all job offers covered by paragraph 1, and publicises them, by its own initiative or by request of the employers or of the immigrant associations recognised as being representative of immigrant communities by ACIDI, pursuant the law.
5. Up to the quota limit established under the provisions of paragraph 2, and for job offers not taken by the workers referred to in paragraph 1, a residence visa for purposes of taking up employment may be issued to third-country nationals who meet the requirements laid down in Article 52 and who:
  - a) Hold an actual or promised employment contract; or
  - b) Have qualifications, competencies or expertise acknowledged and adequate for carrying out one of the activities covered by the preceding paragraph, and regarding whom the employer has expressed a specific manifestation of individual interest.
6. For the purposes of sub-paragraph (b) of the preceding paragraph, all applications of third-country nationals shall be forwarded through the Employment and Vocational Training Institute or, in the case of the autonomous regions, by their respective departments, to the employers offering the jobs covered by paragraph 4.
7. In exceptional cases, and regardless of the quota established in paragraph 2, a visa for purposes of applying for a residence permit for taking up employment may be granted to third-country nationals who meet the conditions laid down by Article 52 and who hold an employment contract, provided they make proof that the job position was not taken by the workers mentioned in paragraph 1.
8. The Employment and Vocational Training Institute shall draw up a bi-annual report on the implementation of the global quota.
9. For the purposes of the preceding paragraph, visa granting under this provision shall be communicated within five days to the Employment and Vocational Training Institute.

## Article 60

### Residence visa for taking up a self-employed activity or for immigrant entrepreneurs

1. A visa for purposes of obtaining a residence permit for taking up a self-employed activity may be granted to a third-country national who:
  - a) Holds a contract or written proposal for a contract for provision of services in the context of self-employment; and
  - b) Has the necessary qualifications to engage in self-employed activity, where applicable.
2. A residence visa is granted to immigrant entrepreneurs who intend to invest in Portugal, provided that:
  - a) They have made investments; or
  - b) They prove to hold available financial resources in Portugal; including those resulting from loans obtained from a banking institution in Portugal, and they demonstrate by any means their intention make investments in Portuguese territory.

## Article 61

### Residence visa for conducting research or highly qualified activity

1. A residence visa for purposes of conducting scientific research shall be granted to third-country nationals who have been admitted as students in higher education at doctoral level, or as researchers cooperating with a research centre recognised by the Ministry of Education and Science, specifically by means of an actual or promised employment contract, of contract or written proposal for provision of services or of a scientific research grant.
2. A residence visa for the purpose of teaching in a higher education establishment or conducting a highly qualified activity shall also be issued to third-country nationals who have an appropriate contract or promised contract for provision of services.
3. The time limit for deciding upon the visa application referred to in this Article is 30 days.
4. The provisions of Article 59 shall not apply to the third-country nationals covered by this Article.

### Article 61 -A

#### Residence visa for a highly qualified activity carried out by an employed person

1. A residence visa for carrying out a highly qualified activity by an employed person is granted to third-country citizens who:
  - a) Hold an actual or promised employment contract with a validity of at least one year, establishing an annual remuneration of at least 1.5 times the average gross annual salary or three times the social support index [IAS – *Indexante de Apoios Sociais*];
  - b) As regards regulated professions, hold higher professional qualifications, duly attested in accordance with the provisions of Act 9/2009, of 4 March, or of an Act establishing the recognition of professional qualifications which are required to access and carry out the occupation specified in the actual or promised employment contract;
  - c) As regards unregulated professions, hold relevant higher professional qualifications in the occupation or sector specified in the actual or promised employment contract.
2. For purposes of employment in professions in the major groups 1 and 2 of the International Standard Classification of Occupations (ISCO), which are designated by Resolution of the Council of Ministers, upon prior opinion issued by the Standing Commission for Social Consultation, as professions which are in particular need of third-country national workers, the salary threshold provided for in paragraph 1 a) may be at least 1,2 times the average gross annual salary, or two times the social support index.
3. Where there is doubt regarding the activity's framework, and for purposes of assessing the adequacy of the professional experience of the third-country national, the ministries responsible for employment and for education and science shall issue an opinion before granting a visa.

### Article 62

#### Residence visa for study, students exchange schemes, traineeships or voluntary service schemes

1. The admission of a third-country national in Portuguese territory for purposes of studying, participating in a secondary level pupil exchange scheme, unremunerated traineeship, or voluntary service scheme is conditional upon the granting of a residence visa to that effect.
2. A visa for obtaining a residence permit for the purposes set out in the preceding paragraph shall be granted, provided that the third-country national:
  - a) Holds a travel document, which validity covers, at least, the expected length of the stay;

- b) Is a minor, according to the Portuguese legal framework, provided that he/she obtains an authorisation from whoever holds parental power to remain in the Country for the expected period of stay.
3. The procedures for granting a visa for issue of a residence permit to the third-country nationals mentioned in paragraph 1, who participate in European Union programmes for promoting mobility to the European Union, or to the Community of Portuguese-Speaking Countries, or to the interest of such countries, shall be facilitated in accordance to the rules to be defined by regulatory order of the members of the government responsible for foreign affairs and internal affairs.
4. In addition to the general conditions laid down by paragraph 2, the third-country national who apply for a visa for obtaining a residence permit for the purpose of pursuing a course of study in higher education, shall meet the admission requirements of that teaching institution for such end.
5. In addition to the general requirements set out in paragraph 2, the third-country national who requires a visa for obtaining a residence permit for the purpose of following a secondary education programme, shall meet the following conditions:
- a) Not be below the minimum age nor above the maximum age set by regulatory order of the members of the government responsible for internal affairs and education;
- b) Have been accepted in a secondary education establishment, with the possibility of being admitted under a secondary education pupil exchange scheme carried out by an institution duly accredited by the Ministry of Education to such end;
- c) Be received for the duration of his/her stay by a family that meets the conditions set by the pupil exchange scheme; or have his/her accommodation ensured.
6. In addition to the general requirements established in paragraph 2, the third-country national who applies for a visa for obtaining a residence permit for the purpose of carrying out an unremunerated traineeship, must be accepted as trainee by a company or an officially acknowledged vocational training institution.
7. In addition to the general requirements established in paragraph 2, the third-country national who requires a visa for obtaining a residence permit for the purpose of participating in a voluntary service scheme, shall:
- a) Be of minimum age for that purpose as established by regulatory order of the member of the government responsible for internal affairs;
- b) Have been admitted by an officially recognised organisation which, in Portugal, is in charge of the respective voluntary service scheme.

8. For purposes of granting a visa under the provisions of this Article, the minimum amount for the means of subsistence required in the regulatory order referred to in paragraph 1 (d) of Article 52 may be waived in the light of circumstances of the particular case.

### **Article 63**

#### **Residence visa within the framework of mobility of higher education students**

1. The third-country national who resides as a student in higher education in an European Union Member State and applies to follow, in Portugal, part of the course of study already commenced, or to complement that course with a similar one, shall be granted a residence visa within a period that does not hamper the pursuit of the relevant studies, and never exceeding 60 days, provided that he/she:
  - a) Meets the conditions laid down by paragraphs 2 and 4 of the preceding Article; and
  - b) Participates in a European Union or bilateral exchange programme, or has been admitted as student in a Member State for no less than two years.
2. Whenever Portugal is the first Member State of admission, SEF must, upon request of the second Member State, provide the appropriate information concerning the stay of the student in national territory.

### **Article 64**

#### **Residence visa for family reunification**

Whenever an application for purposes of family reunification is approved by SEF in accordance with the provisions of this Act, a residence visa allowing entry into national territory shall be issued to the applicants.

### **Article 65**

#### **Communication and notification**

1. For the purposes of the provisions of the preceding Article, SEF shall inform the Directorate-General of Consular Affairs and Portuguese Communities of the approval of family reunification applications, and likewise inform the applicants.
2. The residence visa is issued following the notification mentioned in the preceding paragraph and according to the entailed terms, which implies that SEF's assessment on the application is compulsory, pursuant to Article 53.

## SECTION II

### Visas granted at border posts

#### Article 66

##### Types of visa

At the border posts the following types of visa may be granted:

- a) *(Repealed.);*
- b) Short-stay visas;
- c) Special visas.

#### Article 67

##### Short-stay visa

1. On exceptional grounds, short-stay visas may be granted at the border checkpoints to the foreign citizen who, by unexpected reasons, was unable to apply to the competent authorities for a visa, provided that the applicant:
  - a) Holds a valid travel document enabling border crossing;
  - b) Meets the conditions laid down by Article 11;
  - c) Is not subject to an alert in the Schengen Information System for purposes of refusal of entry;
  - d) Does not represent a threat to the public order, to the public security or to the international relations of a European Union Member State;
  - e) Has ensured the return travel to the country of origin or to the country of destination, as well as the respective admission of entry to these countries.
2. Short-stay visas issued in accordance with the provisions of the preceding paragraph may only be granted for one single entry and its validity must not exceed 15 days.
3. Visas covered by this Article may be valid for one or more States Parties to the Implementing Convention.



## **Article 68**

### **Special visa**

1. On humanitarian grounds or for reasons of national interest determined by regulatory order of the member of the government responsible for internal affairs, a special visa for temporarily entering and remaining in the Country may be granted to foreign citizens that do not meet the legal requirements for doing so.
2. The visa mentioned in the preceding paragraph is only valid in Portuguese territory.
3. The competence provided for in paragraph 1 may be delegated to SEF's National Director, or to another person acting on his behalf.
4. If the person admitted to Portugal under the conditions of the preceding paragraphs is subject to an alert in the Schengen Information System, that admission shall be communicated to the competent authorities of the other States Parties to the Implementing Convention.
5. When the foreign citizen holds a diplomatic, service, official or special service passport, or a travel document issued by an international organisation, the Ministry of Foreign Affairs shall be consulted wherever possible.

## **Article 69**

### **Competence for granting visas at border posts**

SEF's National Director, personally or by delegation of powers, is the competent authority responsible for granting the visas referred to in this section.

## **SECTION III**

### **Cancellation of visas**

## **Article 70**

### **Cancellation of visas**

1. Visas may be cancelled in the following situations:
  - a) When the holder fails to meet the requirements which grounded its granting;

- b) When visas have been granted based on false declarations, by fraudulent means or by calling upon reasons others than those that led to entry of its holder in the Country;
  - c) When the respective holder has been the subject of removal order from national territory.
2. Residence and temporary stay visas may also be canceled when the respective holder, without valid reasons, is absent from the Country for a period of 60 days, during the validity period of the visa.
  3. The provisions of the preceding paragraphs shall also apply during the validity period of the extensions of stay granted under this Act.
  4. The residence visa shall also be cancelled when the application for a residence permit is refused.
  5. After the visa holder enters Portuguese territory, the cancellation of visas to which the preceding paragraphs refer to, is under the competence of the member of the government responsible for internal affairs, who may delegate powers to SEF's National Director, who can sub-delegate this competence.
  6. Visa cancellations in accordance to the preceding paragraph shall be communicated by electronic means to the Directorate-General of Consular and Portuguese Community Affairs.
  7. The cancellation of visas prior to its holder arriving in Portugal is of the competence of diplomatic missions and permanent consular posts, and shall be communicated by electronic means to SEF.

## **CHAPTER V**

### **Extension of stay**

#### **Article 71**

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

1. Foreign citizens who have been admitted in national territory under the provisions of this Act and wish to remain in the Country for a period which exceeds that originally permitted may be granted an extension of stay.
2. The extension of stay granted to holders of transit and short-stay visas may be valid for one or more States Parties to the Implementing Convention.
3. Except in duly justified cases, the extension referred to in paragraph 1 may be granted provided that the conditions which grounded the admission of the foreign citizen still prevail.

4. The temporary stay visa for employment purposes may only be extended if the applicant holds a work contract in accordance to the law and is covered by the National Health Service or has Health Insurance.
5. The temporary stay visa issued for purposes of performing a research or highly qualified activity may only be extended if the applicant holds a work contract, a contract for provision of services or a scientific research grant, and is covered by the National Health Service or has Health Insurance.
6. Except in duly substantiated cases, the extension of stay to holders of residence permit for purposes of employment, self-employment and carrying out a research or highly qualified activity is conditional upon the maintenance of the conditions which grounded the admission of the foreign citizen.

## Article 72

### Limits on the extension of stay

1. The duration of stay may be extended for:
  - a) Up to 5 days if the applicant holds a transit visa;
  - b) Up to 60 days if the applicant holds a special visa;
  - c) Up to 90 days if the applicant holds a residence visa;
  - d) Up to 90 days, with the possibility of extension for another 90-day period, if the applicant holds a short-stay visa, or has been admitted into the country without the need for a visa;
  - e) Up to one year, with the possibility of extension for another year, if the applicant holds a temporary stay visa, except for the cases provided for in paragraph 1 (c) of Article 54, in which case it may be extended only for 90 days.
2. The extension of stay may be granted over and above the limits provided for in the preceding paragraph, while awaiting a resolution concerning a residence permit application, as well as in duly substantiated cases.
3. For exceptional reasons occurring after legal entry into national territory, an extension of stay may be granted to family members of the temporary stay visa holder, however the validity of such extension shall not exceed the validity and duration of the visa granted to the family member.
4. The extension of stay granted to citizens admitted in the Country under visa waiver and to holders of short-stay visas is limited to Portugal, whenever their stay exceeds 90 days within six months to be counted from the date of the first crossing of an external border.



5. Without prejudice to the sanctions provided for in this Act, and unless exceptional circumstances arise, applications for extension of stay will be refused if they have been submitted 30 days after the expiry of the authorised period of stay.
6. The extension of stay is granted by means of a visa sticker which format shall be approved by regulatory order of the member of the government responsible for internal affairs.

### **Article 73**

#### **Competence**

The competence for deciding upon applications for extension of stay is held by SEF's National Director, personally or by delegation of powers.

## **CHAPTER VI**

### **Residence in national territory**

#### **SECTION I**

##### **General provisions**

### **Article 74**

#### **Types of residence permit**

1. There are two types of residence permit:
  - a) Temporary residence permit;
  - b) Permanent residence permit.
2. The foreign citizen who has been authorised to reside in Portuguese territory shall be granted a residence title.

## Article 75

### Temporary residence permit

1. Without prejudice to the special legal provisions applicable, the temporary residence permit is valid for a one-year period to be counted from the date of issue, and is renewable for successive periods of two years.
2. The residence title shall, nonetheless, be renewed in the event of a change in any of the particulars recorded in the document.

## Article 76

### Permanent residence permit

1. The permanent residence permit has no time limit.
2. The residence title must, however, be renewed every 5 years or whenever there is any alteration to the particulars recorded in it.
3. When applying for a permit renewal, the holder is exempted from delivering any documents which have been previously inserted in the electronic system used by SEF.

## Article 77

### General conditions for granting a temporary residence permit

1. Without prejudice to the special conditions applicable, in order to obtain a residence permit the applicant must cumulatively meet the following requirements:
  - a) Hold a valid residence visa, granted to one of the purposes established in this Act as grounds for granting a residence permit;
  - b) Absence of any fact that, if known by the competent authorities, could preclude the granting of that visa;
  - c) To be present in Portuguese territory;
  - d) To hold means of subsistence, such as defined by the regulatory order referred to in paragraph 1 (d) of Article 52;
  - e) To have accommodation ensured;
  - f) Being registered in the Social Security, whenever applicable;

- g) Not having been convicted for any crime punishable by imprisonment for more than one year;
  - h) Not being in a period of ban of entry into national territory, as a result of a removal order from the Country;
  - i) Not being the subject of any alert in the Schengen Information System;
  - j) Not being the subject of any alert in SEF's Integrated Information System for purposes of refusing entry, in accordance with Article 53.
2. Without prejudice to the special legal provisions applicable, a residence permit may be refused on grounds of public order, security or health.
  3. The refusal of residence permit on grounds of public health may only be based on diseases that have been defined in the applicable instruments of the World Health Organization, or on other infectious or contagious parasitic diseases which have been object to protection measures in national territory.
  4. A medical examination may be required to applicants of a residence permit with a view to establish that he/she does not have any of the above mentioned diseases, and to determine the adequate medical measures.
  5. The medical examinations and measures to which the preceding paragraph refers to may not be performed on a systematic basis.
  6. Whenever the applicant is the subject of an alert for refusal of entry issued by a State Party or Associated to the Schengen Implementing Convention, it shall be previously consulted and its interests taken into account, in accordance with Article 25 of that Convention.

## **Article 78**

### **Temporary residence permit renewal**

1. The renewal of temporary residence permit must be requested by the interested parties up to thirty days before the document's expiry.
2. Third-country nationals only have their residence permit renewed if they:
  - a) Hold means of subsistence, such as defined by the regulatory order mentioned in paragraph 1 (d) of Article 52;
  - b) Have accommodation ensured;
  - c) Have complied with their tax and social security obligations;

- d) Have not been sentenced for any crime punishable by imprisonment that individually or cumulatively exceeds one year, even if he/she has been convicted of an intentional crime provided in this Act - or was somehow related to that crime, or crime of terrorism, violent crime or particularly violent crime or highly organised crime – and the sentence has been suspended.
3. A residence permit may not be renewed on grounds of public order or public security.
4. Diseases contracted after the issuing of the first residence title shall not constitute sufficient grounds for refusing the renewal of the residence permit.
5. A residence permit shall not be renewed to any foreign citizen that is declared to be contumacious, until he/she produces evidence that such declaration has expired.
6. If an application is rejected, a copy of that decision must be forwarded to ACIDI, and to the Advisory Council, together with the reasons grounding such decision.
7. The receipt issued against delivery of application for renewal of residence permit is valid as residence title for a period of 60 days, renewable.
8. SEF may conclude protocols with local authorities, as well as with departments of the Autonomous Regions, with a view to facilitate and simplify procedures for renewal of residence permits and respective titles.

