

**Ana Filipa NEVES, Carlos NOLASCO**

*Analysing the effectiveness of migrants' protection and integration through the applicability of the European Union's directive on long-term residents in Portugal*

DOI: [https://doi.org/10.34625/issn.2183-2705\(37\)2025.ic-1](https://doi.org/10.34625/issn.2183-2705(37)2025.ic-1)

## Secção

# Investigação Científica / Scientific Research\*

---

\* Os artigos presentes nesta secção não foram sujeitos a processo de revisão segundo o método *blind peer review* / The articles in this section have not undergone a blind peer review process.

# Analysing the effectiveness of migrants' protection and integration through the applicability of the European Union's directive on long-term residents in Portugal

## Analisando a eficácia da proteção e integração de migrantes com a aplicação da Diretiva da União Europeia relativa a residentes de longa duração em Portugal

Ana Filipa NEVES<sup>1</sup>  
Carlos NOLASCO<sup>2</sup>

**ABSTRACT:** In 2003, the EU approved a new regime of long-term residency of third-country nationals who, after having lived in a Member State for a minimum of five years, should enjoy equal rights as those of Member States citizens in a wide range of economic and social matters. Only in 2011, was this specific regime also applied to refugees. Two decades after its entry into force, it was time to analyse the impact of this legal avenue in the lives of long-term migrants living in Portugal. The analysis conducted systematised how this EU legislation was transposed into the Portuguese migration and asylum legal norms and how it became effective in ensuring migrants' well-being in Portugal. To this end, the chosen qualitative methodology included the analysis of legal and other relevant texts and, also, the organisation and conduction of semi-structured interviews and focus groups with migrants who were long-term residents in Portugal, in 2021. Drawing on the participants' opinions, the present paper aims to address the advantages and pitfalls of a long-term residence status in order to ameliorate the first and surpass the latter not losing sight of the end-goal of ensuring migrants' rights to protection and inclusion.

**KEYWORDS:** migrants' rights; EU migration and asylum policy; long-term residents; Portugal.

**RESUMO:** Em 2003, a UE aprovou um novo regime de residência de longa duração para nacionais de países terceiros que, após terem vivido num Estado Membro durante um mínimo de cinco anos, devem passar a ter direitos iguais aos dos cidadãos dos Estados Membros, em diversas matérias económicas e sociais. Apenas em 2011, este regime tornou-se aplicável, também, aos refugiados. Duas décadas depois da sua entrada em vigor, impõe-se analisar o impacto que esta possibilidade legal teve nas vidas de residentes de longa duração em Portugal. A análise realizada sistematizou a transposição desta legislação europeia para o regime jurídico português e a sua efetivação no sentido de garantir o bem-estar destes migrantes em Portugal. Com este objetivo, a opção por uma metodologia qualitativa incluiu a análise legislativa e documental e, também, a organização e realização de entrevistas semiestruturadas e de *focus groups* com migrantes que, em 2021, eram

---

<sup>1</sup> Postdoctoral researcher, Centre for Social Studies, University of Coimbra, Colégio de S. Jerónimo, Apartado 3087, 3000-995 Coimbra, Portugal, [filipaneves@ces.uc.pt](mailto:filipaneves@ces.uc.pt)

<sup>2</sup> Researcher, Centre for Social Studies, University of Coimbra, Colégio de S. Jerónimo, Apartado 3087, 3000-995 Coimbra, Portugal, [cmsnolasco@ces.uc.pt](mailto:cmsnolasco@ces.uc.pt)

## *Analysing the effectiveness of migrants' protection and integration through the applicability of the European Union's directive on long-term residents in Portugal*

residentes de longa duração em Portugal. Com base nas opiniões expressadas pelos participantes, o presente artigo visa abordar as vantagens e os problemas de um estatuto de residente de longa duração no sentido de melhorar aquelas e ultrapassar estes últimos, sem perder de vista o objetivo final de garantir os direitos à proteção e à inclusão das pessoas migrantes.

**PALAVRAS-CHAVE:** direitos dos migrantes; política de migrações e asilo da UE; residentes de longa duração; Portugal.

### **Introduction**

Beneficiaries of international protection, beneficiaries of temporary protection, long-term residents, temporary residents are some of the legally constructed categories set in motion by the Tampere Programme that defined the guidelines of the European Union policy on migration and asylum. Holding one of these legal status entails access to rights and duties that, if guaranteed, are fundamental components of the integration process. Over the last two decades, equality of treatment, inclusion and integration of third-country nationals have gained relevance in policies' development, both at the EU and national levels, even though the 2020 New Pact on Migration and Asylum insistence on rendering effective these measures indicates that those goals are yet to be achieved.

With a declared objective of facilitating third-country nationals' integration in the EU host countries, the Directive on the Status of Long-term Residents<sup>3</sup> (LTR Directive) was approved, in 2003, to guarantee dignified equal treatment to third-country nationals who have been living in a EU Member State for a minimum of five years. Putting an end to a controversial decision-making process, beneficiaries of international protection, who were initially excluded from the legislation's scope, were finally included, in 2011, as possible holders of long-term resident status in a Member State<sup>4</sup>. In Portugal, the long-term resident status regime entered into force in 2007 with the approval of the Portuguese Immigration Law, that, in 2012, also transposed the recast Directive including beneficiaries of international protection. To achieve its integration goal, the LTR Directive is based on three pillars: ensuring the protection of long-term residents' rights on equal footing as those granted to nationals; and from this first main pillar derive the other two, an enhanced protection against expulsion and the protection of freedom of movement by promoting intra-EU mobility.

---

<sup>3</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

<sup>4</sup> 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.

This paper proposes an analysis of the LTR Directive implementation in Portugal by considering not just the legal implications, but also its impact on the protection of migrants who have been living in the country for, at least, five years. Particular attention will be given to the situation of refugees and beneficiaries of international protection who more than ever find themselves in protracted situations. As such, entitlement to a more secure status, that recognises their *de facto* long-term stay, can be a way out of the limbo. The most recent available data estimates that, in 2023, there were 72.353 long-term residents in Portugal<sup>5</sup> and, of these, only 1.883 were holders of long-term resident status as the vast majority held a permanent resident permit. There is no data available on the number of beneficiaries of international protection in Portugal who hold long-term resident status, but the rather low adherence to this legal regime globally, leads to an assumption that those numbers are, in fact, very low. Although the reasons behind this fall outside of the paper's scope, from the interviews conducted, a general lack of awareness of the long-term resident status' existence helps to explain it.

After briefly contextualising the LTR Directive approval process and its consequent transposition into the Portuguese legal system, the analysis will focus, first, on the conditions to acquire the long-term status in Portugal and, then, on the enjoyment of the rights it is supposed to protect by those who acquired and hold the status. By alluding to the mentioned three pillars – equal treatment; protection against expulsion; intra-EU mobility – and analysing if and how they were implemented in Portugal, we intend to assess the practical usefulness of this long-term residents' protection regime. Most importantly to any “effectiveness” assessment is to include the opinions of those whose lives can be affected by the advantages or shortcomings of taken measures. To this end, twenty-seven long-term residents in Portugal participated and contributed to this study, expressing their opinions in semi-structured individual interviews and focus groups that took place between April and October of 2021 and were organised as part of another research project on long-term migrants in Portugal.<sup>6</sup> The

---

<sup>5</sup> EUROSTAT. *Long-term residents by citizenship on 31 December of each year* [online]. 2024. [viewed 2024-09-19]. Available from: [https://ec.europa.eu/eurostat/databrowser/view/migr\\_reslong/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/migr_reslong/default/table?lang=en).

<sup>6</sup> The overall results of this project are reported in EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS. *Promoting migrant integration: Strengthening EU law on long-term residence - Report*. Publications Office of the European Union, 2023. Available from: <https://data.europa.eu/doi/10.2811/852089>. This research project on the fundamental rights of

sample included fourteen men and thirteen women. As far as the legal status is concerned, eleven participants had temporary residence permits, fourteen participants were granted a permanent residence permit and two held long-term resident status. The opinions expressed by these participants are discussed in this paper as they illustrate the reality lived by migrants who became long-term residents in Portugal.

## **1. Long-term residents in European Union law**

In the conclusions reached in its 1999 Tampere special meeting, the European Council committed itself to the construction of the European Union as an area of freedom, security and justice, underlining that this freedom is not of the exclusive preserve of EU citizens. With these fundamental values, the common migration and asylum policy that had begun to be developed also had to ensure the integration of third-country nationals who reside in the EU.<sup>7</sup> From the start, the idea was to approximate the status of third-country nationals to that of Member States' nationals. Specifically, addressing the situation of long-term residents, the Council concluded that: "A person, who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit, should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by EU citizens; e.g. the right to reside, receive education, and work as an employee or self-employed person, as well as the principle of non-discrimination vis-à-vis the citizens of the State of residence".<sup>8</sup>

The Tampere Principles gave way to the approval of Directive 2003/109/EC - the LTR Directive - that established the conditions for granting and withdrawing long-term resident status by a Member State in relation to third-country nationals legally residing in its territory as well as the corresponding rights. Furthermore, freedom of movement was directly addressed as the legal text also included the terms of residence of third-country nationals in a second Member State, other

---

long-term residents was promoted by the European Union Agency for Fundamental Rights (FRA) and implemented by the Portuguese team part of FRA's multidisciplinary research network (FRANET). The arguments and conclusions presented in this paper are the sole responsibility of the authors and do not represent FRA's opinion.

<sup>7</sup> EUROPEAN COUNCIL. *Tampere European Council 15-16.10.1999: Conclusions of the Presidency*. 1999, paragr. 3-4. Available from: [https://www.europarl.europa.eu/summits/tam\\_en.htm](https://www.europarl.europa.eu/summits/tam_en.htm).

<sup>8</sup> *Ibidem*, paragr. 21.

than the one which first granted the long-term resident status. Recital 2 of the LTR Directive reproduces the afore-mentioned Tampere conclusion setting the tone for what should be its main achievement, i.e., bringing the legal status of third-country nationals who have resided for some time in a Member State closer to the status of nationals, thus allowing them to benefit, in that Member State, from a uniform set of rights, as close as possible to those enjoyed by EU citizens. There was a gap in the legal situation of those that for several years had been living in the EU, whose protection should be enhanced exactly because their stable and continuous stay should enable them to hold a befitting status. Although the LTR Directive was successful in closing this gap, it did not go as far as extending EU citizenship to third-country nationals who have been legally residing in the EU for more than five years. The LTR status envisages an almost - but not quite - European citizenship status based on the idea of residence longevity that would correspond to a gradual recognition of rights.<sup>9</sup> As the full range of rights is not up for recognition, as it will further be analysed, the status granted has been considered as a subsidiary form of EU citizenship.<sup>10</sup>

Other gap that also demanded closing referred to refugees and beneficiaries of subsidiary protection who were excluded from the scope of the LTR Directive. The matter was quite controversial from the beginning. The Commission's proposal included refugees, then, during Council's negotiations, the inclusion of refugees was dropped, although some Member States wished to retain refugees within the scope of the Directive.<sup>11</sup> A final decision was taken to exclude beneficiaries of international protection - i.e., refugees and those with subsidiary protection - in order not to complicate an early agreement on the LTR Directive at a time when the asylum directives were still under discussion<sup>12</sup> and the first steps of a Common European Asylum System (CEAS) were being given. Only in the second phase of the CEAS, beneficiaries of international protection were included by the amending Directive 2011/51/EU. If during the first phase -

---

<sup>9</sup> GIL, Ana Rita. *Imigração e Direitos Humanos*. Lisboa : Petrony Editora, 2017, p. 431. ISBN 978-972-685-236-0.