#### **Article 79**

##### **Renewal of residence permits in particular cases**

1. Residence permits of foreign citizens who are in prison may only be renewed provided that the respective holders have not been the subject of an expulsion measure.
2. The application for renewing a residence permit with an expired validity does not imply any proceedings, provided that it is submitted up to 30 days counted from the date the interested party was released from prison.

#### **Article 80**

##### **Permanent residence permit**

1. Without prejudice to the provisions of this Act concerning the status of third-country nationals who are long-term residents, a permanent residence permit will be granted to foreign citizens that cumulatively meet the following requirements:

- a) Hold a temporary residence permit for at least five years;
  - b) During the last five years of residence in Portuguese territory they have not been sentenced for any crime punishable by imprisonment that, individually or cumulatively, exceeds one year, even if they have been convicted of an intentional crime provided in this Act - or were somehow related to that crime, or crime of terrorism, violent crime or particularly violent crime or highly organised crime - and the sentence has been suspended;
  - c) Have means of subsistence, such as defined by the regulatory order mentioned in paragraph 1 (d) of Article 52;
  - d) Have accommodation ensured;
  - e) Prove to have sufficient command of basic Portuguese language.
2. The period of residence prior to the entry into force of the present Act, is relevant to accomplish the provisions of the preceding paragraph.

#### **Article 81**

##### **Application for a residence permit**

1. The application for a residence permit may be made by the interested party or by a legal representative and shall be submitted to SEF.
2. The application may cover minors under guardianship of the applicant.
3. While a decision regarding the application for a residence permit is pending, for reasons that are not attributable to the applicant, he/she may carry out a professional activity in accordance with the law.
4. The applicant for a residence permit may simultaneously apply for family reunification.

#### **Article 82**

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

1. The application for a residence permit shall be decided within 60 days.
2. The application for renewing a residence permit shall be decided within 30 days.
3. In the absence of a decision within the period provided for in the preceding paragraph, for reasons that are not attributable to the applicant, the decision is considered favorable, and the residence title immediately issued.

4. A decision rejecting the application shall be communicated to the applicant, informing the grounds for refusal, as well as the right to appeal and respective time limit for that action, and a copy shall be sent to the Advisory Council.

### **Article 83**

#### **Rights of a residence permit holder**

1. Without prejudice to the application of special provisions and other rights established in the law, or in international conventions that Portugal is a Party to, the holder of residence permit is entitled, without the need to get a special authorisation on grounds of being a foreign citizen, to:
  - a) Education and teaching;
  - b) Employment;
  - c) Self-employment;
  - d) Professional guidance, training, further training and retraining;
  - e) Health care;
  - f) Access to the law and courts.
2. The application of provisions that guarantee equal treatment to foreign citizens shall be ensured, particularly in what concerns social security, tax benefits, trade union memberships, recognition of diplomas, certificates and other professional credentials or documents granting them access to goods and services made available to the public, as well as the application of provisions that grant them special rights.

### **Article 84**

#### **Identification document**

The residence title replaces, for all legal purposes, the identification document, without prejudice to the provisions laid down by the Treaty of Friendship, Cooperation and Consultation [*Tratado de Amizade, Cooperação e Consulta*] between the Portuguese Republic and the Federative Republic of Brazil, signed in Porto Seguro on 22 April 2000.

## Article 85

### Cancellation of residence permit

1. A residence permit will be cancelled when:
  - a) Its holder has been the subject of a forced return measure or of an expulsion decision from national territory; or
  - b) The residence permit has been obtained on grounds of false or fraudulent declarations, of false or forged documents, or through fraudulent means; or
  - c) There are strong reasons to believe that its holder committed serious criminal acts, or there is strong evidence that he/she intends to commit acts of that nature, specifically in the European Union territory; or
  - d) By reasons of public order or security.
2. Without prejudice to the application of special provisions, the residence permit may also be cancelled when the interested party, without reasonable motives, is absent from the Country:
  - a) Being the holder of a temporary residence permit, six consecutive months or eight interpolated months, within the overall validity of the authorisation;
  - b) Being the holder of a permanent residence permit, 24 consecutive months or, in a period of three years, 30 interpolated months.
3. The absence from the Country beyond the limits established in the preceding paragraph must be justified by means of an application submitted to SEF, before the resident leaves national territory, or, in exceptional cases, after his/her departure.
4. The residence permit of citizens that are absent for longer periods than those established in paragraph 2 will not be cancelled if they prove that during their stay abroad they resided in their country of origin where they carried out a professional or business activity or one of social or cultural nature.
5. Any cancellation of a residence permit shall be communicated to the interested party and, by electronic means, to ACIDI and to the Advisory Council, stating the facts that grounded such decision. Cancellation results in seizing of the respective title.
6. The authority responsible for cancelling the document is the member of the government responsible for internal affairs, personally or by delegation of powers to SEF's National Director.
7. The cancellation decision may be subject to devolutive appeal before the administrative courts.

## **Article 86**

### **Registration of residents**

Residents must inform SEF on any alteration to their civil status or address, within 60 days counted from the date such alteration occurred.

## **Article 87**

### **Foreign citizens exempted from residence permit**

1. Diplomatic or consular agents accredited in Portugal, as well as administrative, domestic service or equivalent staff that serves diplomatic missions or consular posts of their respective States, members of staff of international organizations with head-office in Portugal, or their family members, are exempted from residence permit requirement.
2. The persons referred to in the preceding paragraph are granted an identification document issued by the Ministry of Foreign Affairs, after consulting SEF.

## **SECTION II**

### **Residence Permit**

#### **SUBSECTION I**

### **Residence permit for pursuing a professional activity**

## **Article 88**

### **Residence permits for employment purposes**

1. In addition to the general requirements laid down by Article 77, residence permit for employment purposes shall only be granted to third-country nationals who have a legal employment contract and are registered in the Social Security System.
2. Exceptionally, upon SEF's National Director proposal, or by initiative of the member of the government responsible for internal affairs, the requirement laid down by paragraph 1 (a) of Article 77 may be waived provided that, in addition to the other general requirements established in that provision, the foreign citizen also meets the following conditions:

- a) Holds an employment contract or has an employment relationship confirmed by a trade union, by an association which is party to the Advisory Council, or by the Working Conditions Authority;
  - b) Has entered legally in national territory and here remains legally;
  - c) Is registered and up to date with payments to the Social Security System.
3. In order to implement the quotas defined in Article 59, SEF shall inform, by electronic means, the Employment and Vocational Training Institute on the granting of any residence permit under the provisions of the preceding paragraphs, and in the Autonomous Regions, the corresponding regional services.
  4. The granting of residence permit under the terms of the preceding paragraphs shall be communicated by SEF, by electronic means, to the Working Conditions Authority or, in the Autonomous Regions to the respective regional secretariat, so that these departments may monitor compliance with all legal obligations of the employers in relation to the residence permit holder, as well as to the Tax Authorities and the relevant services of the Social Security.
  5. The holder of a residence permit for purposes of taking up employment may be self-employed, provided that his/her residence title is replaced. In that case the provisions of the following Article shall apply, *mutatis mutandis*.

#### **Article 89**

##### **Residence permit for self-employment purposes**

1. In addition to the general requirements laid down by Article 77, a residence permit for carrying out an self-employed activity shall only be granted to third-country nationals who meet the following requirements:
  - a) Have formed a company in accordance with the law, and declared the start of its activities to the tax and social security authorities as an individual entrepreneur, or have signed a contract for providing services as a self-employed person;
  - b) Detain the necessary qualifications to engage in an self-employed activity, when applicable;
  - c) Hold means of subsistence, such as defined in paragraph 1 (d) of Article 52;
  - d) When required, present a declaration issued by the respective professional association certifying that they comply with membership requirements.

2. Exceptionally, upon SEF's National Director proposal, or by initiative of the member of the government responsible for internal affairs, the requirement laid down by paragraph 1 (a) of Article 77 may be waived, provided that there is evidence that the foreign citizen entered and resides legally in national territory.
3. The holder of a residence permit for purposes of carrying out a self-employed activity may be employed, in which case is applicable, with the necessary adjustments, the dispositions of the preceding Article, and his/her residence title must be replaced.

### Article 90

#### Residence permit for carrying out a research or highly qualified activity

1. A residence permit for research purposes, for teaching in a higher education educational establishment, or for pursuing a highly qualified activity, will be granted to third-country nationals who, in addition to the requirements laid down by Article 77, meet the following conditions:
  - a) Are admitted for purposes of taking part in a research centre which is duly recognized by the Ministry of Education and Science, specifically by means of an actual or promised employment contract, an actual or promised contract for the provision of services, or a research grant for scientific purposes; or
  - b) Hold a contract for provision of services for purposes of teaching in a higher education establishment, or a contract for provision of services that is compatible with a highly qualified activity;
  - c) Are registered in the Social Security System.
2. The applicant may be exempted from the requirement laid down by paragraph 1 (a) of Article 77, whenever he/she entered and resided legally in national territory.
3. The holder of a residence permit granted under the provisions of paragraph 1 (a) may carry out a teaching activity in accordance with the law.

## **SUBSECTION II**

### **Residence permit for investment activities**

#### **Article 90 –A**

##### **Residence permit for investment activities**

1. A residence permit for purposes of performing investment activities shall be granted to the third-country citizens who, cumulatively:
  - a) Meet the general requirements laid down by Article 77, with the exception of paragraph 1 (a);
  - b) Hold a valid Schengen visa;
  - c) Regularise their stay in Portugal within 90 days of their first entry into national territory;
  - d) Meet the requirements laid down by paragraph 3 (d).
2. The residence permit shall be renewed for a period of two years pursuant to this Act, provided that the requirements laid down by Article 3 (d) 3 remain valid.
3. Conditions for enforcing the special framework provided for in this Article, specifically with regard to minimum quantitative requirements, minimum periods of permanence, and means of evidence, shall be defined by regulatory order of the members of the government responsible for foreign affairs and internal affairs.

## **Subsection III**

### **Residence permit for purposes of study, unremunerated training or voluntary service**

#### **Article 91**

##### **Residence permit granted to students in higher education**

1. A residence permit shall be granted to the higher education student who holds a residence visa issued in accordance with the provisions of paragraphs 2 and 4 of Article 62, provided that the applicant:
  - a) Proves to be enrolled and to have paid the respective fees charged by the educational establishment;

- b) Possesses means of subsistence, as settled by the Order mentioned in paragraph 1 (d) of Article 52;
  - c) Is covered by the National Health Service or has health insurance.
2. The residence permit is valid for one year and is renewable for equal periods, provided that its holder continues to meet the conditions of the preceding paragraph.
  3. Exceptionally, if the third-country national has legally entered and legally stays in Portugal and meets the conditions established in paragraph 1, a residence permit for purposes of study in a higher education establishment may be granted with exemption of the requirement provided for in paragraph 1 (a) of Article 77.
  4. Where the duration of the course of study is less than one year, the residence permit must have the necessary validity to cover the duration of the study.

#### **Article 92**

##### **Residence permit granted to students in secondary education**

1. A residence permit will be issued to holders of residence visa for the purpose of carrying out secondary education studies, provided that the applicant is enrolled in a secondary education establishment and covered by the National Health Service or by health insurance.
2. The validity of the residence permit to which the preceding paragraph refers to shall not exceed one year, and may be renewed for a similar period, provided that the conditions for its granting are still met.

#### **Article 93**

##### **Residence permit for unremunerated trainees**

1. A residence permit will be issued to a holder of residence visa for the purpose of accomplishing unremunerated traineeship, provided that he/she is covered by the National Health Service or has health insurance.
2. The granting of residence permit in accordance with the provisions of the preceding paragraph is conditional upon delivery by the interest party of a training contract for purposes of carrying out an unremunerated traineeship with a company or officially recognised vocational training institution, which has been certified by the Employment and Vocational Training Institute.

#### Article 94

##### Residence permit for voluntary service

1. A residence permit will be issued to a holder of residence visa for the purpose of participating in a voluntary service scheme, provided that he/she is covered by the National Health Service or by a health insurance.
2. The granting of residence permit under the provisions of the preceding paragraph is conditional upon delivery by the interested party of a contract concluded with the organisation in charge of such programme in Portugal. The contract must describe the tasks that the applicant will perform, the conditions he/she will benefit from by performing such tasks, his/her working hours, as well as, where applicable, the training he/she will receive with a view to perform his/her service correctly.
3. The validity of the residence permit referred to in paragraph 1 may not exceed one year.
4. In exceptional cases, if the duration of the voluntary service scheme exceeds one year, the validity of the residence permit may correspond to the period concerned.
5. The residence permit granted under the provisions of this Article is not renewable.

#### Article 95

##### Cancellation and non-renewal

Without prejudice to the provisions of Articles 78 and 85, the residence permit issued under the provisions of this section may be cancelled or not renewed if its holder:

- a) Does not meet or ceases to meet the requirements laid down by Article 62, or in respect to his/her category, in Articles 91 to 94;
- b) Does not comply with the provisions of Article 97; or
- c) Does not make acceptable progress in his/her course of study.

#### Article 96

##### Procedural and transparency safeguards

1. The decision upon an application for renewal of a residence permit is adopted and communicated to the applicant within a period of time that does not hinder the pursuing of studies, without prejudice to a reasonable period of time for processing the application.

2. The examining of the application may be suspended if the information provided by the applicant is inadequate. In that case, the necessary additional information shall be requested to the interested party.
3. A refusal on granting residence permit is communicated to the applicant, together with indication of the grounds for refusal, as well as information regarding the right to appeal, and the respective time limit.
4. The decision on refusal or cancellation of a residence permit under the provisions of this section, may be subject to a devolutive appeal before the administrative courts.

#### **Article 97**

##### **Pursuing a paid professional activity**

1. The holders of a residence permit for purposes of taking part in a voluntary service scheme are not allowed to engage in any paid professional activity.
2. Out of the period which was scheduled to accomplish the course of study or following completion of the unremunerated traineeship, and subject to the applicable rules and requirements of the relevant activity, students may engage in a paid professional activity, under the provisions of paragraph 1 of Article 88, upon prior authorisation granted by SEF.
3. SEF is under the obligation of sending notifications as specified in paragraphs 3 and 4 of Article 88.

#### **SUBSECTION IV**

##### **Residence permit for family reunification**

#### **Article 98**

##### **Right to family reunification**

1. A citizen with a valid residence permit has the right to family reunification with the family members that are abroad, with whom he/she have lived in another country, or that are dependent on him/her or lived in cohabitation, whether the family relationship arose before of after the citizen's entry in Portugal.
2. In the circumstances referred to in the preceding paragraph, the right to family reunification is also recognised to the family members who have legally entered national territory and that depend on or live in cohabitation with the holder of a valid residence permit.

3. Refugees, recognised under the asylum law, have the right to family reunification with family members who are in national territory or abroad, without prejudice to the legal provisions that grant the refugee status to the respective family members.

#### **Article 99**

##### **Family members**

1. For the purposes of the provisions of the preceding Article, the following are considered family members of the resident:
  - a) The spouse;
  - b) Minors or incapable children under guardianship of the couple or of one spouse;
  - c) Minors adopted by an unmarried applicant, by a married applicant or by the spouse, following decision taken by the relevant authority of the country of origin, provided that its legal framework comprises the same rights and duties of natural filiation and provided that such decision is acknowledged by Portugal;
  - d) Children who are of full age and are dependent of the couple or of one of the spouses, and study in a Portuguese education establishment;
  - e) First-degree relatives in the direct ascending line of the resident or his/her spouse, provided that they are dependent on them;
  - f) Minor siblings provided they are under the tutelage of the resident, in accordance with a decision made by the relevant authority of the country of origin, and provided that such decision is recognised by Portugal.
2. For purposes of family reunification, the following are also considered family members of a refugee who is an unaccompanied minor:
  - a) First-degree relatives in the direct ascending line;
  - b) His/her legal guardian or any other relative, if the refugee has no relatives in the direct ascending line or such relatives cannot be traced.
3. For purposes of family reunification with a holder of a residence permit on grounds of study, unremunerated traineeship or voluntary service, only those mentioned in paragraph 1 (a) and (c) are considered family members.

4. Family reunification with an underage or incapable child of one of the spouses is conditional upon authorisation of the other parent, or upon decision of the relevant authority according to which the child has been entrusted to that parent.
5. For purposes of the provisions of paragraph 2, it is considered 'unaccompanied minor' the third-country national or stateless person under the age of 18 years old, who:
  - a) Has entered national territory unaccompanied and is not under the guardianship of a responsible adult, whether by law or custom; or
  - b) Has been left unaccompanied after his/her entry in national territory.

#### **Article 100**

##### **Registered partnership**

1. Family reunification may be authorised with:
  - a) The partner with whom the foreign resident maintains, either in national territory or abroad, a *de facto* union duly recognised under the law;
  - b) The unmarried minor children or those considered incapable, including the children adopted by a *de facto* partner, provided that they have been entrusted to that partner;
2. The provisions regarding the exercise of the right to family reunification shall apply, *mutatis mutandis*, to family reunification under the provisions of the preceding paragraph.

#### **Article 101**

##### **Requirements for exercising the right to family reunification**

1. In order to exercise the right to family reunification, the applicant shall have:
  - a) Accommodation ensured;
  - b) Means of subsistence, such as defined in the regulatory order mentioned in paragraph 1 (d) of Article 52.
2. The provisions of the preceding paragraph are not applicable to family reunification of refugees.