<sup>10</sup> ARCARAZO, Diego Acosta. Civic Citizenship Reintroduced? The Long-Term Residence Directive as a Post-National Form of Membership. *European Law Journal*. 2015, Vol. 21, nº 2, p. 200. DOI 10.1111/eulj.12112.

<sup>11</sup> PEERS, Steve and ROGERS, Nicola (eds.). *EU Immigration and Asylum Law: Text and Commentary*. Leiden; Boston: Brill Nijhoff, 2006, p. 624. ISBN 978-90-474-1090-4.

<sup>12</sup> THYM, Daniel. Long Term Residents Directive 2003/109/EC. In: HAILBRONNER, Kay and THYM, Daniel (eds.), *EU Immigration and Asylum Law. Commentary*. München, Oxford : C.H. Beck, Hart, Nomos, 2016, p. 434-435. ISBN 978-3-8452-5920-8.

## *Analysing the effectiveness of migrants' protection and integration through the applicability of the European Union's directive on long-term residents in Portugal*

covering both Tampere (1999-2004) and the Hague Programmes (2005-2009) -, harmonisation of minimum standards of protection was the main goal, it was now time to raise the standards to achieve a higher common standard of protection by improving all aspects of the asylum process until the moment a durable solution is found.<sup>13</sup> With continuous instability in their home countries, the prospect of a safe return slims down and refugees' chances to regain their autonomy are found in resettlement and/or local integration. The same conclusion was reached by the EU. Looking beyond the Hague Programme, in 2008, the European Pact on Immigration and Asylum was adopted, encompassing integration of third-country nationals as one of five commitments undertaken by the European Council in order "to give a new impetus to the definition of a common immigration and asylum policy".<sup>14</sup> In the continuous effort to harmonise national integration policies, the Council set some parameters that included balancing between migrants' rights - in particular to education, work, security, and public and social services - and duties - compliance with the host country's laws; and setting specific measures to promote language learning and access to employment, essential factors for integration.<sup>15</sup> As the EU's policies focused increasingly on the integration of third-country nationals, the extension of LTR status to beneficiaries of international protection would significantly contribute to this effect,<sup>16</sup> by providing legal certainty about their residence and the rights they are entitled to as long-term residents which are comparable to those of Member States nationals.

## **2. Long-term residents in Portuguese law**

The LTR Directive was transposed into the Portuguese legal system by Law 23/2007<sup>17</sup> which defines the conditions and procedures for the entry, stay, exit and removal of third-country nationals from Portugal, as well as long-term

---

<sup>13</sup> EUROPEAN COMMISSION. *Green Paper on the future Common European Asylum System* [online]. 2007, p. 3. Available from: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A52007DC0301>.

<sup>14</sup> COUNCIL OF THE EUROPEAN UNION. *European Pact on Immigration and Asylum* [online]. 2008, p. 4. Available from: <https://eur-lex.europa.eu/EN/legal-content/summary/european-pact-on-immigration-and-asylum.html>.

<sup>15</sup> *Ibidem*, p. 6.

<sup>16</sup> EUROPEAN COMMISSION. *Proposal for a Council Directive amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection* [online]. 2007. Available from: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52007PC0298>.

<sup>17</sup> *Law 23/2007, of 4 of July - Approves the legal regime of entry, stay, exit and removal of third country nationals from national territory*. Official Gazette No. 127/2007, Series I of 4 July 2007.



resident status. The Portuguese Immigration Law foresees two possible regimes for long-term residents: permanent residence permit - *autorização de residência permanente* (art. 76) - and long-term resident status - *estatuto do residente de longa duração* (art. 125). Article 13 of the LTR Directive allows Member States to issue national permanent residence permits under more favourable terms, even though it clarifies that these permits will not confer a right to move to a second Member State. From the outset, this possibility gives a greater leeway to LTR status that was designed to facilitate intra-EU mobility. When analysing both regimes, it is easy to conclude that their main requirements are similar and those that are different are not of particular relevance as it will be referred to in the next part.

Besides the general regime of long-term residence of third-country nationals, there is specific legislation regarding refugees and beneficiaries of subsidiary protection. Portuguese legislation includes a general regime applicable to third-country nationals and, alongside this regime, special regimes were approved given the specificity of the situation in which third-country nationals find themselves that demands a differentiated protection. This is the case of beneficiaries of international protection and its applicants, including refugees and beneficiaries of subsidiary protection, to whom it is Law 27/2008<sup>18</sup> that applies. Consequently, Immigration Law only applies to beneficiaries of international protection in a complimentary way or when there is an explicit reference. This is the case of beneficiaries of international protection who wish to apply for long-term residence status, thus, having to comply with the legal requirements set out in the Immigration Law. Beforehand, it should be noted that the Asylum Law determines that refugee status holders are granted a residence permit valid for five years, renewable for the same period, and beneficiaries of subsidiary protection are granted a residence permit valid for three years, renewable for the same period after considering the evolution of the situation in the country of origin. Upon the admissibility of the request, asylum and subsidiary protection applicants are granted a six months provisional residence permit, renewable until the international protection procedure ends.<sup>19</sup>

---

<sup>18</sup> Law 27/2008, of 30 June - Establishes the conditions and procedures to grant asylum or subsidiary protection and asylum applicants, refugees and subsidiary protection statuses. Official Gazette No. 124/2008, Series I of 30 June 2008.

<sup>19</sup> Law 27/2008, of 30 June, arts. 67 (1)(2) and 27 (1).