## Article 102

### Authority

The decision regarding applications for family reunification is under the responsibility of SEF's National Director, personally or by delegation of powers.

## Article 103

### Application for family reunification

1. The application for family reunification with family members who are abroad shall be submitted to SEF by the citizen who is entitled to that right.
2. Whenever the family members are in national territory, the application for family reunification may be delivered either by the family members or by the citizen who is entitled to that right.
3. The application must include the following:
  - a) Documents evidencing the existence of relevant family ties or of a registered partnership;
  - b) Documents evidencing compliance with the requirements for exercising the right to family reunification;
  - c) Certified copies of the travel documents of the family members or of the *de facto* partner.
4. When a refugee is unable to submit official documents proving a family tie, other proofs of the existence of such relationship shall be taken into consideration.

## Article 104

### Examination of the application

1. SEF may, if necessary, interview the applicant for family reunification, and his/her family members, and conduct any other inquiries deemed necessary.
2. When examining an application regarding a *de facto* partner of the applicant for family reunification, SEF must ponder factors such as the existence of common children, former cohabitation, and the registration of the partnership as well as any other reliable means of proof.

## **Article 105**

### **Time limits**

1. At the earliest possible date, and in any event within three months, SEF shall notify the applicant, in writing, on the decision rendered.
2. In exceptional circumstances related to possible complexities when examining an application, the period of time referred to in the preceding paragraph may be extended by three months, in which case the applicant shall be informed of such extension.
3. An application not decided upon six months after its submittal is considered tacitly granted.
4. In case of tacit granting, and upon request of the applicant, SEF shall certify such granting and informs the Director General of Consular and Portuguese Communities Affairs, for the purpose of issuing a residence visa under the provisions of Article 64.

## **Article 106**

### **Application rejection**

1. An application for family reunification may be rejected in the following circumstances:
  - a) When the requirements for exercising the right to family reunification are not met;
  - b) When the family member is refused to enter national territory;
  - c) When the presence of the family member represents a threat to public policy, public security or public health.
2. When the granting of an application for family reunification is hindered by reasons of public policy or security, the seriousness or type of infringement to public order or security perpetrated by the family member, or the dangers that may arise from the permanence of that person in national territory, must be taken into consideration.
3. Before deciding on a rejection of the family reunification application, the nature and solidity of the person's family relationships, the duration of his/her stay in Portugal and the existence of family, cultural and social ties with the country of origin, will be pondered.
4. The rejection of an application submitted by a refugee cannot lie solely on the lack of documents evidencing the family relationship.

5. The rejection of an application must be communicated, by means of forwarding a copy of the decision, with the respective grounds for rejection, to ACIDI and to the Advisory Council, without prejudice to the applicable rules on the protection of personal data.
6. The applicant is notified of the rejection of his/her application with the indication of the reasons justifying such decision, and is informed of his/her right to appeal and the respective time limit for that action.
7. The rejection of an application for family reunification may be subject to devolutive appeal before the administrative courts.
8. When the members of the family are already in national territory and the rejection of the application is exclusively grounded on non-compliance with the conditions laid down by paragraph 1 (a), the appeal has suspensory effect.

#### **Article 107**

##### **Residence of family members**

1. A family member who holds a visa issued in accordance with Article 64, or who is in national territory after having obtained granting to an application of family reunification, is entitled to a residence permit of the same duration as that held by the resident.
2. A family member of the holder of a permanent residence permit is entitled to a renewable residence permit with a validity of two years.
3. Two years after the issuing of the first residence permit to which the preceding paragraphs refer to, and assuming that the family relationship continues to exist, or independently from the aforementioned time period, whenever the person entitled to family reunification has minor children residing in Portugal, the family members are entitled to an autonomous permit.
4. In exceptional cases, including legal separation, divorce, widowhood, death of a relative in the ascending or descending line, charge drawn up by the Public Prosecution for domestic violence, and when the person becomes of full age, an autonomous residence permit may be granted before the end of the time limit established in the preceding paragraph.
5. The first residence permit granted to a spouse under the legal framework of family reunification will be autonomous, provided that he/she has been married to the resident for more than five years.

## Article 108

### Residence permit cancellation

1. Without prejudice to the provisions of Article 85, the residence permit issued under the right to family reunification is cancelled when the marriage, registered partnership or adoption had as only purpose allowing the entry of the interested party into the country.
2. Inquiries and specific checks may be performed where there are founded reasons to suspect of fraud, or of a marriage, partnership or adoption of convenience, as laid down by the preceding paragraph.
3. Before the decision on cancellation of the residence permit under family reunification is rendered, the nature and solidity of the person's family relationships, his/her stay in Portugal and the existence of family, cultural and social ties with the country of origin are taken into account.
4. The decision on cancellation of the permit is issued following a hearing of the foreign citizen, which represents, for all purposes and effects, a hearing of the interested party.
5. The decision on cancellation of the permit is notified to the interested party with the indication of the grounds of such decision, and contains information regarding the right to appeal and respective time limit.
6. The cancellation decision shall be conveyed electronically to ACIDI and to the Consulting Council, without prejudice to the applicable rules on the protection of personal data.
7. The decision on cancellation of the permit to the family member based on the provisions of paragraph 1 may be subject to appeal, with suspensory effect, before the administrative courts.

## SUBSECTION V

### Residence permit issued to victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration

## Article 109

### Residence permit

1. A residence permit shall be granted to the foreign citizen who is or has been a victim of offences related to trafficking in human beings or subject of an action to facilitate illegal immigration, even if he/she has illegally entered the country or does not meet the necessary requirements for being granted a residence permit.

2. The residence permit mentioned in the preceding paragraph shall be issued after the expiry of the reflection period provided for in Article 111, provided that:
  - a) It is necessary to extend the stay of the party concerned in national territory considering the interest that his/her presence may have to judicial investigations and proceedings;
  - b) Whether he/she shows a clear intention to cooperate with the authorities in the investigation and suppression of trafficking in human beings and facilitation of illegal immigration;
  - c) Whether he/she has severed all relations with those suspected of the offences listed in the preceding paragraph.
3. The residence permit may be granted before the expiry of the reflection period provided for in Article 111, if it is clear that the concerned party meets the criterion laid down by sub-paragraph (b) of the preceding paragraph.
4. A residence permit may also be granted after expiry of the reflection period provided for in Article 111 to the foreign citizen who is identified as a victim of trafficking in human beings under special legislation, with exemption of the conditions laid down by paragraph 2 (a) and (b).
5. The residence permit granted under the provisions of the preceding paragraphs is valid for one year and shall be renewed for equal periods if the conditions listed in paragraph 2 are still complied with, or if there is need to maintain the protection of the person identified as victim of trafficking in human beings, under special legislation.

## **Article 110**

### **Information provided to the victims**

When the competent authorities or organisations acting within the framework of protection of crime victims' deem that a foreign citizen may fall into the scope of the provisions of the preceding Article, they shall inform him/her of the possibilities offered under this section.

## **Article 111**

### **Reflection period**

1. Before issuing the residence permit provided for in Article 109, SEF will grant a reflection period to the person concerned allowing him/her to recover and escape the influence of the perpetrators of the offences.

2. The reflection period mentioned in the preceding paragraph has a minimum duration of 30 days and a maximum duration of 60 days, from the starting point in which the competent authorities ask for the person concerned collaboration, or when he/she expresses willingness in collaborating with the competent authorities in charge of the investigation, or when the person is identified as a victim of trafficking in human beings under the provisions of the applicable special legislation.
3. During the reflection period, the person concerned is entitled to the treatment provided for in Article 112, and it shall not be possible to enforce any expulsion order against him/her.
4. The reflection period shall not create any entitlement to residence under this section.

## **Article 112**

### **Rights of the victim before the granting of a residence permit**

1. Before the granting of a residence permit, the person pointed out or identified as a victim of trafficking in human beings or subject to an action to facilitate illegal immigration, who does not hold sufficient resources, is granted standards of living capable of ensuring his/her subsistence and access to appropriate emergency medical treatment.
2. For the purposes of the provisions of the preceding paragraph, the specific needs of the most vulnerable persons shall be taken in due account, including psychological assistance, when necessary.
3. The protection and safety of the person mentioned in paragraph 1 shall also be ensured.
4. When necessary, the person mentioned in paragraph 1 is provided with translation and interpretation services, as well as legal protection under the provisions of Act 34/2004 of 29 July, exception made to paragraph 2 of Article 7, which does not apply.

## **Article 113**

### **Rights of the residence permit holder**

1. The holder of a residence permit granted under the provisions of Article 109, who does not have sufficient resources falls within the scope, with the necessary adjustments, of the provisions of the preceding Article.
2. The holders of a residence permit granted under the provisions of Article 109, who do not hold sufficient resources and have special needs, such as minors, pregnant women, the disabled or victims of sexual violence or other forms of violence, are given the necessary medical and social assistance.

3. The holder of a residence permit granted under Article 109 is given access to official existing programmes whose purpose is to help him/her recovering a normal social life, including courses designed to improve their professional skills or to prepare their assisted return to the country of origin.

#### **Article 114**

##### **Minors**

1. In applying the provisions of Articles 109 to 112, the best interests of the child shall be taken in due account, and the procedures shall be appropriate to his/her age and maturity.
2. The reflection period provided for in paragraph 2 of Article 111 may be extended if it is in the best interest of the child.
3. Minors who are victims of trafficking in human beings or subject to an action to facilitate illegal immigration have access to the education system under the same conditions as national citizens do.
4. All steps shall be taken to establish the identity and nationality of the unaccompanied minor, as established by paragraph 5 of Article 99, as well as every effort to locate his/her family as quickly as possible, and to ensure legal representation, including representation in criminal proceedings, if necessary, in accordance to the law.

#### **Article 115**

##### **Residence permit cancellation**

1. Without prejudice to the provisions of Article 85, the residence permit granted under this section may be cancelled at any time in case:
  - a) The holder has actively, voluntarily and in his/her own initiative renewed contacts with the suspects of committing trafficking in human beings or action to facilitate illegal immigration; or
  - b) The competent authority believes that the victim's cooperation is fraudulent or that his/her complaint is wrongful or fraudulent; or
  - c) The victim ceases to cooperate.
2. Sub-paragraph (c) of the preceding paragraph does not apply to holders of the residence permit granted under paragraph 4 of Article 109.

**SUBSECTION VI**

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

**Article 116**

**Right of residence of holders of long-term resident status in another European Union Member State**

1. The third-country national who has acquired a long-term resident status in another European Union Member State and stays in national territory for more than three months has the right of residence provided that he/she:
  - a) Is employed; or
  - b) Is self-employed; or
  - c) Pursues a course of study or vocational training; or
  - d) Presents a strong motive to set up residence in national territory.
2. The provisions of the preceding paragraph are not applicable to long-term residents who stay in national territory as:
  - a) Employees posted by a service provider for the purpose of cross-border provision of services;
  - b) Cross-border service providers.
3. The provisions of the preceding paragraph is without prejudice to the full application of the relevant Community law on social security applicable to third-country nationals.
4. Third-country nationals under paragraph 1 are granted residence permit as long as they have:
  - a) Means of subsistence;
  - b) Accommodation.
5. With a view to assess compliance with the requirement provided in sub-paragraph a) of the preceding Article, the resources shall be evaluated by reference to its nature and regularity, considering the level of minimum wages and pensions.
6. The granting of a residence permit to third-country nationals under paragraph 1 (a) falls within the scope of the provisions of paragraph 1 of Article 88.
7. The granting of a residence permit to third-country nationals under paragraph 1 (b) falls within the scope of the provisions of paragraph 1 of Article 89.

8. The granting of a residence permit to third-country nationals under paragraph 1 (c) is conditional upon the submittal, by the person concerned, of an enrolment in an officially recognised higher education establishment, or admission in an officially recognised establishment or company of vocational training.

#### **Article 117**

##### **Application for a residence permit**

1. The long-term resident mentioned in the preceding Article shall submit to SEF an application for residence permit within three months as from the date of entry in national territory.
2. The application mentioned in the preceding paragraph shall be accompanied by documents confirming that the applicant fulfils the conditions for exercising his/her right to residence as mentioned in the preceding Article.
3. The application shall also be accompanied by the long-term resident title and a valid travel document or certified copies of those documents.
4. The decision on an application for a residence permit submitted in accordance with the preceding Article shall be rendered within three months.
5. If the application is not accompanied by the documents mentioned in paragraphs 2 and 3, or in exceptional circumstances linked with complexity of the examination of the application, the time limit referred to in the preceding paragraph may be extended for a period not exceeding three months. In such cases, the applicant shall be informed thereof.
6. SEF's National Director has the powers to decide on the granting of a residence permit in accordance to the present section, personally or by delegation of powers.
7. In the absence of a decision within six months, the application is considered approved.
8. The granting of a residence permit to a long-term resident as well as to his/her family members shall be conveyed by SEF to the competent authorities of the Member State which granted the long-term resident status.

## **Article 118**

### **Family reunification**

1. Residence permit in national territory is granted to family members of the residence permit holder issued in accordance with the provisions of Article 116, who live with him/her in the Member State which for the first time granted him/her the long-term resident status.
2. For the purposes of the provisions of the preceding paragraph, family members are considered those relatives mentioned in paragraph 1 of Article 99, as well as those mentioned in paragraph 1 of Article 100.
3. The submitting of an application for a residence permit is ruled by the provisions of the preceding Article.
4. The person concerned shall attach to his/her application for residence permit the following documents:
  - a) His/her EU long-term resident title and a valid travel document or certified copies of the same;
  - b) Evidence that he/she resided in the Member State which granted him/her for the first time the long-term resident status as a family member or registered partner of a long-term resident;
  - c) Evidence that he/she holds means of subsistence and is covered by the national health service or by health insurance.
5. For purposes of evaluating the means of subsistence referred to in sub-paragraph (c) of the preceding paragraph, the nature and regularity of those means, as well as the level of minimum wages and allowances must be taken into account.
6. If the family was not already constituted in the Member State which granted the applicant the long-term resident status for the first time, the provisions of chapter VI's section IV shall apply.
7. Family members covered by the provisions of the preceding paragraphs are granted a residence permit of identical length as the one granted to the long-term resident. The provisions of paragraph 8 of the preceding Article shall apply in this case.

## **Article 119**

### **Public policy, public security and public health**

1. The application for a residence permit submitted in accordance with this section can be refused when the person concerned represents a threat to public policy or public security.

2. The decision for rejection in accordance with the provisions of the preceding paragraph must take into consideration the seriousness or type of offence to public policy or security committed by the long-term resident or his/her family member, or the dangers that might result from that person's stay in national territory.
3. The decision mentioned in paragraph 1 must not be grounded on economic reasons.
4. The application for a residence permit submitted by a long-term resident or his/her family member may also be rejected if the person concerned represents a threat to public health under the provisions of paragraph 3 of Article 77.
5. The provisions of paragraphs 4 and 5 of Article 77 are applicable to those situations referred to in the preceding paragraph.

## **Article 120**

### **Cancellation and non-renewal of a residence permit**

1. Without prejudice of the provisions of Article 85, until the holder of a residence permit granted in accordance with this section obtains the long-term resident status in national territory, he/she may be subject to a decision on cancellation or non-renewal of the residence permit in the following situations:
  - a) On grounds of public policy or public order. The severity or type of offence against public policy or public security, or the danger that emanates from the stay of the person concerned, as well as the length of residence and the existence of links with the country, are facts that shall be taken into consideration;
  - b) When the conditions provided for in articles 116 e 118 are no longer met.
2. SEF shall convey any cancellation or non-renewal of the long-term resident residence permit, or his/her family members, to the competent authorities of the Member State which granted for the first time ever the long-term resident status.

## Article 121

### Procedural safeguards

1. The decision on the rejection of an application for a residence permit, or non-renewal or cancellation of a residence permit granted in accordance to this section shall be notified to the interested party, indicating the grounds for refusal, non-renewal or cancellation, along with information regarding the right to appeal and respective time limits.
2. The decisions referred to in the preceding paragraph are electronically conveyed to ACIDI and to the Advisory Council.

## SUBSECTION VII

### 'EU blue card' residence permit

#### Article 121 –A

##### 'EU blue card' holders

1. 'EU blue card' is a residence title which entitles its holder to reside and carry out a highly qualified activity in national territory, in accordance with the provisions of this section.
2. 'EU blue card' holders have the right to family reunification under the provisions of Section IV.
3. 'EU blue card' shall not be awarded to third-country citizens:
  - a) Who are authorised to reside in a Member State on the basis of temporary protection or have applied for a residence permit on that basis, as well as beneficiaries of the protection granted on grounds of Act 27/2008 of 30 June, or have applied for that protection and are awaiting a decision on their status;
  - b) Who are family members of Union citizens, in accordance with Act 37/2006 of 9 August;
  - c) Who have applied for or are holders of a residence permit for purposes of pursuing a research activity, in accordance with Article 90, paragraph 1;
  - d) Who enjoy a long-term resident status in a European Union Member State, in accordance with paragraph 1 (a) and (b) of Article 116;
  - e) Who are temporarily staying in Portugal in order to carry out investment-related trading activities, as seasonal workers or posted within the framework of a provision of services;

- f) Who, pursuant to an agreement concluded between the European Union and the third-country of nationality, enjoy rights of free movement equivalent to those of European Union citizens;
- g) Whose expulsion has been suspended for reasons of fact or law;

#### **Article 121 –B**

##### **Conditions for granting an ‘EU blue card’**

1. An ‘EU blue card’ for purposes of carrying out a highly qualified activity shall be granted to third-country citizens who, in addition to the conditions set out in Article 77, exception made to paragraph 1 (e) of that Article, cumulatively meet the following requirements:
  - a) Produce a work contract that is compatible with carrying out a highly qualified activity, for not less than one year, with a salary of at least 1,5 times the average national gross annual salary or, in cases provided for in paragraph 2 of Article 61 –A, a salary of at least 1,2 times the average national gross annual salary;
  - b) Have health insurance or submit proof that they are covered by the National Health Service;
  - c) Are registered with the social security system;
  - d) For unregulated professions, submit the documents establishing the relevant higher professional qualifications in the activity or sector specified in the work contract or binding job offer;
  - e) For regulated profession specified in the work contract or binding job offer, submit documents establishing professional certification, where applicable.
2. The applicant may be exempted from the requirement provided for in paragraph 1 (a) of Article 77 in case he/she is a holder of a valid residence title for national territory.
3. For the purposes of paragraph 1 (d) the provisions of paragraphs 2 and 4 of Article 61 –A shall apply.
4. An application for an ‘EU blue card’ shall be rejected in the following situations:
  - a) If the employer has been sanctioned for illegally employing foreign workers in the last five years;
  - b) For reasons of public policy, public security or public health

### **Article 121 –C**

#### **Authority**

The decisions provided for in this section are under the responsibility of the following:

- a) In cancellation cases, the member of the government in charge of internal affairs with the option to delegate powers to SEF's National Director;
- b) In all other cases, SEF's National Director, personally or by delegation of powers.