### **3. Acquiring the European Union's long-term resident status in Portugal**

Articles 4 to 6 of the LTR Directive set three mandatory conditions for acquisition of the status: five years of lawful and continuous residence in a Member State; stable and regular income for the applicant and the family without recourse to public assistance; and health insurance. In addition to these conditions, Member States may require third-country nationals to comply with integration conditions in accordance with national law and may refuse to grant status on public policy and public security grounds. In a first assessment of the Directive, Groenendijk<sup>20</sup> argued that it had two Achilles' heels, the first relates to the insertion of integration requirements, an open-end possibility allowing Member States to set these conditions in a discretionary way; and the second refers to access to employment which is crucial to achieve one of the Directive's goals, mobility within the EU. Both potential limitations will be analysed within the Portuguese context to confirm whether or not they have hindered the implementation of the long-term resident status in Portugal.

Third-country nationals can apply for a long-term resident status in Portugal when they have been legally living in the country, in a continuous manner, for five years immediately preceding the status' application and they have sufficient and regular means of subsistence including for his/her family; health insurance; housing and they can demonstrate fluency in basic Portuguese.<sup>21</sup>

Regarding the residence time required, for the long-term resident status a 5-year-period of legal and uninterrupted residence is required. Member States remain competent to define the notion of 'lawful residence' under national legislation, within the limits of EU law. The Portuguese Immigration Law foresees that a first temporary residence permit is valid for two years, from the date the temporary resident's title is issued, and, then, it has to be renewed every three years.<sup>22</sup> Prior to 2022, when the Immigration Law was amended, the first temporary resident permit was valid for one year and every two years it had to be renewed. This new amendment means, in practice, that third-country nationals who hold a temporary resident permit, only need to renew their permit once to

---

<sup>20</sup> GROENENDIJK, Kees. The Long-Term Residents Directive, Denizenship and Integration. In: GUILD, Elspeth, BALDACCINI, Anneliese and TONER, Helen (eds.), *Whose freedom, security and justice?: EU immigration and asylum law and policy*. Oxford: Hart, 2007, p. 442. ISBN 978-1-84113-684-4.

<sup>21</sup> *Law 23/2007, of 4 of July*, art. 126 (1).

<sup>22</sup> *Law 23/2007, of 4 of July*, art. 75 (1).

fulfil the time requirement to become a long-term resident. In the situation of refugees and beneficiaries of subsidiary protection, the bureaucracy involved is even less because, as mentioned previously, refugee status immediately grants a five years residence permit meaning the fulfilment of the five years legal residence for long-term resident status. Subsidiary protection holders will need to have their initial three years resident permit renewed once. It is worth mentioning that, in the 2020 Commission's proposal for a New Pact on Migration and Asylum, one of the amendments proposed to the LTR Directive referred to the case of beneficiaries of international protection and the possibility of shortening the residence time from five to three years of legal and continuous residence in the Member State which granted international protection.<sup>23</sup> In the case of beneficiaries of international protection in Portugal, if this proposal does materialise, it would allow facilitated access to a long-term status after the 3-year-period of the first resident permit. Although the Commission's proposal is to be commended, its intentions are worthy of criticism as what was mentioned was that this proposal would create an incentive to remain in the Member State that granted international protection and would prevent secondary movement. In a piece of legislation that emphasises intra-EU mobility as its cornerstone, the Commission's argument contradicts one of the Directive's purposes.

When referring to the 5-year-period counting, for beneficiaries of international protection, although the LTR Directive provides that at least half of the period between the date of the international protection application and its granting is counted, when it does not exceed 18 months, in Portugal, the whole period, since the international protection application, is taken into account.<sup>24</sup> For the residence continuity, it should be considered that if the applicant stays away from Portugal for periods shorter than six consecutive months or that do not exceed, in total, ten months within the required five years, time counting is not interrupted. Consequently, longer absences interrupt the counting which is temporarily suspended. In practice, this means that the applicant who has been out of the country for longer periods has to extend his/her stay in Portugal for an

---

<sup>23</sup> EUROPEAN COMMISSION. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum* [online]. 2020, p. 6. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0609>.

<sup>24</sup> *Law 23/2007, of 4 of July*, art. 126 (1)(a).

equivalent period in order to compensate the time away, but the five years of residence do not start counting again.

As regards sufficient means of subsistence, the Immigration Law is complemented by Ordinance 1563/2007 that establishes the criteria to determine whether or not a third-country national possesses sufficient resources to provide for his/her subsistence and that of his/her family's is based on the minimum monthly wage. The applicant needs to provide proof of his/her income regularity which means that he/she must be able to secure it for, at least, 12 months.<sup>25</sup> Health insurance is required when applying for long-term resident status, but when the applicant is a beneficiary of the National Health System, this fact suffices as proof. Universal access to the national health system is enshrined as a fundamental right in the Portuguese Constitution. Therefore, third-country nationals are entitled to resort to and benefit from the National Health System, independently of their residence permit, temporary or permanent. As far as proof of housing is concerned, no specific housing elements - such as, typologies - are required. The applicant only needs to provide a formal declaration personally attesting to his/her address and provide a property certificate or house rent contract.

Focusing on the possibility of including integration requirements - one of the referred Achilles' heels -, the Immigration Law requires that third-country nationals demonstrate fluency in basic Portuguese which is equivalent to level A2 of the CEFL.<sup>26</sup> As proof, applicants have to provide a certificate attesting the successful conclusion of a Portuguese language course issued by an official Portuguese teaching institution or a private or corporative teaching institution recognised by law, or by the Institute of Employment and Professional Training. These courses – Portuguese as Host Language – are addressed to non-Portuguese speakers, who are 16 years or older, holders of a resident permit. The PHL courses are available for free, taking place in schools, professional training centres and other specialised entities across all Portuguese districts and have a maximum duration of 150 hours. As follows, the integration threshold is

---

<sup>25</sup> *Ordinance 1563/2007, of 11 July - Defines the means of subsistence that third country nationals must possess to stay and reside in Portugal and their duration.* Official Gazette No 238/2007, Series I of 11 December 2007. art. 2 (2) and 8.

<sup>26</sup> *Ordinance 183/2020, of 5 August - Creates Portuguese as Host Language courses, as well as their organization, functioning and certification rules.* Official Gazette No 151/2020, Series I of 5 August 2020. art. 11.

quite lenient, not even comparable to other Member States. Despite of Portugal's most favourable option, from the first evaluation of the LTR Directive's implementation it is clear that the integration requirement continued to raise some concerns and could potentially compromise its effectiveness, if not applied in a proportional way. On this note, the Commission underlined the need to balance “the nature and level of the knowledge expected from the applicant, also by comparison to the knowledge of the host society, the cost of the exam, the accessibility of the integration training and tests, the comparison between the integration requirements imposed on a prospective LTR and those applied to prospective citizens which are expected to be higher”.<sup>27</sup> This piece of advice to Member States is indicative of integration conditions potentially undermining third-country national's integration.

All of the above-mentioned requirements are demanded to acquire long-term resident status in Portugal, as well as the equivalent national regime of a permanent resident permit. Besides the bureaucracy implied in the administrative procedure to apply for a long-term residence status, or a permanent permit, the most challenging requirement – as referred by the participants – concerns proving they have sufficient and stable subsistence resources because many third-country nationals work in sectors with dimensions of informality or with precarious work contracts.

#### **4. Applying the pillars of the Long-term Residents Directive in Portugal**

##### **4.1. First pillar: Granting equal treatment in Portuguese law and practice**

Article 11 of the LTR Directive grants long-term residents equal treatment with nationals in a vast array of subjects, but not in all areas. While it can be argued that the inclusion of such a provision goes directly to the point of showing that the EU does not consider long-term residents “worthy of genuine equality of treatment in all areas of life”,<sup>28</sup> on the other hand, article 11 only allows for two

---

<sup>27</sup> EUROPEAN COMMISSION. *Report from the Commission to the European Parliament and the Council on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents* [online]. 2011, p. 3. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52011DC0585>.

<sup>28</sup> STORGAARD, Louise Halleskov. The Long-Term Residents Directive: A fulfilment of the Tampere Objective of Near-Equality? In: GUILD, Elspeth and MINDERHOUD, Paul (eds.), *The First Decade of EU Migration and Asylum Law*. Leiden; Boston: Brill Nijhoff, 2012, p. 309. ISBN 978-90-04-21203-9.

exceptions, setting the bar up as Member States cannot introduce new restrictions.<sup>29</sup> Both exceptions refer to the right to work that is limited when it entails even occasional involvement in the exercise of public authority and may be restricted when the activities entailed, in accordance to national or EU legislation, are reserved to nationals, EU or EEA citizens. The possibility that Member States have of reserving employment seats to EU/EEA citizens allows for a clear distinction between long-term residents and EU citizens entailing unequal treatment and compromising one of the Directive's main goals. On the other hand, it was not intended, by this legislation, to grant citizenship status although it envisions it in a progressive way where long-term resident status is conceived as a last step to become a EU citizen.

In similar terms as those of the LTR Directive, Article 133 of the Immigration Law lists the rights to which long-term resident status' holders are entitled to. It should be emphasised that these lists are not exhaustive. In fact, listing rights can be mistakenly interpreted as limiting a person's entitlement to those listed rights. This is not the case here and these lists should be interpreted as merely indicative of the rights held by long-term residents in Portugal. Although Article 133 fully transposed article 11 (1) of the LTR Directive, it must be highlighted that equal treatment between Portuguese nationals and third-country nationals is a fundamental principle enshrined in Article 15 of the Portuguese Constitution which reads (1): "Foreigners and stateless persons who find themselves or who reside in Portugal enjoy the same rights and are subject to the same duties as Portuguese citizens". The Constitution's norm has limitations regarding political rights, but, other than these specific situations which are referred to next, equal treatment must be reflected in Portuguese legislation. In accordance with this fundamental principle, Article 133 of the Immigration Law establishes equal treatment, specifically, between long-term resident status holders and Portuguese nationals, while Article 83 grants the same rights to permanent – and, also, temporary – residence permit holders. Article 65 of the Asylum Law foresees equal treatment for beneficiaries of international protection. The fundamental

---

<sup>29</sup> GROENENDIJK, Kees. The Long-Term Residents Directive, Denizenship and Integration. In : GUILD, Elspeth, BALDACCINI, Anneliese and TONER, Helen (eds.), *Whose freedom, security and justice?: EU immigration and asylum law and policy*. Oxford : Hart, 2007, p. 447. ISBN 978-1-84113-684-4.

principle of equal treatment is not taken lightly as it rests on the constitutional belief that we are all equal as human beings.

As mentioned, the principle of equal treatment has limitations that refer to political rights, the exercise of public functions that are not predominantly technical in nature, and the rights and duties that the Constitution and the law reserve exclusively to Portuguese citizens.<sup>30</sup> The main difference between Portuguese citizens and third-country nationals lies in political rights, namely voting rights and the eligibility for certain positions. However, third-country nationals can vote in local elections provided that they have been legally residing in Portugal for more than three years, and that their countries, under conditions of reciprocity, attribute active electoral capacity to the Portuguese residing there. Political participation is key to one's sense of belonging so it would be sensible to allow the exercise of political rights, especially at the local level, by long-term residents who have been working, paying their taxes and contributing to social security for quite some time and raising their families in local communities where they should have a saying in the decisions taken that also affect them.

Interestingly, among long-term residents' participants, although some reported feeling constrained in the exercise of their rights, they also felt that their residence status had little impact on their unequal treatment as they believed it was mostly motivated by social discrimination against migrants who are identified and stereotyped on the basis of skin colour and language.