### **Article 121 –D**

#### **Procedure**

1. The application for an 'EU blue card' shall be submitted by a third-country citizen, or his/her employer, at SEF's national directorate or at SEF's regional office of the area of residence of the citizen or his/her employer.
2. The application shall be accompanied by documents supporting that the applicant meets the requirements listed in Article 121 –B.
3. Where the information or documents provided by the applicant are insufficient, the examination of the application is suspended and the applicant is required to provide additional information or documents within a period set by SEF of no-less than 20 days.
4. The decision on the application shall be notified to the applicant, in writing within a period not exceeding 60 days.
5. Decisions rejecting granting or renewal of 'EU blue card', as well as cancellations, shall be notified in writing to the applicant, or his/her employer, specifying the grounds for refusal, the right to appeal and respective time limits.

### **Article 121 –E**

#### **'EU blue card' duration, renewal and issuing**

1. 'EU blue card' has the initial validity of one year and is renewable for successive periods of two years.
2. Renewal of the 'EU blue card' must be requested by the interested party up to thirty days before expiry of the document's validity period.

3. The 'EU blue card' shall be issued in accordance with the uniform format of residence title to third-country nationals as provided for in Order number 1432/2008 of 10 December. The designation 'EU blue card' must be entered under heading "type of card".
4. The provisions of Article 212 shall apply to the issuing of the 'EU blue card'.

#### **Article 121 –F**

##### **'EU blue card' cancellation or refusal of the renewal**

1. 'EU blue card' shall be canceled whenever:
  - a) It has been obtained on grounds of false or fraudulent declarations, of false or forged documents, or through fraudulent means;
  - b) There are strong reasons to believe that the 'Eu blue card' holder committed serious criminal acts, or there is strong evidence that he / she intends to commit acts of that same nature, specifically in European Union territory;
  - c) There are reasons of public policy, public security or public health.
2. The 'EU blue card' is only renewed when the holder cumulatively:
  - a) Meets or continues to meet the conditions for entry and residence laid down by this section, or when the same conditions which enabled the issuing of the document are maintained;
  - b) Has sufficient resources to maintain him/herself, as defined by regulatory order of the members of the government responsible for internal affairs and social security, without having recourse to social security assistance, exclusion made to unemployment benefit;
  - c) Has not been convicted of a crime with punishment or penalties which, individually or collectively, exceed one year imprisonment;
  - d) Does not produce any risk to public policy, public security or public health.

#### **Article 121 –G**

##### **Access to the labour market**

1. For the first two years of legal employment in national territory, access to the labour market for the holder of a 'EU blue card' shall be restricted to the exercise of paid employment activities which meet the conditions set out in Article 121-B.

2. After the first two years of legal employment in national territory, the holder of an 'EU blue card' must provide a written information to SEF, where possible in advance, of any alterations affecting the granting conditions.

#### **Article 121 –H**

#### **Equal treatment**

1. 'EU Blue Card' holders shall enjoy equal treatment with nationals as regards:
  - a) Working conditions, including pay and dismissal, as well as health and safety requirements at the workplace;
  - b) Freedom of association, affiliation and membership of an organization representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;
  - c) Education and vocational training, in accordance with the requirements set out in the applicable legislation;
  - d) Recognition of diplomas, certificates and other professional qualifications in accordance with the relevant legislation;
  - e) Relevant rules concerning social security;
  - f) Payment of income-related acquired statutory pensions in respect of old age, at the rate applied;
  - g) Access to goods and services and the supply of goods and services made available to the public, including procedures for obtaining housing, as well as information and counseling services afforded by employment offices;
  - h) Free access to the entire Portuguese territory.
2. The right to equal treatment as laid down by paragraph 1 shall be without prejudice to the right to cancel or to refuse the 'EU Blue Card' in accordance with Article 121-F.
3. The right to equal treatment may be limited in the situations provided for in paragraph 1, exception made to paragraph 1 (b) and (d), whenever the holder of a 'EU blue card' from another Member State moves to national territory, under Article 121 –L and a decision on the granting of a 'EU blue card' in Portugal is still pending.

4. In cases where the decision referred to in the preceding paragraph is still pending and the applicant is allowed to work, he/she must enjoy full equality of treatment.

#### **Article 121 –I**

##### **Long-term resident status for ‘EU Blue Card’ holders**

1. The provisions of Articles 125 to 133, with the alterations contained in the following paragraphs, shall apply to holders of ‘EU blue card’ who wish to benefit from the long-term resident status.
2. The long-term resident status may be granted to the holder of an ‘EU blue card’ who have obtained it in Portugal under the provisions of Article 121 –B, provided that the following conditions are cumulatively met:
  - a) five years of legal and continuous residence within the European Union territory as an ‘EU Blue Card’ holder;
  - b) legal and continuous residence in national territory as an ‘EU Blue Card’ holder for two years immediately prior to the submission of the relevant application in Portugal.
3. For the purposes of the provisions set out in this Article regarding the calculation of the period of legal and continuous residence within the European Union, periods of absence from the territory of the European Union shall not interrupt the period referred to in paragraph 2 (a) of this Article, provided that they are shorter than 12 consecutive months and do not exceed in total 18 months.
4. The provisions of the previous paragraph also apply in cases where the third-country citizen has only resided in national territory as an ‘EU blue card’ holder.
5. In case of loss of long-term resident status for former holders of ‘EU blue card’, the provisions of Article 131 with the necessary adjustments as regards the period mentioned in paragraph 1 (c) of that Article, which is extended to 24 consecutive months, shall apply.

#### **Article 121 –J**

##### **Long-term resident permit**

1. ‘EU blue card’ holders who fulfill the conditions set out in the previous Article for the acquisition of the long-term resident status shall be issued with an EU long-term resident permit.
2. In the residence permit referred to in the previous paragraph, under the heading “remarks” the following shall be entered: “Former EU Blue Card holder”.

#### **Article 121 –K**

##### **Residence permit for 'EU blue card' holders in another Member State**

1. The 'EU blue card' holder who has resided for at least 18 months as an 'EU blue card' holder in the Member State that first issued the title may, together with his/her family members, move to Portugal for the purpose of highly qualified employment.
2. Applications for 'EU blue card' in national territory and, where applicable, for a residence permit for purposes of family reunification, must be submitted within 30 days as from the moment the 'EU blue card' holder from another Member State enters national territory.
3. The application referred to in the preceding paragraph shall be accompanied by supporting documents confirming the situation mentioned in paragraph 1 and that the applicant meets the requirements set out in paragraph 1 of Article 121-B.
4. The application may be refused under paragraph 4 of Article 121-B, or if the 'EU blue card' issued by another Member State has expired or has been canceled on the course of the application' examination.
5. In case of rejection of the application, and without prejudice to the provisions of the following paragraph, the third-country citizen and his/her employer may be held responsible for the costs related to the return and readmission of the EU Blue Card holder and his family members.
6. If the application is rejected on grounds of paragraph 4 (a) of Article 121-B, the employer is held responsible for the costs mentioned in the previous paragraph.
7. Decisions rendered on the applications submitted pursuant to this Article shall be communicated, in writing, by SEF to the authorities of the Member State of the 'EU blue card' holder, preferably electronically.

#### **SUBSECTION VIII**

##### **Residence permit under special circumstances**

#### **Article 122**

##### **Residence permit with residence visa exemption**

1. The following third-country nationals are exempted from visa requirement for granting of temporary residence permit:

- a) Minors, children of foreign citizens who are holders of a residence permit, born in Portuguese territory;
- b) Minors born in national territory who have stayed here and are attending pre-school education or primary school, secondary or professional education;
- c) Children of holders of a residence permit who have reached full age and normally stayed in national territory since they were 10 years old;
- d) Adults born in national territory who have not left the country or have lived in Portugal since the age of 10 years old;
- e) Minors who are under compulsory guardianship in accordance to the Civil Code;
- f) Citizens who no longer are entitled to enjoy the right to asylum in Portugal, because the reasons for which they obtained this protection no longer prevail;
- g) Those suffering from a disease that requires extended medical assistance, preventing him/her to return to the country so as to avoid risks to his/her own health;
- h) Those who served in the Portuguese Armed Forces;
- i) Those who have lost Portuguese citizenship and stayed in national territory in the last fifteen years;
- j) Those who have not left national territory, and whose right of residence has expired;
- k) Those who have minor children residing in Portugal, or minor children of Portuguese nationality over who he/she effectively exercises parental responsibilities and ensures livelihood and education;
- l) Diplomatic and consular agents, or his/her spouse or dependant relatives in the ascending or descending line, who have been accredited in Portugal for a period of not less than three years;
- m) Those who are or have been victims of a criminal offence or a serious or very serious administrative offence related to the labour relationship, in accordance with paragraph 2 of this Article, of which there are indications substantiated by the inspection services of the ministry responsible for employment matters, provided that he/she has reported the offence to the competent authorities and collaborates with them;
- n) Those who have been granted a residence permit under the provisions of Article 109;

- o) Those who, having been granted a residence permit for purposes of study under Articles 91 or 92, and having concluded them, wish to pursue a professional activity in national territory, as an employed or self-employed person, exception made in cases where the permit has been issued under cooperation agreements and there are no solid grounds of national interest that may justify it;
  - p) Those who, having been granted a temporary stay visa for purposes of carrying out a research or highly qualified activity, wish to pursue in national territory a research activity, or a teaching activity in a higher education establishment, or a highly qualified activity, either as an employed or as a self-employed person.
  - q) Those who provide evidence of an investment activity in accordance with the provisions of Article 3.
2. For the purposes of sub-paragraph (m) of the preceding paragraph, only offences resulting in conditions of lack of social protection, exploitation of salary or working hours, or in particularly abusive working conditions, shall be considered, or in case of using the activity of minors who are illegally staying in national territory.
  3. In the situations provided for in paragraph 1 (n), (o) and (p), the provisions of Articles 88, 89 or 90 shall apply, adapted accordingly, depending on the case.
  4. A residence permit with visa exemption shall also be granted to direct ascendants of foreign citizens under paragraph 1 (b), who effectively exercise parental powers. Both applications may be simultaneously submitted.
  5. Where the minor, with no well-founded reason, stops attending pre-school or primary school, the temporary residence permit granted under paragraphs 1 (b) and 3 shall be cancelled or not renewed.
  6. Where the minor, with no well-founded reason, stops attending secondary school or professional training, the temporary residence permit granted under paragraphs 1 (b) and 3 shall be cancelled or not renewed.
  7. Holders of a residence permit granted with visa exemption under the preceding numbers are entitled to benefit from the rights provided for in Article 83.

### **Article 123**

#### **Exceptional Framework**

1. In extraordinary situations that may arise which do not fall into the scope of the provisions of Article 122, as well as situations where a residence permit is granted for humanitarian reasons in accordance with the asylum law which rules the right to asylum, upon a proposal of SEF's National Director or by initiative of the member of the government responsible for internal affairs, a temporary residence permit can be granted, exceptionally, to foreign citizens who do not meet the requirements of this Act:
  - a) For reasons of national interest;
  - b) For humanitarian reasons;
  - c) For public interest reasons resulting from the exercise of a relevant activity in science, culture, sports, economic or social activities.
2. The decisions of the member of the government responsible for internal affairs regarding applications for residence permit made under the exceptional scheme provided for in this Article shall be duly substantiated.

### **Article 124**

#### **Foreign minors born in the country**

1. Foreign minors born in Portuguese territory enjoy a resident status identical to the one granted to any of his/her parents.
2. For purposes of issuing a residence title, any of the parents must submit the application in the following six months after the minor's birth registration.
3. After expiry of the period provided for in the preceding paragraph, any citizen may request from the minors' curator that he/she may replace the parents and requires the granting of the status for the minors.

## CHAPTER VII

### Long-term resident status

#### Article 125

##### Beneficiaries

1. Third-country nationals residing legally in national territory and fulfilling the necessary conditions for the granting of the status, qualify for the long-term resident status.
2. Third-country nationals do not qualify for the long-term resident status if they:
  - a) Hold a residence permit for purposes of study, unremunerated professional traineeship or voluntary service;
  - b) Are authorised to reside in national territory under temporary protection or have submitted an application for a residence permit for that reason and are awaiting a decision on their status;
  - c) *(Repealed.);*
  - d) *(Repealed.);*
  - e) Stay in Portugal only for temporary reasons, as seasonal workers, workers posted by a service provider for the purposes of cross-border provision of services, or as a cross-border providers of services;
  - f) Enjoy a legal status under the Vienna Convention on diplomatic relations adopted on 18 April 1961 or the Vienna Convention on consular relations adopted on 24 April.

#### Article 126

##### Conditions for acquiring a long-term resident status

1. The long-term resident status shall be granted to the third-country national who:
  - a) Has a legal and uninterrupted residence in national territory for at least five years before submitting the application, or in case he/she is a beneficiary of international protection, since the date of submittal of the application that resulted in the international protection status granting;
  - b) Holds stable and regular resources for his/her own livelihood and his/her family members without having recourse to the solidarity subsystem;

- c) Has health insurance;
  - d) Has accommodation;
  - e) Proves proficiency in basic Portuguese.
2. Residence periods for the reasons mentioned in paragraph 2 (e) and (f) of the preceding Article are not relevant for the assessment of the period mentioned in sub-paragraph *a*) of the preceding paragraph.
  3. In cases covered by the provisions of paragraph 2 (a) of the preceding Article, every time a third-country national is granted a residence permit that qualifies him/her to a long-term resident status, the period in which he/she was a holder of a resident permit for purposes of study, unremunerated vocational training or voluntary service is accounted for, in half, for calculation of the period mentioned in paragraph 1 (a).
  4. Periods of absence from national territory do not affect the period mentioned in paragraph 1 (a), and are used for its calculation, provided that they are shorter than 6 successive months, and do not exceed, in total, 10 months of the period mentioned in paragraph 1 (a).
  5. However, in the calculation of the period mentioned in paragraph 1 (a), the periods resulting from detachment for work purposes, more specifically as regards a cross-border provision of services, shall be taken into account.
  6. For the purposes of applying the provisions of paragraph 1 (b), the resources are assessed by their nature and regularity, taking into consideration the level of minimum wages and pensions, before submitting the application for acquiring a long-term resident status.
  7. Periods of uninterrupted permanence in national territory under a working visa or a stay permit, issued according to the provisions of the preceding legislation, are relevant to the calculation of the period foreseen in paragraph 1 (a).

## Article 127

### Public order and public security

1. The status of long-term resident may be refused for public order or public security reasons. The severity or type of offence against public policy or public security, or the danger that emanates from the stay of the person concerned, as well as the length of residence and the existence of links to the country, are facts that shall be taken into consideration.
2. The refusal referred to in the preceding paragraph cannot be grounded on economic reasons.

3. Without prejudice to the provisions of the preceding paragraphs, the long-term resident status on grounds of international protection shall be refused when such protection is withdrawn, suspended or its renewal is refused, in accordance with paragraph (a) and (b) of Article 41 of Act 27/2008, of June 30, that establishes the conditions and procedures for granting asylum or subsidiary protection and the statuses of asylum-seeker, refugee and subsidiary protection.

#### **Article 128**

##### **Authority**

The granting or refusal of the long-term resident status is under the responsibility of SEF's National Director, personally or by delegation of powers.

#### **Article 129**

##### **Procedure for acquiring a long-term resident status**

1. SEF's delegation in the applicant's area of residence has the powers to receive the application for granting of a long-term resident status.
2. The application shall be accompanied by documents demonstrating that the third-country national fulfils the conditions laid down by Article 126, as well as a valid travel document or a certified copy of it.
3. Without prejudice to the provisions of the preceding paragraph, the application for granting a long-term resident status made by a third-country national who is simultaneously a holder of a long-term EU title issued by another Member State, shall be preceded by a consultation to the citizen with the purpose of ascertaining if the applicant still benefits from international protection.
4. As soon as possible, and in any event within six months, the applicant shall be notified of the decision rendered.
5. Under extraordinary circumstances linked with complexity of the examination of the application, the time limit referred to in the preceding paragraph may be extended for a period of three months. In such cases, the applicant shall be informed thereof.
6. In the absence of a decision within six months, the application is considered approved.
7. If the conditions laid down in Article 126 are met, and the applicant does not represent a threat within the scope of Article 127, the long-term resident status shall be granted.
8. Anyone who applies for a long-term resident status is informed of his/her rights and obligations.