#### **4.2. Second pillar: Enhancing legal protection against expulsion from Portugal**

Once acquired, long-term status is permanent, entitling its holder to a secure residence right in the Member State that granted the status. Subject to renewal is only the title/document, but if it expires this does not entail the loss of status. In order to secure a third-country national's residence right, Article 9 of the LTR Directive establishes that the long-term resident status can only be lost on the following grounds: fraudulent acquisition of the status; an expulsion measure; absence from the territory of the EU for more than 12 consecutive months or six years of absence from the territory of the Member State that granted long-term resident status. Considering beneficiaries of international protection, long-term

---

<sup>30</sup> *Constitution of the Portuguese Republic (7th revision)*. Official Gazette No. 155/2005, Series I-A of 12 August 2005, art. 15 (2).

resident status can be withdrawn if it was obtained on the basis of international protection which has been revoked, ended or not renewed, but if it implies removal from the Member State, *non-refoulement* must be respected.

As far as protection from expulsion is concerned, [Article 136](#) of the Immigration Law fully corresponds to Article 12 of LTR Directive, necessarily including a provision safeguarding the principle of *non-refoulement*. Accordingly, a long-term resident status holder in Portugal can only be expelled where he/she constitutes an actual and sufficiently serious threat to public policy or public security and this decision shall not be based on economic considerations. Attesting to the enhancement of protection against the expulsion of long-term residents, is the fact that a similar provision does not exist for third-country nationals who hold a permanent residence permit. Moreover, while for long-term resident status holders expulsion depends on the existence of a “an actual” serious threat, for permanent residence permit holders, “reasonable suspicion”<sup>31</sup> suffices to issue an expulsion order which renders expulsion of the first more demanding than the latter.

Focusing on the possibility of losing long-term status due to absence of the EU territory, the Immigration Law fixates the same period of 12 consecutive months away from the EU as proposed by the LTR Directive, but Portugal used the derogation clause providing that in a situation when the period of absence from the EU exceeds the prescribed deadline, this does not imply a loss of the residence status if the absence is duly justified, namely due to involvement in professional, corporate, cultural or social activities in the country of origin. The same applies to absence periods from Portugal longer than six years. Only by way of comparison with the permanent resident permit can it be confirmed that protection of long-term residents has been improved. Between long-term resident status and permanent residence permit there is a substantial difference regarding the possibility of losing the respective status due to absences from Portuguese territory. As for the absence period from the EU, it is understandable that this possibility is not foreseen in the permanent residence regime due to its national nature and the time of entry into force. Concerning the absence period from Portugal, while holders of long-term resident status can be away from the country for a period of six consecutive years, those holding a permanent residence permit

---

<sup>31</sup> Law 23/2007, of 4 of July, art. 135 (2).



can stay out of Portugal for two consecutive years or, within a 3-year-period, for 30 non-sequential months.<sup>32</sup>

The second pillar of the LTR Directive referred to a secure right of residence and, thus far, it is the one that seems more firmly constructed because, in theory, the protection against expulsion has been improved, but also, in practice, most participants reported having a greater sense of security as they report having gained a stronger feeling of being part of society, linked to a sense of relief because they have a more stable situation.

### **4.3. Third pillar: Ensuring freedom of movement within the European Union**

Chapter III of the LTR Directive extends freedom of movement to third-country nationals holding a long-term residence status, entitling them with the right to move to, and reside in, another Member State for the purpose of employment, study or any other purposes. Although the possibility of intra-EU is presented as the main flagship of the LTR Directive, the limitations imposed have impeded its flying. The right to reside in a second Member State is dependent on conditions similar to those of the acquisition of the new status in the first Member State. Contrary to what seems suggested when the intra-EU mobility flag is raised, its usage is far from being automatic. Taking the case of Portugal as the second Member State, a long-term resident status holder in another Member State is entitled to a residence permit if he/she exercises an economic activity in an employed capacity; has self-employed capacity; attends a programme of studies or vocational training; or has a good reason to live in the country. When applying for this new residence permit in Portugal, the applicant will have to prove he/she has the means of subsistence and housing in the same terms established for long-term residents. In addition to these two requirements, depending on the applicant's reason to request this type of residence permit, there are specific conditions that he/she has to fulfil to enjoy his/her right of residence in Portugal. According to the Immigration Law, a third-country national holder of long-term resident status in another Member State can directly apply for a temporary residence permit in Portugal, without a previous application for a long-term visa, thus, surpassing bureaucratic and time-consuming administrative procedures. As much as this possibility sounds appealing, the fact is that to exercise their right,

---

<sup>32</sup> *Law 23/2007, of 4 of July*, art. 131 (1)(e) and 85 (2)(b).

long-term residents still need to fulfil as many conditions as the ones requested for a new residence permit. As underlined in the most recent report on the implementation of the LTR Directive, intra-EU mobility remains the most problematic issue and intra-EU mobility rights provided under the Directive continue to be underused.<sup>33</sup> It comes as little surprise that detailing conditions and strictly implementing them often hinders the exercise of intra-EU mobility rights as reaffirmed by the Commission in the 2020 Pact on Migration and Asylum.<sup>34</sup>

It should be mentioned that for long-term residence status holders wishing to apply for a residence permit in Portugal, the Immigration Law does not include limits or preferences referring to the labour market policy. Article 14 (3) of the LTR Directive provides for the possibility of Member States issuing preference clauses granting or limiting access to the labour market. As previously mentioned, this provision was considered a second Achilles' heel of the regime as it could significantly limit its core right to move between Member States, but, then again, Portugal did not include this possibility. If the focus is turned to long-term residents in Portugal, the most common opinion among the research's participants was that they were not interested in moving to another Member State due to the stability and security felt in the country.

### **5. Portugal's particularity: Acquiring nationality as a first step, not the last**

Recalling the 1999 Tampere conclusions, the European Council also called upon Member States to facilitate the acquisition of their respective nationalities, and hence EU citizenship, by long-term residents living in their territory.<sup>35</sup> After two decades, Portugal accepted the Council's suggestion and entered into force the possibility of third-country nationals acquiring Portuguese nationality after five years of legal residence in the country. In 2018, an amendment to the Nationality Law altered the time of legal residence required to apply for Portuguese

---

<sup>33</sup> EUROPEAN COMMISSION. *Report from the Commission to the European Parliament and the Council on the implementation of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents* [online]. 2019, p.7. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1567069007318&uri=CELEX:52019DC0161>.