9. The long-term resident status is permanent on the basis of title that is renewable.
10. The granting of the long-term resident status to a third-country national holder of a residence permit granted in accordance with Article 116 shall be reported by SEF to the Member State which granted the citizen the long-term resident status for the first time ever.

### **Article 130**

#### **EU long-term residence permit**

1. Long-term residents are issued an EU long-term residence permit.
2. The EU long-term residence permit is valid for five years, and is automatically renewed, upon request, in the end of the expiry period.
3. The EU long-term residence permit is issued according to the rules and to the uniform format of residence permit for third-country nationals in force in the European Union. Under the heading “type of permit” shall be the designation “Long-term resident-EU”.
4. If an EU long-term residence permit is issued to a third-country national who has benefited from international protection in another Member State, the document's heading shall include the observation “International protection granted by (Identification of the Member State) on... (date)”.
5. If the international protection is transferred, the above-mentioned observation shall be modified upon request from the member where the third-country national has enjoyed international protection.
6. As soon as possible, and in any event within three months, the residence permit shall be fitly modified with the above-mentioned observation.

### **Article 131**

#### **Loss of the status**

1. Long-term residents will lose their resident status in the following cases:
  - a) Fraudulent acquiring of the long-term resident status;
  - b) Adoption of an expulsion measure according to the provisions of Article 136;
  - c) Absence from the territory of the European Union for a period of 12 successive months;
  - d) Acquiring the long-term resident status in another Member State;
  - e) Absence from national territory for a period of six successive years.

2. Absences from the territory of the European Union for a period of more than 12 successive months justified by specific or exceptional reasons do not imply the loss of the status, particularly when the long-term resident stayed in the country of origin with the purpose of pursuing a professional or entrepreneurial activity, or of a cultural or social nature.
3. Absences from national territory for a period of more than 6 successive years justified by specific or exceptional reasons do not imply the loss of the status, particularly when the long-term resident stayed in the country of origin for purposes of carrying out a professional or entrepreneurial activity, or of a cultural or social nature.
4. When the loss of the status is attributed to those situations provided for in paragraph 1 (c) and (e), the person concerned can recover the long-term resident status by means of an application, as long as he/she meets the requirements laid down by paragraph 1 (b) and (d) of Article 126.
5. The decision on the application referred to in the preceding paragraph is given within three months.
6. The expiry of the EU long-term residence permit does not imply the loss of the long-term resident status.
7. The loss of long-term resident status implies the cancellation of the residence permit and the seizure of the EU long-term residence permit.
8. The cancellation of the residence permit to the long-term resident is a competence of the member of the government responsible for internal affairs, with possibility of delegation of powers to SEF's National Director.
9. If the loss of the long-term resident status leads to the removal from national territory of the third-country national who has been the holder of the EU long-term residence permit provided for in paragraph 4 of Article 130, that removal can only be done to the country identified in the heading 'observations'.
10. In the situation mentioned in the preceding paragraph, if there are serious reasons to believe that the third-country citizen may represent a threat to national security or public order, or if he/she has been sentenced in Portugal by a final judgment for an intentional crime that carries a term of non-suspended imprisonment of at least one year, even if, when convicted for an intentional crime provided for in this Act or somehow related to that crime, or crime of terrorism, violent crime or particularly violent crime or highly organised crime the respective sentence has been suspended, or if the international protection status granted by another Member State has been withdrawn, the removal of the citizen can be made to a different country, in accordance with the principle of non-refoulement.

11. If the loss of the long-term resident status does not result on the removal of the citizen, he/she shall be granted a residence permit with visa exemption.

### **Article 132**

#### **Procedural safeguards**

1. Decisions rejecting an application for a long-term resident status or loss of that status shall be notified to the interested party with the indication of the grounds for refusal and containing information regarding the right to appeal and relevant time limits.
2. The grounds for refusal of the application for a long-term resident status or loss of that status shall be electronically reported to ACIDI, I. P., indicating the reasons for such decision.
3. The decision rejecting the application for a long-term resident status or the decision on the loss of that status is subject to appeal, with suspensory effect, before the administrative courts.

### **Article 133**

#### **Equal treatment**

Beneficiaries of the long-term status shall enjoy equal treatment with the national citizens under the provisions of the Constitution and the law, more specifically as regards:

- a) Access to an employed or self-employed activity, provided that such activity does not entail even occasional involvement in the exercise of public authority, without prejudice to the application of the special scheme granted to citizens from Portuguese-speaking countries;
- b) Access to conditions of employment and working conditions, including conditions regarding dismissal and remuneration;
- c) Education and vocational training including study grants and allowances according to the applicable legislation;
- d) Recognition of professional diplomas, certificates and other qualifications in accordance to law and national procedures;
- e) Social security, social assistance and social protection;
- f) Tax benefits;
- g) Health care;

- h) Access to goods and services and the supply of goods and services made available to the public, as well as to procedures for obtaining accommodation;
- i) Freedom of association and affiliation and membership of an organisation representing workers or employers, or any organisation whose members are engaged in a specific occupation, including the benefits conferred by such type of organisations, without prejudice to the national provisions on public policy and public security.
- j) Free access to the entire national territory.

## CHAPTER VIII

### Removal from national territory

#### SECTION I

##### General provisions

#### Article 134

##### Grounds for removal

1. Without prejudice to the provisions in the existing international conventions of which Portugal is party to or will be bound to, the foreign citizen shall be subject to forced removal or to an expulsion order whenever:
  - a) He/she illegally enters or stays in Portuguese territory;
  - b) He/she acts against national security or public policy;
  - c) His/her presence or activities in the country are a threat to the interests or dignity of the Portuguese State or its nationals;
  - d) He/she interferes abusively in the exercise of the rights to political participation that are reserved to national citizens;
  - e) He/she has performed acts that, if were known by the Portuguese authorities would have prevented his/her entry in the country;
  - f) In relation to whom there are strong reasons to believe that he/her has committed serious offences or intends to commit such actions, specifically in the European Union territory;



- g) He/she holds a valid residence title, or other title that confers the right to stay in another Member State, and he/she fails to comply with the requirement of immediately depart to that Member State;
  - h) The provisions of the preceding paragraph shall be without prejudice to any criminal liability which the foreign citizen may have incurred;
  - i) Refugees shall be applied the most beneficial scheme resulting from legislation or any international convention to which the Portuguese state is bound to.
2. The provisions of the preceding paragraph shall be without prejudice to any criminal liability which the foreign citizen may have incurred.
  3. Refugees shall be applied the most beneficial scheme resulting from legislation or any international convention to which the Portuguese state is bound to.

#### **Article 135**

##### **Restrictions to forced removal or expulsion**

Exception made to cases of threat to national security or public order and to the situations provided for in paragraph 1 (c) and (f) of Article 134, foreign citizens cannot be removed or expelled from national territory if:

- a) They were born in Portuguese territory and habitually reside here;
- b) They have custody of minor children of Portuguese or foreign nationality, residing in Portugal, and effectively exercise parental responsibilities upon them, providing for their livelihood and education;
- c) They live in Portugal since the age of 10 years old or less, and habitually reside in the country.

#### **Article 136**

##### **Protection of the long-term resident in Portugal**

1. The decision on a judicial expulsion of a long-term resident can only be grounded on the fact that he/she represents an actual and sufficiently serious threat to public policy or public security. This decision shall not be grounded on economic reasons.
2. Before the decision of expulsion of a long-term resident can be made, the following elements shall be taken into account:

- a) The length of residence in the territory;
  - b) The age of the person concerned;
  - c) The consequences for that person and for his/her family members;
  - d) The bonds with the country of residence or the absence of bonds with the country of origin.
3. The decision on expulsion is liable of appeal with suspensory effect.
  4. The long-term resident who does not hold sufficient financial resources is given legal support according to the law.

#### **Article 137**

##### **Forced removal of long-term residents in an European Union Member State**

1. A forced removal measure can be applied to the holder of a long-term resident status granted by an European Union Member State if he/she illegally stays in national territory.
2. Until the third-country national holder of a residence permit granted under Article 116 is given the status of long-term resident in national territory, the decision on forced removal may only be taken in accordance with the provisions of paragraphs 1 and 2 of Article 136, after consulting the European Union Member State which granted him/her the status.
3. In case of forced removal to the territory of the European Union Member State which granted him/her the long-term resident status, SEF shall notify the competent authorities of the decision.
4. SEF shall take all the measures to effectively execute such decision, and shall inform the competent authorities of the European Union Member State which granted the long-term resident status to the person concerned on the adopted measures to the implementation of the forced removal decision.

#### **Article 138**

##### **Voluntary departure from national territory**

1. The foreign citizen who illegally enters or stays in national territory shall be notified by SEF to voluntarily leave national territory within the period that will be settled, from 10 to 20 days.
2. The foreign citizen who has had his/her residence permit cancelled shall be notified by SEF to voluntarily leave national territory within the period that will be settled, from 10 to 20 days.

3. The period mentioned in the preceding paragraphs can be extended by SEF when taking into consideration specific circumstances such as the length of stay, the existence of children attending school and the existence of other family and social links. The foreign citizen shall be notified of the extension of the period.
4. In case of decision of cancellation of the residence permit according to the provisions of Article 85, where there is a risk of absconding, or the application for extension of stay has been refused on grounds of being manifestly unfounded or fraudulent, or the concerned person represents a threat to public order or security or to national security, the foreign citizen shall be notified to immediately leave national territory, at the risk of incurring in the crime of serious disobedience.
5. Compliance with the order to immediately depart from national territory implies the use by the foreign citizen of the first means of travel available and suitable to his/her situation.

#### **Article 139**

##### **Assisted voluntary return**

1. The State may assist the voluntary return of foreign citizens who meet the requirements to the countries of origin, under cooperation programmes concluded with international organisations, more specifically the International Organisation for Migration or non-governmental organisations.
2. Foreign citizens benefiting from assistance under the provisions laid down by the preceding paragraph, when holding a residence permit, shall return it at the border post when boarding.
3. During a period of three years after departure of the country, beneficiaries of assisted voluntary return can only be admitted into national territory if they return the amounts received, with interest on deferred payment at the legal rate.
4. The provisions of the preceding paragraph are without prejudice to the possibility of the short-term visa issuing, for humanitarian reasons, in accordance to the provisions laid down by Article 68.
5. Citizens who have benefited from a temporary protection scheme are not subject to the requirement provided for in paragraph 3.

#### **Article 140**

##### **Authorities responsible for removal**

1. The forced removal can be determined in accordance to the present law, by SEF's National Director, personally or by delegation of powers.
2. SEF's National Director is responsible for the decision of closing the forced removal procedure.
3. The judicial expulsion order is determined by a relevant judicial authority.
4. The expulsion order is an ancillary penalty or is adopted where the foreign citizen subject to the decision has legally entered or stayed in Portugal.

#### **Article 141**

##### **Procedural competence**

1. SEF's National Director has the powers, personally or by delegation, to bring an action of forced removal and to order the pursuing of the procedure, as well as to determine its filing to the competent court.
2. SEF's National Director also has the powers to close the file.

#### **Article 142**

##### **Coercive measures**

1. As regards expulsion procedures, in addition to the coercive measures listed in the Penal Code, exception made to provisional detention, where there is a risk of absconding, the judge may also determine the following:
  - a) Regular reporting (in person) to SEF;
  - b) House confinement using electronic surveillance means in accordance to the provisions of the law;
  - c) Placing the person concerned in a detention facility or equated facility, in accordance to the provisions of the law.
2. The lower criminal courts [*juízos de pequena instância criminal*] of the area where the foreign citizen was found have the powers to enforce coercive measures.

### **Article 143**

#### **Country of destination**

1. Forced removal and expulsion cannot be made to a country where the foreign citizen may be subject to persecution for the reasons that, in accordance to the law, substantiate the granting of the right to asylum or where the foreign citizen may suffer from torture, inhuman or degrading treatment according to the sense of Article 3 of the European Convention on Human Rights.
2. In order to benefit from the guarantee provided for in the preceding paragraph, the person concerned shall call upon the fear of being persecuted and provide evidence within the period that will be granted to him/her.
3. For the cases provided for in the preceding paragraph, the person concerned is removed to another country that accepts him/her.

### **Article 144**

#### **Entry ban period**

The foreign citizen subject to a removal decision is refused to enter national territory for up to five years. Such time period, however, may be longer in case there is any serious threat to public order, public security or national security.

## **SECTION II**

### **Forced removal ordered by an administrative authority**

### **Article 145**

#### **Forced removal**

Without prejudice of the application of the readmission scheme, the forced removal can only be ordered by an administrative authority on grounds of illegal entry or staying in national territory.

## Article 146

### Arrangements on the forced removal decision

1. The foreign citizen who illegally enters or stays in national territory shall be detained by a police authority and, when possible, handed over to SEF with the respective police report. The citizen shall be presented within forty eight-hours at the most to the judge of the lower criminal court [*juízo de pequena instância criminal*] under his/her jurisdiction or to the district court in other areas of the country, in order to validate and possibly enforce coercive measures.
2. If detention in a detention centre, or equated facility, is ordered, SEF shall be notified of the fact in order to further the judicial proceeding aiming at the removal of the foreign citizen from national territory.
3. The detention provided for in the preceding paragraph cannot exceed more than the necessary period to allow the execution of the removal decision, which is of 60 days.
4. If the detention in a detention centre, or equated facility, is not ordered, SEF shall also be notified for the purposes referred to in paragraph 2, and the foreign citizen shall be notified to appear in person in the respective Service.
5. A forced removal procedure shall not be arranged against the citizen who:
  - a) Illegally enters national territory, nevertheless lodges an application for asylum at any police authority within 48 hours after his/her entry;
  - b) Holds a valid residence permit or any other permit that provides him/her the right to stay in another Member State and complies with the requirement to immediately depart to that Member State;
  - c) Is readmitted or accepted upon request of another Member State, in compliance with international agreements or conventions concluded in that regard, provided that he/she is the holder of a permit that enables him/her to legally stay or reside in national territory;
  - d) Holds a residence permit or other permit entitling his/her legal stay in national territory, in accordance with the legal provisions in force.
6. The foreign citizen who is in the conditions referred to in sub-paragraph (a) of the preceding paragraph awaits on conditional release the decision on his/her application, and shall be notified by SEF of his/her rights and obligations in accordance with the provisions of the law which rules the right to asylum.
7. According to the provisions of paragraph 1 the authorities and officers from SEF, *Guarda Nacional Republicana*, *Polícia de Segurança Pública*, *Polícia Judiciária* and *Polícia Marítima* are competent to make arrests.

## Article 146 -A

### Conditions for detention

1. The foreign citizen detained in a detention centre or equated facility is authorised, upon request, to contact his/her legal representative, family members and relevant consular authorities.
2. The foreign citizen detained in a detention centre or equated facility has the right to communicate with his/her lawyer or legal counsel in private.
3. The foreign citizen detained in a detention facility or equated facility has the right to emergency health care and essential treatment of illness. Special attention shall be paid to vulnerable persons, particularly minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.
4. Under the management powers of detention facilities granted to SEF, other protocols may be concluded with national or international organisations with recognised work in the area of immigration, with the purpose of defining the conditions for authorising visits to those citizens.
5. The detained foreign citizen is provided a document with the rules of the detention centre or equated facility, as well as his/her rights and duties, such as the right to contact the bodies referred to in paragraph 1.
6. Detained families should be provided separated accommodation so as to ensure adequate privacy.
7. Detained accompanied minors shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education.

## Article 147

### Escort to a border post

1. The foreign citizen detained under the provisions of paragraph 1 of Article 146 who, during judicial questioning and after being informed on the provisions of paragraphs 2 and 3, claims that he/she wants to leave national territory may, by resolution of the competent judge and if duly provided with documents, be handed over to SEF's custody so as to be escorted to a border post in the shortest possible period of time.
2. The citizen who declares the will to be escorted to the border post is refused to enter national territory for a period of one year.

3. Escort to a border post implies the registration of the citizen in the Schengen Information System and in the national list of alerts on persons to be refused entry during the entry ban period.

#### **Article 148**

##### **Proceedings**

1. During the proceedings, the hearing of the person concerned is ensured, and he/she shall enjoy all the guarantees to his/her defence.
2. The audition mentioned in the preceding paragraph is valid for all purposes and effects as an hearing of the concerned person.
3. The officer responsible for the proceedings must promote all the essential procedures in order to obtain the truth. He/she may refuse, by means of a reasoned order, the request of the person against whom the proceedings was brought, whenever he/she considers the alleged facts as proven.
4. Once the assessment on the proceedings is concluded, the respective report is drawn up. This report, produced by the responsible officer, includes the description and assessment of the facts ascertained and proposes the resolution considered the most appropriate by the officer. The proceedings are then submitted to the authority with powers to render a decision.

#### **Article 149**

##### **Forced removal decision**

1. The forced removal decision falls within the competence of SEF's National Director.
2. The removal decision shall be electronically reported to ACIDI and to the Advisory Council, and notified to the concerned person against whom the proceedings were brought, indicating the grounds, the right to appeal, as well as its registration at the Schengen Information System and in the national list of alerts on persons to be refused entry for the period of the entry ban, without prejudice to the applicable rules as regards the protection of personal data.
3. The forced removal decision must indicate:
  - a) The grounds;
  - b) Legal obligations of the third-country national to be removed;
  - c) The refusal of entry in national territory and its duration;



- d) The indication of the country to where the foreign citizen benefiting from the guarantee provided for in Article 143 shall not be sent to.

#### **Article 150**

##### **Appeal**

1. The forced removal decision rendered by SEF's National Director is subject to devolutive appeal before the administrative courts.
2. The provisions of the previous paragraph are without prejudice to the citizen's right to pursue priority procedures or with suspensory effect, as provided for in the administrative procedural law.
3. The foreign citizen, upon request, shall enjoy legal protection. Act 34/2004, of July 29, shall apply, mutatis mutandis, in the scheme provided to the appointment of a legal representative for the defendant in urgent matters.
4. Upon request of the interested party, translation and interpretation services may be provided for purposes of the appeal referred to in paragraphs 1 and 2.

### **SECTION III**

#### **Judicial expulsion**

##### **SUBSECTION I**

#### **Ancillary penalty of expulsion**

#### **Article 151**

##### **Ancillary penalty of expulsion**

1. The ancillary penalty of expulsion can be applied to the non-resident foreign citizen who has been convicted of an intentional crime with a non-suspended penalty of imprisonment of at least six months, or a fine as an alternative to imprisonment for more than 6 months.

2. The same penalty may be imposed to a foreign citizen resident in Portugal, who was convicted of an intentional crime with a penalty of imprisonment of one year or more. Nevertheless, when the penalty is enforced, the seriousness of the facts practiced by the defendant, as well as his/her character, eventual re-incident, degree of social integration, special prevention and period of residence in Portugal shall be taken into account.
3. Without prejudice to the provisions of the preceding paragraph, the ancillary penalty of expulsion can only be imposed to the permanent resident foreign citizen where his/her conduct seriously threatens the public policy or national security.
4. If the ancillary penalty of expulsion is imposed, the judge responsible for the enforcement of sentences [*juiz de execução de penas*] shall order the penalty's enforcement as soon as:
  - a) In cases of conviction with a sentence of imprisonment for at most five years: half of the sentence served;
  - b) In cases of conviction with a sentence of imprisonment for more than five years: two thirds of the sentence served.
5. In cases of conviction with a sentence of five years or less imprisonment, and provided that the remaining time for completion of the sentence is complied with in the country of destination, the judge responsible for the enforcement of sentences [*juiz de execução de penas*], upon a reasoned proposal of the prison's director and provided that there is no objection from the sentenced person, may decide on the anticipation of enforcement of the ancillary penalty of expulsion when a third of the sentence has been served.

## SUBSECTION II

### Autonomous judicial measure of expulsion

#### Article 152

##### Competent court

1. The following courts are competent for applying the autonomous measure of expulsion:
  - a) In the respective area of jurisdiction: judges of the lower criminal courts [*juízo de pequena instância criminal*];
  - b) In the rest of the country: district courts.

2. Territorial competence is determined on the basis of the place where the foreign citizen lives or the place where he/she is found.

### **Article 153**

#### **Expulsion procedure**

1. Where SEF is aware of any fact that may constitute a ground for expulsion, it will organize a procedure for gathering evidence that empower the decision.
2. The expulsion procedure starts with the order that initiated the procedure and must include, in addition to the identification of the concerned foreign citizen, all the relevant evidence, more specifically the circumstance of being or not a resident in the country and, when residing in the country, the period of residence.
3. In case the foreign citizen is also indicted of the crime of disobedience for failure to immediately leave national territory, in accordance with the provisions of paragraph 4 of Article 138, he/she shall likewise face trial for this matter.

### **Article 154**

#### **Trial**

1. Upon reception of the proceedings, the judge will schedule the trial that should take place in the following five days, ordering a notification of the defendant, of the witnesses listed in records and of SEF, represented by the respective regional director.
2. The presence of the defendant at the hearing is mandatory.
3. The notification to the defendant shall mentioned that, if he/she so wishes, it is possible to challenge the proceedings at the hearing and add a list of witnesses or any other evidence elements.
4. SEF's notification, which is represented by the respective regional director, seeks the appointment of the official or officials who may provide the court with the explanations considered relevant for the decision.
5. For the cases provided for in paragraph 1 (f) of Article 134, the provisions of paragraphs 1 and 2 of Article 382 and Articles 385 and 389 of the Penal Code shall apply.

## Article 155

### Adjournment of the hearing

1. The hearing can be adjourned only once, and no later than the tenth day after the first date settled:
  - a) If the defendant asks for a new date in order to prepare his/her defence;
  - b) If the defendant misses the trial;
  - c) If witnesses considered crucial miss the trial;
2. The provisions of sub-headings *a)* and *c)* of the preceding paragraph shall not apply to the cases provided for in paragraph 1 (f) of Article 134.

## Article 156

### Subsidiary application of the summary procedure

Exception made to the cases provided for in paragraph 1 (f) of Article 134, the provisions of the Penal Code concerning trial in summary procedure shall apply *mutatis mutandis*.

## Article 157

### Decision content

1. The judicial expulsion decision must contain:
  - a) The grounds for decision;
  - b) Legal obligations of the defendant;
  - c) The entry ban refusing entry into national territory and indicating the respective period;
  - d) The indication of the country to which the foreign citizen benefits of the guarantee provided for in Article 143.
2. The enforcement of the decision entails the registration of the expellee in the Schengen Information System and in the national list of alerts on persons to be refused entry for the period of the entry ban.
3. SEF shall notify the expellee of the registration in Schengen Information System.

**Article 158**

**Appeal**

1. The judicial decision determining the expulsion may be subject to devolutive appeal before the court of appeal [*tribunal da relação*].
2. The provisions of the Criminal Procedure Code on ordinary appeal shall apply on a supplementary basis.

**SECTION IV**

**Enforcement of the decisions on forced removal and judicial expulsion**

**Article 159**

**Competence for the execution of the decision**

SEF is responsible for the execution of decisions on forced removal and expulsion.

**Article 160**

**Compliance with the decision**

1. The foreign citizen against whom a decision on forced removal or judicial expulsion has been issued is granted a period to leave national territory, between 10 to 20 days.
2. In duly substantiated situations, more specifically when there are concrete and objective reasons to believe that there is any risk of absconding, where the third-country national uses false or falsified documents, or is detected in situations indicating the commission of a crime, or there are serious reasons to believe that he/she committed serious criminal acts, or strong evidence of his/her intention to commit such acts, the citizen shall be handed over to SEF's custody with a view to executing the forced removal or judicial expulsion decision.
3. Until execution of the forced removal or judicial expulsion decision, and while the period referred to in paragraph 1 is still valid, the competent judge may be required to subject foreign citizen to one of following arrangements:
  - a) Placement in a detention centre or equated facility;
  - b) Obligation to stay at home using electronic surveillance means;

- c) Regular reporting (in person) to SEF or other police authorities;
  - d) Payment of a security.
4. On the course of the granted period, the special needs of vulnerable persons shall be taken into account, more specifically the needs of minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.
  5. During the time period granted for voluntary departure, the foreign citizen has the right to maintain family unit with family members that are in national territory, as well as to emergency health care and essential treatment of illness and, in case of a minor, access to the public education system.
  6. The time period set out in paragraph 3 (a) may be longer, but may in no case exceed three months in situations where there are clear indications that the foreign citizen has committed or intends to commit a serious offence, or if he/she has been convicted for an intentional crime, or poses a serious threat to public order, national security or the international relations either of a European Union Member State or of States that have adopted the Implementing Convention.

#### **Article 161**

##### **Non-compliance with the decision**

1. The foreign citizen who does not leave national territory within the time limit fixed shall be detained and escorted to the border post with a view to be removed from national territory.
2. If it is not possible to execute the forced removal or expulsion decision within forty eight hours after the detention, the fact shall be reported to the judge of the lower criminal court [*juízo de pequena instância criminal*] of the respective jurisdiction area, or the district court in the remaining areas of the country, with a view to set the placing of the foreign citizen in a detention centre or equated facility.

#### **Article 162**

##### **Announcement of decision**

The execution of the forced removal or expulsion decision must be communicated, through diplomatic channels, to the competent authorities of the country of destination of the foreign citizen.

## SECTION V

### Readmission

#### Article 163

##### Readmission concept

1. According to the provisions of international conventions, all foreign citizens who are illegally staying in the territory of a State, entering the country directly from another State, may be readmitted by the latter upon request made by the State in which territory they are staying.
2. When Portugal is the requesting State, the readmission is active; when Portugal is the requested State, readmission is passive.

#### Article 164

##### Competence

The acceptance by Portugal of readmission applications as well as submittal of readmission applications to another State is a competence of SEF's National Director, who may delegate that power.

#### Article 165

##### Active readmission

1. Where a foreign citizen who is irregularly staying in Portugal shall be readmitted by another State, SEF shall formulate the application in accordance with the provisions of Article 153 *mutatis mutandis*.
2. On the course of the proceedings, the hearing of the foreign citizen to be returned to the required State shall be guaranteed, and shall weight for all purposes as a hearing of the interested party.
3. If the application submitted by Portugal is accepted, the competent authority shall determine the return of the foreign citizen to the required State.
4. Where the application is refused, an expulsion proceedings shall be initiated.
5. The State making the readmission application is competent to determine the return of the foreign citizen to the required State.

6. If the required State is a third-country, the return of the foreign citizen to the required State implies the citizen's registration in the national list of persons to be refused entry in the Schengen Information System.

#### **Article 166**

##### **Appeal**

The decision to return a foreign citizen to the required State is subject to devolutive appeal to the member of the government responsible for internal affairs, within 30 days.

#### **Article 167**

##### **Entry ban**

The foreign citizen who has been returned to another State under an international convention is refused entry in the country for a period of three years.

#### **Article 168**

##### **Passive readmission**

1. The foreign citizen readmitted into Portuguese territory and who does not meet the legal requirements for staying in the country shall be the subject of a removal order from national territory provided for in this chapter.
2. The following third-country nationals shall be immediately readmitted without formalities into national territory:
  - a) Third-country nationals who have acquired the long-term resident status in Portugal, as well as their family members, whenever they have been the subject of a forced removal order of the Member state where they exercised their right of residence;
  - b) Third-country nationals who are holders of residence permit («EU Blue Card») granted in accordance with Articles 121 -A and following, as well as their family members, even if the title has expired or has been withdrawn during the examination of the request, whenever they have been the subject of a forced removal order of the Member State where they went to for purposes of performing a highly-qualified activity;

- c) Third-country nationals who are the subject of a request for admission formulated by another member State, under agreements or conventions in that regard, provided that they are holders of permits that enable them to legally reside or stay in national territory.
3. The readmission obligation mentioned in the preceding paragraph is without prejudice to the possibility of the long-term resident and his/her family members move to a third Member State.

## SECTION VI

### Mutual recognition of removal decisions

#### Article 169

##### Recognition of a removal decision taken against a third-country national

1. Decisions on removal taken by the competent administrative authority of a European Union Member State or a Party State in the Implementing Convention against a third-country national who is in national territory shall be recognised and executed provided that the removal decision is based upon:
  - a) A serious and actual threat to public policy or national security of the State that issued the decision;
  - b) Non-compliance by the concerned third-country national of the rules regarding entry and stay of foreign citizens of the State that issued the removal decision.
2. A removal decision based on the provisions of sub-paragraph (a) of the preceding paragraph is only recognised if it was taken in case of:
  - a) Sentencing of the third-country national by the issuing State for an offence punishable by at least one year imprisonment;
  - b) Existence of serious grounds indicating that a third-country national has committed serious criminal offences, or the existence of solid evidence of his/her intention to commit such offences within the territory of a European Union Member State or of a State Party to the Implementing Convention.
3. If the person covered by the provisions of the preceding paragraph holds a residence permit issued in national territory, the recognition and execution of the removal decision can only be determined by a judicial authority in accordance with the provisions of articles 152 to 158.

4. Without prejudice to the provisions of paragraph 2 of Article 25 of the Implementing Convention, where the person subject to a removal decision mentioned in paragraphs 1 and 2 holds a residence permit issued by a European Union Member State or by a State Party to the Implementing Convention, SEF shall consult the competent authorities of that State in order to eventually cancel the residence permit pursuant to the provisions in force in that State, as well as of the State that issued the removal decision.
5. The removal decision in accordance with the provisions of paragraphs 1 and 2 is only recognised if it is not adjourned or suspended by the issuing State.
6. The provisions of this Article shall apply without prejudice to the provisions on determining the responsibility of European Union Member States on the examination of an asylum application and on the readmission agreements concluded between European Union Member States.

#### **Article 170**

##### **Competence**

1. SEF has the competence to execute the removal measures mentioned in the preceding Article.
2. Where a removal decision taken by a competent national authority is executed by a European Union member State or a State Party to the Implementing Convention, SEF shall provide the competent body of the enforcing State with all documents needed to certify the continued enforceability of the decision.
3. SEF is allowed to establish and maintain a personal data file for the purposes provided for in this section, without prejudice to compliance with constitutional and legal rules as regards data protection.
4. SEF is also responsible for cooperating and exchanging relevant information with the competent authorities from other European Union member States or States parties to the Implementing Convention with a view to recognise and execute removal decisions in accordance with the provisions of the preceding Article.

#### **Article 171**

##### **Enforcement of the removal**

1. The removal decision recognised in accordance with the provisions of Article 169 shall only be executed if the provisions of Article 135 are complied with, and after a preliminary examination of the situation of the person concerned in order to ensure that neither the Constitution, the relevant international conventions nor the law prevents its execution.



2. Any third-country national that illegally stays in national territory and against whom there is a decision in accordance with the provisions of Article 169, shall be detained by a police authority and handed over, with the respective police report, to SEF where he/she will remain under custody. SEF shall escort the citizen to the border.
3. The decision on the enforcement of the removal may be subject to devolutive appeal before the administrative courts.
4. The foreign citizen who has been issued a decision taken in accordance with the provisions of paragraph 3 of Article 169 shall be handed over to SEF where he/she will remain under custody in order to be escorted to the border and be removed as soon as possible.
5. Where removal is not possible to execute within forty eight hours after detention, the third-country national shall be brought before a judge of the lower criminal court [*juízo de pequena instância criminal*] at the respective jurisdiction area or at the competent district court, for validating the detention and eventual enforcement of coercive measures.
6. The order that validates detention and delivery to SEF's custody may be subject to appeal in accordance with the provisions of Article 158.
7. After execution of the removal measure, SEF shall notify the competent authority of the Member State which issued the removal decision.

## Article 172

### Financial compensation

The financial return for costs related with the removal of third-country nationals follows the criteria endorsed by the Council of the European Union.

## SECTION VII

### Assistance to removal by air during airport transit

## Article 173

### Preference for a direct flight

When a third-country national is removed by air, the possibilities for taking a direct flight to the country of destination shall be taken into account.

**Article 174**

**Request for airport transit in the territory of a Member State**

1. If it is impossible to take a direct flight, airport transit may be requested to the competent authorities of another member State, provided that does not imply a change of airport in the territory of the requested Member State.
2. Request for airport transit, with or without an escort, and related assistance measures, more specifically the measures mentioned in paragraph 2 of Article 177, shall be submitted in writing and must be reported to the Member State as soon as possible, and in any case no later than two days before transit.
3. SEF's National Director has the powers to request airport transit, personally or by delegation of powers.
4. Transit may not be initiated without the approval of the requested Member State, exception made in cases where there is no answer to the request mentioned in paragraph 1 within the time limits to which the requested Member State is obliged to abide. The transit operation may initiate upon a mere notification.
5. For the purposes of dealing with the request referred to in paragraph 1, the information on the form to be used for requesting and authorising transit in accordance with the Annex of Directive 2003/110/EC of November 25, shall be forwarded to the requested Member State.
6. SEF shall take appropriate action to ensure that the transit operation takes place in the shortest possible time, at the latest within twenty-four hours.
7. The third-country national shall be immediately readmitted into Portuguese territory if:
  - a) The airport transit permit was refused or repealed; or
  - b) During transit, the third-country national entered the requested Member State without holding a permit; or
  - c) The removal of the third-country national to another transit country or to the country of destination, or boarding to the connecting flight, was unsuccessful; or
  - d) Transit is not possible for any other reason.
8. SEF shall bear the costs incurred in returning the third-country national.
9. SEF shall bear the costs related with measures for assisting airport transit mentioned in paragraph 2 of Article 177, which were paid by the requested Member State.

## Article 175

### Assistance to airport transit in national territory

1. Airport transit may be authorised to the competent authorities of a Member State who are removing a third-country national when deemed necessary.
2. Airport transit may be refused if:
  - a) The third-country national is accused of a criminal offence or is wanted for the carrying out of a sentence, in accordance with applicable law; or
  - b) Transit through other States or admission by the State of destination cannot be guaranteed; or
  - c) The removal measure entails changing airport in national territory; or
  - d) For practical reasons, the requested assistance is impossible at a particular moment; or
  - e) The presence of the third-country national in national territory represents a threat to public policy, public security or public health, or to the international relations of the Portuguese State.
3. As regards sub-paragraph (d) of the preceding paragraph, the requesting State shall be given in the earliest opportunity a date as close as possible to the originally requested on which transit may be assisted, in so far as the other conditions are complied with.
4. Authorisations for airport transit which have already been issued may be revoked if circumstances within the meaning of paragraph 2 subsequently come to light, thus justifying a refusal of the transit.
5. SEF shall inform the competent authorities of the requesting Member State forthwith of the refusal or revocation of an airport transit authorisation under paragraph 2 or of the preceding paragraph, or of any other reason why the transit is not possible, and shall provide an explanation of the reasons.

## Article 176

### Decision on granting assistance to airport transit

1. The decision on authorisation or refusal of airport transit is a competence of SEF's National Director, personally or by delegation of powers.
2. The decision on authorisation or refusal of airport transit shall be reported to the competent authorities of the requesting Member State within forty-eight hours. Nevertheless, in duly substantiated cases it may be extended for an equal period.