<sup>34</sup> EUROPEAN COMMISSION. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum* [online]. 2020, p. 26. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0609>.

<sup>35</sup> EUROPEAN COUNCIL. *Tampere European Council 15-16.10.1999: Conclusions of the Presidency* [online]. 1999, paragr. 21. Available from: [https://www.europarl.europa.eu/summits/tam\\_en.htm](https://www.europarl.europa.eu/summits/tam_en.htm).

nationality, by naturalisation.<sup>36</sup> Since then, according to Article 6 (1)(b) of the Nationality Law, third-country nationals residing in Portugal for a minimum of five years can apply for Portuguese nationality. This was the eighth amendment to Portuguese Nationality Law and, similarly to the previous ones, it broadened the possibility of acquiring nationality by foreseeing more flexible criteria. In this regard, it can be said that the national law has been rather lenient, thus facilitating the naturalisation of third-country nationals, in particular of those from Portuguese-speaking countries in recognition of the historic ties that still connect these countries. This open-arms policy also comes across in the several possibilities foreseen, in Article 6 of the Nationality Law, to acquire Portuguese nationality by naturalisation. Although these alternatives will not be addressed, a particular possibility is worth mentioning because it refers to those who are born in Portugal, whose parents are third-country nationals and, at the time of birth, had been living, regardless of the title, in Portugal for at least five years. In other words, even if the parents have been living in Portugal for five years albeit in an irregular way, their children born in Portugal can acquire Portuguese nationality.<sup>37</sup>

To acquire Portuguese nationality by naturalisation, a third-country national needs to be over 18 years or emancipated according to national law; to have been legally living in Portugal for at least five years; to have sufficient knowledge of the Portuguese language; to have not been sentenced, by a criminal court, to three or more years in prison; and do not constitute a danger or a threat to national defence or security through their involvement in activities linked to terrorism.<sup>38</sup> When comparing the requirements for acquiring Portuguese nationality by naturalisation, and those for applying for one form of long-term resident status, EU or national - that, as explained, do not differ much - it becomes clear why acquiring Portuguese nationality may prevail over applying for long-term resident status. The main requirement is the same: five years of legal residence in Portugal. The level of knowledge of Portuguese requested to acquire nationality does not differ from the one determined for the long-term resident status. Regarding the criminal record of the applicant, it can be considered that, to acquire nationality, it is no less demanding than applying for long-term resident

---

<sup>36</sup> *Law 37/81, of 3 October - Nationality Law*. Official Gazette No 228/1981, Series I of 3 October 1981.

<sup>37</sup> *Law 37/81, of 3 October*, art. 6 (5).

<sup>38</sup> *Law 37/81, of 3 October*, art. 6 (1).

status. Finally, the most relevant difference consists in the requirement to prove one's means of subsistence when applying for long-term residence status, because this requirement is not legally foreseen for acquiring nationality. Therefore, applying for nationality became a valid option for long-term residents in Portugal and, depending on the nationality of origin, even a preferred option. In fact, when faced with the choice between long-term resident status or nationality, one of the balanced factors refers to the possibility of having double nationality and whether the country of origin allows it or not. Severing this formal link with the country of origin, it is not a decision that comes lightly because the emotional linkages do not disappear and, in the case of refugees, it may be even more so.

### **Conclusion**

Portugal's interpretation of the LTR Directive has assumed its potential to enhance the protection of long-term residents by, immediately, not imposing strict integration requirements to acquire the status. As contradictory as it is to impose highly demanding integration conditions in a legal regime that has as its main goal the integration of long-term residents, Portugal managed not to lose sight of this objective, but there is still plenty of space for improvement. As far as equality of treatment is concerned, it has been legally implemented, but in practice it lacks effectiveness. Political participation is the area where legal improvements could make a difference, particularly, at the municipal level. Granting political rights in local elections to those who already feel a member of the community and hold a status that rightly declares it, would allow long-term residents to have a saying in matters that also refer to them on equal footing as nationals. With regard to the other two pillars, enhanced protection against expulsion is the only that has been fully implemented, legally and in practice, whereas intra-mobility has almost no legal implementation, nor practical effectiveness.

Long-term residents in Portugal can choose between applying for long-term resident status or applying for Portuguese nationality. In theory, acquiring nationality can be framed as the last step in the integration process, but, in practice, it means much more than a legal status, pointing directly to a deeper sense of belonging to a community that is as subjective as the choice between the alternatives.

Following the 2020 Pact on Migration and Asylum incentive to revise the LTR Directive, in April 2022, the Commission proposed amending the LTR Directive.<sup>39</sup> The bulk of the Directive's recast consists on facilitating access to long-term resident status by clarifying all periods of legal residence that should be counted, and particular relevance is given to improving intra-EU mobility, by removing some administrative obstacles, to ensure the exercise of freedom of movement. It remains to be seen how Member States enact these provisions. In the Portuguese context and given the general lack of awareness of the long-term residence status, the inclusion of a new article that obliges Member States to facilitate access to information ensuring a level playing field between the EU long-term residence status and the national permanent residence permits, can have an impact.

## REFERENCES

ARCARAZO, Diego Acosta. Civic Citizenship Reintroduced? The Long-Term Residence Directive as a Post-National Form of Membership. *European Law Journal*. 2015, Vol. 21, n° 2, p. 200-219. DOI 10.1111/eulj.12112.

COUNCIL OF THE EUROPEAN UNION. *European Pact on Immigration and Asylum* [online]. 2008. Available from: <https://eur-lex.europa.eu/EN/legal-content/summary/european-pact-on-immigration-and-asylum.html>. Viewed 31.05.2024.