3. Where no reply is provided within the deadline referred to in the preceding paragraph, the transit operations may be started by means of a notification by the requesting Member State.

### **Article 177**

#### **Assistance measures to airport transit**

1. Based on mutual consultations with the requesting Member State, within the available means and in compliance with the relevant international standards, all the assistance measures necessary shall be provided with a view to ensure that the third-country national has left the territory.
2. Assistance measures mentioned in the preceding paragraph are the following:
  - a) Meeting the third-country national at the aircraft and escorting him/her within the confines of the transit airport, in particular to his/her connecting flight;
  - b) Providing emergency medical care to the third-country national and, if necessary, to his/her escort;
  - c) Providing sustenance for the third-country national and, if necessary, his/her escort;
  - d) Receiving, keeping and forwarding travel documents, particularly in the case of unescorted removals;
  - e) In cases of unescorted transit, informing the requesting Member State of the place and time of departure of the third-country national from national territory;
  - f) Informing the requesting Member State if any serious incidents took place during the transit of the third-country national.
3. Mutual consultations are not required in accordance with paragraph 1 when providing the assistance measures referred to in sub-paragraph (b) of the preceding paragraph.
4. Without prejudice to the readmission of the third-country national, in cases where the completion of transit operations cannot be ensured, despite the assistance provided for in accordance with paragraphs 1 and 2, upon request and in consultation with the requesting Member State, all necessary assistance measures may be taken with a view to continue the transit operation, which may be carried out within 48 hours.
5. Appropriate information with regard to the costs of the services provided in accordance with paragraph 2(b) and (c) shall be borne to the requesting Member State, in addition to the criteria on quantification of the actual costs incurred referred to in sub-paragraph 2.

6. Assistance to the readmission of the third-country national shall always be granted by the requesting Member State, when such readmission takes place.

#### **Article 178**

##### **International conventions**

1. The starting of transit operations by means of a mere notification can be subject to international conventions concluded with one or more Member States.
2. The international conventions mentioned in the preceding paragraph shall be notified to the European Commission.

#### **Article 179**

##### **Central authority**

1. SEF is the central authority responsible for the receipt of requests for airport transit assistance.
2. SEF's National Director shall appoint contact points for all the relevant airports of transit who can be contacted throughout all transit operations.

#### **Article 180**

##### **Escort**

1. For purposes of application of this section, «escort» means all persons from the requesting Member State responsible for accompanying the third-country national during airport transit in national territory, including the persons responsible for medical care and interpreters.
2. When carrying out the transit operation, the powers of the escorts shall be limited to self-defense.
3. In the absence of national police officers, the escorts may use reasonable and proportionate action in response to an immediate and serious risk to prevent the third-country national from escaping, causing injury to himself/herself or to a third party, or damage to property.
4. Under all circumstances, escorts must comply with national legislation.
5. Escorts shall not carry weapons during transit by air and shall wear civilian clothes.
6. Escorts shall provide means of appropriate identification, including the transit authorisation, or where applicable, the notification referred to in paragraph 3 of Article 176.

**Article 180 -A**

**Implementation of removal decisions**

1. SEF's National Director has the competence to decide on the organisation or participation of the Portuguese State in joint flights for purposes of removing from the territory of two or more Member States the third-country nationals who are subject to of forced removal or judicial expulsion decisions.
2. The afore-mentioned decision is guided by principles of efficiency by means of sharing of existing resources and, in particular, by compliance with international conventions or agreements regarding human rights which bind the Member States.
3. The organisation of a joint operation of removal by air, open to the participation of other Member States, shall ensure:
  - a) The essential information to be provided to the competent authorities of the other Member States, with a view to determine their interest in participating in the operation;
  - b) The implementation of the necessary measures to the appropriate evolution of the joint operation, considering the provisions of Article 4 of the Council Decision 2004/573/EC of 29 April 2004 and its annex.
4. For the purposes of the preceding paragraph, the organising national authority, in accordance with the common guidelines on security provisions provided for in the afore-mentioned annex, undertakes to the following:
  - a) Ensuring that third-country nationals hold the valid travel documents, as well as entry visas, when required, to the country or countries of transit or destination of the joint flight;
  - b) Providing the necessary health care, medicinal products, translation or interpreting services, as well as escort services, in accordance with principles of necessity, proportionality and identification provided for in Article 180;
  - c) Monitoring every joint removal operation which shall be performed by a reliable and appropriate body that will be appointed by regulatory order of the member of the government responsible for internal affairs;
  - d) Preparing an internal and confidential report of the joint removal operation which includes preferably, where available, statements of incidents or of application of coercive measures or medical measures, as well as progress reports from other participant Member States.

5. Without prejudice of the provisions of Council Decision 2004/573/EC of 29 April 2004 and its annex, the arrangements of this Article shall apply, *mutatis mutandis*, to the participation of the Portuguese State in joint operations organised by other Member States.

## CHAPTER IX

### Penal provisions

#### Article 181

##### Illegal entry, stay and transit

1. The entry of foreign citizens into Portuguese territory in infringement of the provisions of Articles 6, 9 and 10, and of paragraphs 1 and 2 of Article 32 is deemed illegal.
2. The stay of foreign citizens in Portuguese territory when not authorised in accordance with the provisions of this law or of the law governing the right to asylum, as well as when an illegal entry has been registered in accordance with the provisions of the preceding paragraph, is deemed illegal.
3. Transit of foreign citizens in Portuguese territory when the concerned citizens do not have their admission guaranteed in the country of destination is deemed illegal.

#### Article 182

##### Civil and criminal liability of legal persons and equivalent bodies

1. Legal persons and equivalent bodies are responsible, generally speaking, for the crimes provided for in this Act.
2. The bodies mentioned in paragraph 1 shall be jointly liable, according to civil law, for the payment of fines, penalties, compensations and other payments to which they are condemned to pay in result of the offences provided for in this Act.
3. In addition to the criminal liability for the crimes provided for in Articles 183, 184 and 185, there is also civil liability for all costs regarding the stay and removal of the involved foreign citizens, including any expenses regarding the remittance to the country of origin of any amounts regarding outstanding remuneration.

### **Article 183**

#### **Action to facilitate illegal immigration**

1. Whoever favours or facilitates by any means the illegal entry or transit of a foreign citizen in national territory shall be punished by a term of imprisonment of three years or less.
2. Whoever favours or facilitates by any means the illegal entry or transit of a foreign citizen in national territory, for profit, shall be punished by a term of imprisonment from one to five years.
3. If on the course of an action to facilitate illegal immigration the facts are carried out by transporting or maintaining the foreign citizen under inhuman or degrading conditions, or risking his/her life or causing serious threat to his/her physical health or causing death, the offender shall be punished with a term of imprisonment from one to eight years.
4. Attempt to commit the provided offences is also punishable.
5. Penalties incurred to the bodies mentioned in paragraph 1 of Article 182 are either in the form of a fine, which minimum and maximum limits are doubled, or by prohibition of professional activity from one to five years.

### **Article 184**

#### **Association for facilitating illegal immigration**

1. Whoever promotes or founds a group, organisation or association whose activity is to practice the crimes provided for in the preceding Article shall be punished by a term of imprisonment from one to six years.
2. Whoever is part of such groups, organisations or associations, as well as those supporting or providing assistance for recruiting new elements, shall incur in the same penalty.
3. Whoever leads the groups, organisations or associations mentioned in paragraph 1 shall be punished by a term of imprisonment from one to eight years.
4. Attempt to commit the provided offences is also punishable.
5. Penalties incurred to the bodies mentioned in paragraph 1 of Article 182 are either in the form of a fine, which minimum and maximum limits are doubled, or by prohibition of professional activity from one to five years.

### **Article 185**

#### **Recruiting illegal labour**

1. Whoever, with a view to making a profit, to him/herself or to a third person, entices or recruits, for purposes of getting into the labour market, foreign citizens who do not hold a valid residence title or visa enabling them to carry out a professional activity shall be punished by a term of imprisonment from one to five years.
2. Whoever consistently directs the actions provided for in the preceding paragraph shall be punished by a term of imprisonment from two to six years.
3. Attempt to commit the provided offences is also punishable.

### **Article 185 -A**

#### **Using the activity of an illegally staying foreign citizen**

1. Whoever, on a regular basis, uses the activity of foreign citizens who do not hold a residence permit or visa enabling them to legally stay in Portugal, shall be punished by a term of one year imprisonment or a fine up to 240 days.
2. In cases referred to in previous paragraph, whoever uses simultaneously the activity of a significant number of illegally staying foreign citizens, shall be punished by a term of two years or less imprisonment or a fine up to 480 days.
3. Whoever uses the work of a minor foreign citizen, even if he/she is authorised to work under the provisions of the Labour Code, shall be punished by a term of two years or less imprisonment or a fine up to 480 days.
4. If the actions mentioned in the preceding paragraphs also evince particularly abusive or degrading working conditions, the offender shall be punished by a term of one to five years imprisonment unless a more serious penalty is applied under any other legal provision.
5. If the employer or person using the work or services of a illegally staying foreign citizen is aware that the citizen is a victim of crimes related to trafficking in human beings, he/she shall be punished by a term of two to six years imprisonment unless a more serious penalty is applied under any other legal provision.
6. In the event of repeated infringements, the penalty limits shall be increased under general terms.

7. Penalties incurred to the bodies mentioned in paragraph 1 of Article 182 are either in the form of a fine, which minimum and maximum limits are doubled, or by preventing the exercise of a professional activity from three months to five years.

#### **Article 186**

##### **Marriage or partnership of convenience**

1. Whoever marries or is linked by registered partnership with the sole purpose of offering the possibility of obtaining, or for actually obtain a visa, a residence permit or a «EU Blue Card», or for defrauding the legislation in force as regards acquisition of citizenship, shall be punished by a term of one to five years imprisonment.
2. Whoever, on a regular basis fosters or creates conditions for the practice of the actions provided for in the preceding paragraph shall be punished by a term of two to six years imprisonment.
3. Attempt to commit the provided offences is also punishable.

#### **Article 187**

##### **Infringement of an entry ban measure**

1. The foreign citizen who enters national territory during the period in which he/she was banned to enter shall be punished by a term of two years or less imprisonment or a fine up to 100 days.
2. In case of conviction, the court may decree as ancillary measure, by means of a duly grounded judicial decision, the expulsion of the foreign citizen, in accordance with the provisions of Article 135.
3. Without prejudice of the provisions of paragraph 1, the foreign citizen may be removed from national territory with a view to comply with the remainder of the period of entry ban in accordance with the proceedings which determined the citizen's removal.

#### **Article 188**

##### **Investigation**

1. In addition to the competent entities, SEF also holds the competence to investigate the crimes provided in this chapter, and other related crimes, such as trafficking in human beings.

2. Covert investigations carried out by SEF under the framework of preventing and investigating illegal immigration-related crimes which have the involvement of criminal associations, shall follow the provisions of Act 101/2001, of August 25.

#### **Article 189**

##### **Seized objects**

1. The objects seized by SEF that have been declared lost in favour of the State are assigned to the State provided that they:
  - a) Are documents, weapons, ammunition, vehicles, telecommunication devices, computers or other useful items to the service;
  - b) Result from the enforcement of international conventions related to illegal immigration.
2. The usefulness of objects mentioned in sub-paragraph (a) of the preceding paragraph should be proposed by SEF in the final report of the respective criminal proceedings.
3. Objects mentioned in sub-paragraph (a) of paragraph 1 may be temporarily used by SEF from the moment of its seizure until the declaration of loss or recovery upon an order issued by SEF's National Director that shall be conveyed to the authority that oversees the proceedings.

#### **Article 190**

##### **Ancillary penalties and coercive measures**

The crimes provided for in this Act may have ancillary penalties applied of prohibition or suspension of the exercise of public functions provided for in the Penal Code, as well as coercive measures provided for in the Code of Criminal Procedure.

#### **Article 191**

##### **Sentence transmission**

Courts shall send to SEF, electronically and within the shortest possible time, the following:

- a) Certificates of convictions given in criminal proceedings against foreign citizens;
- b) Certificates of decisions given on proceedings for crimes of facilitating illegal immigration and recruitment of illegal labour;

- c) Certificates of decisions given on expulsion proceedings;
- d) Certificates of decisions given on extradition proceedings relating to foreign citizens.

## **CHAPTER X**

### **Administrative offences**

#### **Article 192**

##### **Illegal stay**

1. The stay of a foreign citizen in Portuguese territory for a period exceeding the initially granted is an administrative offence punishable with the following fines:
  - a) From €80 to €160, if the period of stay does not exceeds 30 days;
  - b) From €160 to €320, if the period of stay is more than 30 days but does not exceed 90 days;
  - c) From €320 to €500, if the period of stay is more than 90 days but does not exceed 180 days;
  - d) From €500 to €700, if the period of stay is longer than 180 days.
2. The same fine shall apply when the offence provided for in the preceding paragraph is detected when the citizen is leaving the country.

#### **Article 193**

##### **Unauthorised access to the port's international zone**

1. Access to the international zone of the port by an individual non-authorized by SEF is an administrative offence punishable with a fine from €300 to €900.
2. The access on board of any ship by an individual non-authorized by SEF is an administrative offence punishable with a fine from €500 to €1000.

**Article 194**

**Transporting a person unauthorised to enter the country**

The transport into Portuguese territory of a foreign citizen who does not hold a valid travel document or visa by a carrier operator or by any person on the course of his/her professional activity is an administrative offence punishable, for each foreign citizen carried, with a fine from €4000 to €6000 in case of legal persons, and from €3000 to €5000, in case of natural persons.

**Article 195**

**Absence of airport transit visa**

Carriers, as well as anyone on the course of a professional activity, who carry to a national airport foreign citizens who do not hold an airport transit visa when needed are liable to a fine, for each foreign citizen, from €4000 to €6000, in case of legal persons, and from €3000 to €5000, in case of natural persons.

**Article 196**

**Failure to comply with the data reporting requirement**

Carriers who fail to provide the information they are required to in accordance with Articles 42 and 43, or who have provided incorrect, incomplete or false data, provide it after the time limit established shall be punished, for each journey, with a fine from €4000 to €6000 in case of legal persons, and from €3000 to €5000, in case of natural persons.

**Article 197**

**Absence of declaration of entry**

Failure to comply with the provisions of paragraph 1 of Article 14 is an administrative offence punishable with a fine from €60 to €160.

## Article 198

### Carrying out an unauthorised professional activity

1. The exercise of a self-employed activity by a foreign citizen who does not hold the adequate residence permit, when required, is an administrative offence punishable with a fine from €300 to €1200.
2. The perpetration of the offences provided for in this Article may lead to the enforcement of ancillary sanctions provided for in Articles 21 and following of the general framework of administrative offences [*Regime Geral das Contraordenações*].
3. *(Repealed.)*
4. *(Repealed.)*
5. *(Repealed.)*
6. *(Repealed.)*
7. *(Repealed.)*
8. *(Repealed.)*
9. *(Repealed.)*
10. *(Repealed.)*

## Article 198 -A

### Employing an illegally-staying foreign citizen

1. Whoever employs a foreign citizen who does not hold a residence permit or a visa authorising him/her to carry out a working activity is liable to the application of one of the following fines:
  - a) From €2000 up to €10 000, if employing one to four citizens;
  - b) From €4000 up to €15 000, if employing 5 to 10 citizens;
  - c) From €6000 up to €30 000, if employing 11 to 50 citizens;
  - d) From €10 000 up to €90 000, if employing more than 50 citizens.
2. The perpetration of the offences provided in this Article may lead to the enforcement of the following ancillary sanctions:

- a) Those provided in Articles 21 and following of the general framework of administrative offences [*Regime Geral das Contraordenações*];
  - b) Obligation to refund some or all public benefits, aids or subsidies, including European Union funding, granted to the employer for up to 12 months preceding the detection of illegal employment, when the offence occurred during the performance of duties or as a result of the performance of duties for which the allowance was granted;
  - c) Obligation to publish the enforceable judgment.
3. Sanctions mentioned in paragraph 1 (b) and (g) of Article 21 of the general framework of administrative offences [*Regime Geral das Contraordenações*], when applied pursuant to the provisions of the previous paragraph, have a maximum duration of five years.
4. The ancillary sanction referred to in paragraph 2 (c) of this Article requires:
- a) The publication, at the expense of the infringer, of a statement holding the identification of the offender, the offence, the infringed rule and the enforced sanction in SEF's website, in a national newspaper and in a regional or local periodic publication of the area of the offender's headquarters.
  - b) The statement referred to in the previous sub-paragraph shall be sent to the competent administrative authority whenever the performance or access to the activity provided by the offender requires administrative permissions, including permits, licenses, authorisations, validations, authentications, certifications and acts issued following previous contacts and records.
5. The employer, the user by means of a contract of provision of services, agreement for occasional employment or temporary work and the general contractor are severally liable for:
- a) Payment of fines provided in the previous paragraphs and of outstanding pay of a work contract, its breach or termination;
  - b) Sanctions imposed as a result of non-compliance with labour legislation;
  - c) Sanctions resulting from non-declaration of income subject to discounts for tax authorities and social security regarding the work performed by the foreign citizen whose professional activity was illegally used;
  - d) Payment of the costs regarding the stay and removal of the foreign citizens involved in the situation;

- e) Payment of any costs arising from the sending of outstanding pay to the country to which the illegally employed third-country national has, or has been, returned.
6. Also severally liable, under the provisions of the preceding paragraph, is the main contractor who does not get from the other contracting party the statement of compliance with legal requirements as regards hiring foreign citizens.
  7. Failure to comply with the provisions of the preceding paragraph may be liable to disciplinary action if the main contractor is Public Administration.
  8. For purposes of calculating the outstanding pays and wages subject to contributions to tax authorities and social security, it is assumed that, without prejudice of the provisions of labour and tax legislation, the level of remuneration is at least the minimum monthly salary guaranteed by law, in collective agreements or in accordance with practices established in the concerned areas of activity, and that the employment relationship has, at least, three months, except if the employer, the user of the activity, or the employed citizen prove otherwise.
  9. In accordance with labour legislation, failure to comply with the provisions of paragraphs 5 and 6 is considered a very serious administrative offence.
  10. If the employer does not pay for any outstanding remuneration for the work actually provided, as well as any costs arising from the stay and removal of the involved foreign citizens, the settlement note produced in the respective process represents an enforcement note. In this situation, rules on the common enforcement procedure apply for payment of the accurate amount.
  11. If the offender is a legal person or equated, he/she is severally liable for the payment of the fine with the managers, directors or administrators.

#### **Article 198 -B**

##### **Providing assistance to the third-country citizen which professional activity was illegally used**

1. Trade unions or immigrant associations with recognised representativeness, in accordance with the law, by ACIDI, I.P., and other bodies with responsibilities or activities in the integration of immigrants, may lodge a complaint against the employer and user of the professional activity of an illegally-staying third-country national, in the service with inspection competences of the ministry responsible for employment, more specifically in the following situations:
  - a) Non-payment of outstanding pay;

- b) Existence of an employment relationship with lack of social protection, wage and working hours' exploitation or in particularly abusive working conditions;
  - c) For illegally using child labour.
2. Without prejudice of the provisions of the preceding paragraph, the organisations that promote immigrant rights and interests, particularly against the use of the professional activity of a illegally-staying foreign citizen, the use of child labour, the discrimination as regards access to employment, training or the employment or self-employment conditions, have legal standing to intervene, as a representative or in assisting the interested person, provided that the following conditions are cumulatively met:
- a) The defence of the interests involved are explicitly included in their assignments of statutory objectives;
  - b) There is the explicit permission of the person concerned.
3. The voluntary or forced return to the country of origin of the third-country national whose activity is being illegally used shall be without prejudice to the provisions of the preceding paragraphs.
4. Third-country nationals whose activity is being illegally used and who are the subject of a forced removal decision from Portuguese territory shall be informed of the rights provided for in this Article at the time they receive the notification for forced removal, under the provisions of Article 149.

#### **Article 198 -C**

##### **Inspections**

1. SEF has the competence to perform regular inspections with a view to control the use of the activity of illegally staying third-country nationals, in accordance with the provisions of paragraph 2 of Article 181.
2. The inspections mentioned in paragraph 1 are carried out by taking into account SEF's assessment on the existing risk in national territory of the use of illegally staying third-country nationals, by areas of activity.
3. SEF shall convey until the end of May of each year the final report of the inspections carried out in accordance with the provisions of the preceding paragraphs, to the member of the government responsible for internal affairs, who shall communicate it to the European Commission by 1 July of each year.

#### **Article 199**

##### **Failure to provide a travel document**

The breach to the provisions of Article 28 represents an administrative offence punishable with fine from €60 to €120.

#### **Article 200**

##### **Absence of an application for residence permit**

The breach to the dispositions of paragraph 2, Article 24 is an administrative offence punishable with fine from €60 to €120.

#### **Article 201**

##### **Failure to renew a residence permit in due time**

An application for renewing a temporary residence permit submitted after the time limit established in paragraph 1 of Article 78 is an administrative offence punishable with fine from €75 to €300.

#### **Article 202**

##### **Non-compliance with certain duties**

1. Non-compliance with the duties of communication established in Article 86 constitutes an administrative offence punishable with fine from €45 to €90.
2. Non-compliance with the duty provided in paragraph 1 of Article 6 constitutes an administrative offence punishable with fine from €200 to €400.
3. Embarking and disembarking of foreign citizens outside the border posts specifically designated for that purpose and by infringement of the provisions of paragraph 1 of Article 6, constitutes an administrative offence punishable with fine from €50000 to €100000.
4. The carrier and its representatives in Portuguese territory are jointly liable for paying the fines established in the preceding paragraph.

### **Article 203**

#### **Failure to provide information on accommodation**

1. Failure to electronically register the foreign citizens under the provisions of paragraph 4 of Article 15, or failure to submit the accommodation form in accordance with paragraph 1 or 2 of Article 16, constitutes an administrative offence punishable with the following fines:
  - a) €100 to €500, when 1 to 10 accommodation forms have not been registered;
  - b) €200 to €900, when 11 to 50 accommodation forms have not been registered;
  - c) €400 to €2000, if the accommodation forms relating to 51 citizens have not been submitted or registered.
2. In case of negligent failure to comply with the time limit established for communicating the accommodation or departure of the foreign citizen, the limit for the minimum and maximum fine is reduced to one quarter.

### **Article 204**

#### **Negligence and voluntary payment**

1. On the administrative offences provided in the preceding Articles, negligence shall always be punishable.
2. In case of negligence, the fines' minimum and maximum amounts shall be reduced to half of the total established for each fine.
3. In case of voluntary payment, the minimum and maximum amounts for the fines shall be reduced to half of the total established for each fine.

### **Article 205**

#### **Default in payment of fines**

Extension of stay, where applicable, shall only be granted after submittal of evidence of payment of any fine charged following proceedings for offenses provided in Articles 192, 197, 199 and in paragraphs 1 of Article 198 and 2 of Article 202.

#### **Article 206**

##### **Destination of the fines**

The proceeds from fines charged under the provisions of this Act will be distributed as follows:

- a) 60% to the State;
- b) 40% to SEF.

#### **Article 207**

##### **Competence for imposing fines**

1. The application of fines and ancillary sanctions provided for in this chapter are under the competence of SEF's National Director, personally or by delegation of powers, without prejudice to the specific powers assigned to other entities as regards the provisions of paragraph 9 of Article 198-A.
2. For the purposes of the provisions of the preceding paragraph, SEF shall keep an individual record, without prejudice to the applicable rules on matters of protection of personal data.

#### **Article 208**

*(Repealed.)*

### **CHAPTER XI**

#### **Taxes and other charges**

#### **Article 209**

##### **Applicable framework**

1. Fees charged for the issuing of visas at consular posts are those established in the table of consular fees.
2. Taxes and other charges collected by the administrative procedures referred to in this Act, are determined by regulatory order of the member of the government responsible for internal affairs.

3. The escort of foreign citizens, whose removal from Portuguese territory is the carrier's responsibility, as well as placing of passengers who were not admitted into national territory in detention centres or equated facilities, under the provisions of Article 41, implies the charge of fees up to the value which will be determined by regulatory order of the member of the government responsible for internal affairs.
4. The total fees and charges to be collected in accordance with paragraphs 2 and 3 constitute revenue assigned to SEF.

## **Article 210**

### **Fee exemption or reduction**

1. Without prejudice to the provisions of the preceding Article, SEF's National Director may exceptionally grant an exemption or a reduction to the fees incurred in for the proceedings established in this Act.
2. The following shall be exempted from payment of fees:
  - a) Visas granted under the provisions of paragraph 1 (a) of Article 48, as well as those of Articles 57 and 61;
  - b) Visas and extensions of stay granted to foreign citizens who are holders of diplomatic, service, official and special passports and equally to holders of travel documents issued by international organisations;
  - c) Visas granted to children of residence permit holders under the provisions on family reunification;
  - d) Visas and residence permits granted to foreign citizens who benefit from study grants conferred by the Portuguese State;
  - e) Special visas.
3. Third-country nationals shall benefit from exemption or reduction of fees when the law of those countries ensures equality of treatment to Portuguese citizens.

## CHAPTER XII

### Final provisions

#### Article 211

##### Change of citizenship

1. The Central Registry Office [*Conservatória dos Registos Centrais*] shall inform SEF, where possible electronically, of any citizenship changes registered relating to individuals residing in national territory.
2. The communication provided for in the preceding paragraph shall be made within 15 days following registration.

#### Article 212

##### Identification of foreign citizens

1. With a view to establish or confirm the identity of foreign citizens, SEF may use civil identification means provided for in the law and in community regulations applicable to the issuing of identity cards and visas, more specifically the gathering of face images and fingerprints, using where possible biometrics and expert opinions.
2. The personal data record is an information integrated system, hereinafter referred to as SII/SEF, under the responsibility and management of SEF. SII/SEF shall respect the following rules and features:
  - a) Data gathering for automated processing under SII/SEF shall be limited to the strictly necessary for managing the control of entry, stay and exit of foreign citizens, as well as to preventing an actual danger or suppressing a criminal offence falling into the scope of its tasks and powers;
  - b) The different categories of the gathered data shall be, as far as possible, distinguished in accordance with the level of accuracy or reliability. Moreover, factual data shall be distinguished from data entailing an assessment of the facts;
  - c) SII/SEF is composed of personal data and legal interest data, incorporating information within the tasks the law bestows as regards:



- i) Foreign citizens, nationals from European Union Member States, stateless persons, and national citizens, when the information relates to control on their transit on land, sea and air borders, as well as their stay and activities carried out in national territory;
  - ii) Identification and whereabouts of foreign citizens or nationals of European Union Member States regarding the suspicion or practice of an action to facilitate illegal immigration or criminal association for that purpose;
- d) In addition to those mentioned in the preceding paragraph, personal data gathered for purposes of processing under SII/SEF are the following:
- i) Name, name of father/mother, nationality, country of birth, birth place, marital status, gender, date of birth, death date, professional situation, diseases that may be dangerous or a threat to public health according to this Act, name of household's members, addresses, signature, references of natural and legal persons in national territory, as well as the number, place and date of issuing, and expiry date of identification and travel documents;
  - ii) Judicial decisions that under the law shall be conveyed to SEF;
  - iii) Participation or evidence of participation in illegal activities, as well as data related to physical personal particulars, objective and unchangeable, nicknames, the indication that the person concerned is armed, is violent, the reason why the person concerned is subject of an alert, and recommendation for further action;
  - iv) As concerns legal persons or equivalent bodies, in addition to the afore-mentioned data, the following shall also be gathered: name, business name or trading name, tax address, address, tax identification number, nature of the business, initial and ending date of the activity.
3. With a view to prevent the consultation, modification, suppression, addition or communication of data of SII/SEF by means non-authorized by this Act and by Article 15 of Act 67/98, of 26 October, on personal data protection, the following technical measures shall be adopted for ensuring the safety of:
- a) Data media and its transportation, with the purpose of preventing unauthorised reading, copying, modification or removal;
  - b) Data input, with a view to prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data;

- c) The use of automated data, in order to prevent the use of automated data processing systems by unauthorised persons using data communication equipment;
  - d) Data access, in order to ensure that persons authorised to use an automated data processing system only have access to the data relating to the performance of their legal duties;
  - e) Data transmission, in order to ensure that the use of such data is limited to authorised bodies;
  - f) Input control, so as to ensure that it is possible to verify and establish which personal data have been input into automated data or processing systems and when and by whom the data were input.
4. Data may be communicated in accordance with international and Community conventions to which Portugal is bound to, as well as within international or national cooperation, to law enforcement authorities and public services within the competences of the legal attributions of the body requiring such data, and only as regards data that may be relevant for the purposes they are communicated.
5. Personal data shall be retained only for the period necessary for the purpose which grounded the record at SII/SEF and in accordance with that end. The record shall be subject to an assessment on the need for continuation of such data 10 years following the last issuing of documents relating to its holder, after which they can be stored on an historical file during 20 years after the date of that document.
6. The provisions of the preceding numbers shall not prevent the automated data processing for purposes of statistics or studies, provided that it is not possible to identify the persons to whom the data relates.
7. The number appearing in the identification card mentioned in paragraph 1 shall also be used for identification purposes before the Public Administration, particularly as regards tax, security, social and health matters.
8. The transmission to the competent legal authority or to other holders of the right to access any integral parts of the electronic workflow used by SEF for the exercise of the rights conferred by the law shall always be made by electronic means.
9. With the purpose of facilitating procedures on visa issuing, the citizen shall be exempted from presenting certificates or other documents to prove the data already included in the Public Administration information systems. SEF shall obtain such documents, more specifically at tax authorities, work and social security services and attached them to the file.

### Article 213

#### Costs

1. Any costs resulting from the removal of the foreign citizen that cannot be afforded by him/her or that he/she shall not pay for pursuant to special schemes provided for in international conventions, nor are covered by the bodies referred to in Article 41, shall be borne by the State.
2. The State may bear the costs resulting from the voluntary departure of the country of the following:
  - a) Family members of the foreign citizen who was subjected to a forced removal or expulsion decision where they are dependent and provided that they cannot pay such costs;
  - b) Foreign citizens who do not hold the necessary means of subsistence, provided that it is impossible to obtain the necessary support from the diplomatic representations of their countries.
3. In order to meet the costs resulting from the application of this Act, the necessary amount shall be allocated to SEF's budget.

### Article 214

#### Duty to collaborate

1. All services and bodies of the Public Administration have the duty to assure that the bodies with which they conclude public contracts do not receive work provided by illegally staying foreign citizens.
2. The services and bodies above mentioned may terminate a contract, with just cause, if, in a date after its granting, the private entities receive work rendered by illegally staying foreign citizens.
3. The Public Administration bodies and sea captains have the duty to report the following situations:
  - a) Arrest or detention of a vessel, as well as when these measures cease;
  - b) Evacuation for health reasons of crew members or passengers of a vessel;
  - c) Disappearance of passengers or crew members from a vessel;
  - d) When clearance is denied for a vessel to leave to port;
  - e) When passengers or crew members of a vessel are detained;
  - f) When emergency plans are set off in national ports;

- g) When crew members or passengers are removed from the vessel by the competent authority, more specifically the Marine Police [*Polícia Marítima*], and by request of the sea captain.

#### **Article 215**

##### **Duty to report**

When issuing a title that regularises the stay of the foreign citizen in national territory, SEF must report to tax authority, social security and employment services all the necessary data with a view to register the citizen in those services, if not already registered.

#### **Article 216**

##### **Regulation**

1. The law that regulates this Act as well as the regulatory orders herein provided for shall be approved within 90 days.
2. The special legislation provided for in Article 109 shall be approved within 120 days.

#### **Article 217**

##### **Transitional provisions**

1. For all legal purposes, the holders of working visa, permanence permit, temporary staying visa for purposes of carrying out an employed activity, extension of stay for purposes of performing a professional activity and studying visa granted under Decree-Law 244/98, of 8 August, as amended by Act 97/99 of 26 July, by Decree-Law 4/2001 of 10 January and by Decree-Law 34/2003, of 25 February, are considered holders of a residence permit which has to be replaced at its expiry date by residence titles. Depending on the cases, the provisions regarding renewal of temporary residence permit or granting of permanent residence permit shall apply.
2. For the purposes of the provisions of paragraph 1 (a) of Article 80, the period of legal permanence shall be accounted for in accordance to the titles mentioned in the preceding paragraph.
3. Applications for extension of stay for purposes of carrying out a professional activity under Article 71 of Regulatory-Decree 6/2004, of 26 April, shall be converted into residence permit applications for purposes of carrying out an employed or self-employed activity under this Act, with visa exemption.



4. Foreign citizens covered by Article 71 of Regulatory Decree 6/2004, of 26 April are granted an extension of stay of three months with a view to obtain a work contract or proof of a labour relationship, by a trade union, by an association which is party to the Advisory Council, or by the Working Conditions Authority, for purposes of granting a residence permit in accordance with the provisions of the preceding paragraph.
5. Applications for work visa under paragraph 2 of Article 6 of the Agreement between the Portuguese Republic and the Federative Republic of Brazil on reciprocal hiring of nationals, of 11 July 2003, are converted into applications for residence permit, with visa exemption.
6. Pending the global quota which indicates the availability of employment vacancies provided for in Article 59, the Employment and Vocational Training Institute or, in the Autonomous Regions, the respective departments, shall publish all vacancies that within 30 days were not filled by Portuguese citizens, nationals of European Union Member States, of the European Economic Area, of a third-country with which the European Community has concluded an agreement on free movement of people, or by third-countries nationals that legally reside in Portugal.
7. Residence visa for obtaining a residence permit for purposes of carrying out an employed activity may be granted within the limits of the employment vacancies mentioned in the preceding paragraph, if the remaining legal conditions are complied with.
8. Holders of a residence permit issued under previous legislation shall replace the title they hold for the card provided for in paragraph 1 of Article 212, in accordance with the rules and period to be established in regulatory legislation.

#### **Article 218**

##### **Repeal**

1. The following are repealed:
  - a) Article 6 of Act 34/94 of 14 September;
  - b) Act 53/2003 of 22 August;
  - c) Decree-Law 244/98 of 8 August, as amended by Act 97/99 of 26 July, Decree-Law 4/2001 of 10 January, and Decree-Law 34/2003 of 25 February.

2. Pending express repeal, Regulatory Decree 6/2004 of 26 April shall be in force, as well as regulatory orders approved under Decree-Law 244/98 of 8 August, as amended by Act 97/99 of 26 July, Decree-Law 4/2001 of 10 January, and Decree-Law 34/2003 of 25 February, in what may be compatible with this Act.

#### **Article 219**

##### **Autonomous regions**

The provisions of the preceding articles do not affect the competences conferred in the Autonomous Regions of the Azores and Madeira to the respective regional bodies and services. These and the Portuguese Republic and European Union services shall ensure coordination, with the intervention in procedures provided for in this Act.

#### **Article 220**

##### **Entry into force**

The present Act shall enter into force on the 30<sup>th</sup> day after its publication.