EUROPEAN COMMISSION. *Green Paper on the future Common European Asylum System* [online]. 2007. Available from: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A52007DC0301>. Viewed 27.05.2024.

EUROPEAN COMMISSION. *Proposal for a Council Directive amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection* [online]. 2007. Available from: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52007PC0298>. Viewed 27.05.2024.

EUROPEAN COMMISSION. *Report from the Commission to the European Parliament and the Council on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents* [online]. 2011. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52011DC0585>. Viewed 28.05.2024.

EUROPEAN COMMISSION. *Report from the Commission to the European Parliament and the Council on the implementation of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents* [online]. 2019. Available from: <https://eurlex.europa.eu/legalcontent/EN/TXT/?qid=1567069007318&uri=CELEX:52019DC0161>. Viewed 25.05.2024.

---

<sup>39</sup> EUROPEAN COMMISSION. *Proposal for a Directive of the European Parliament and of the Council concerning the status of third-country nationals who are long-term residents (recast)* [online]. 2022. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A650%3AFIN&qid=1651218479366>.

*Analysing the effectiveness of migrants' protection and integration through the applicability of the European Union's directive on long-term residents in Portugal*

EUROPEAN COMMISSION. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum* [online]. 2020. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0609>. Viewed 25.05.2024.

EUROPEAN COMMISSION. *Proposal for a Directive of the European Parliament and of the Council concerning the status of third-country nationals who are long-term residents (recast)* [online]. 2022. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A650%3AFIN&qid=1651218479366>. Viewed 7.06.2024.

EUROPEAN COUNCIL. *Tampere European Council 15-16.10.1999: Conclusions of the Presidency* [online]. 1999. Available from: [https://www.europarl.europa.eu/summits/tam\\_en.htm](https://www.europarl.europa.eu/summits/tam_en.htm). Viewed 25.05.2024.

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS. *Promoting migrant integration: Strengthening EU law on long-term residence - Report*. Luxembourg: Publications Office of the European Union, 2023. ISBN 978-92-9489-190-7. Available from: <https://data.europa.eu/doi/10.2811/852089>. Viewed 25.05.2024.

EUROSTAT. *Long-term residents by citizenship on 31 December of each year* [online]. 2024. Available from: [https://ec.europa.eu/eurostat/databrowser/view/migr\\_reslong/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/migr_reslong/default/table?lang=en). Viewed 19.09.2024.

GIL, Ana Rita. *Imigração e Direitos Humanos*. Lisboa: Petrony Editora, 2017. ISBN 978-972-685-236-0.

GROENENDIJK, Kees. The Long-Term Residents Directive, Denizenship and Integration. In: GUILD, Elspeth, BALDACCINI, Anneliese and TONER, Helen (eds.), *Whose freedom, security and justice?: EU immigration and asylum law and policy*. Oxford: Hart, 2007, p. 429-450. ISBN 978-1-84113-684-4

PEERS, Steve and ROGERS, Nicola (eds.). *EU Immigration and Asylum Law: Text and Commentary*. Leiden; Boston: Brill Nijhoff, 2006. ISBN 978-90-474-1090-4

STORGAARD, Louise Halleskov. The Long-Term Residents Directive: A fulfilment of the Tampere Objective of Near-Equality? In: GUILD, Elspeth and MINDERHOUD, Paul (eds.), *The First Decade of EU Migration and Asylum Law*. Leiden; Boston: Brill Nijhoff, 2012, p. 299-327. ISBN 978-90-04-21203-9

THYM, Daniel. Long Term Residents Directive 2003/109/EC. In: HAILBRONNER, Kay and THYM, Daniel (eds.), *EU Immigration and Asylum Law. Commentary*. München: Oxford: C.H. Beck, Hart, Nomos, 2016, p. 428-520. ISBN 978-3-8452-5920-8.

### **EU and Portuguese legislation**

EU. *Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents*. 2003. Available from: <http://data.europa.eu/eli/dir/2003/109/oj/eng>. Viewed 25.05.2024.

EU. *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*. 2011. Available from: <http://data.europa.eu/eli/dir/2011/51/oj/eng>. Viewed 25.05.2024.

PORTUGAL. *Constitution of the Portuguese Republic (7th revision)*. Official Gazette No. 155/2005, Series I-A of 12 August 2005. Available from : <https://diariodarepublica.pt/dr/geral/en/relevant-legislation/constitution-of-the-portuguese-republic>. Viewed 6.06.2024.

PORTUGAL. *Law 37/81, of 3 October - Nationality Law*. Official Gazette No 228/1981, Series I of 3 October 1981.

PORTUGAL. *Law 23/2007, of 4 of July - Approves the legal regime of entry, stay, exit and removal of third country nationals from national territory*. Official Gazette No. 127/2007, Series I of 4 July 2007.

PORTUGAL. *Ordinance 1563/2007, of 11 July - Defines the means of subsistence that third country nationals must possess to stay and reside in Portugal and their duration*. Official Gazette No 238/2007, Series I of 11 December 2007.

PORTUGAL. *Law 27/2008, of 30 June - Establishes the conditions and procedures to grant asylum or subsidiary protection and asylum applicants, refugees and subsidiary protection statuses*. Official Gazette No. 124/2008, Series I of 30 June 2008.

PORTUGAL. *Ordinance 183/2020, of 5 August - Creates Portuguese as Host Language courses, as well as their organization, functioning and certification rules*. Official Gazette No 151/2020, Series I of 5 August 2020.

Data de submissão do artigo: 15/10/2024

Data de aprovação do artigo: 10/01/2025

Edição e propriedade:

**Universidade Portucalense Cooperativa de Ensino Superior, CRL**

Rua Dr. António Bernardino de Almeida, 541 - 4200-072 Porto

Email: [upt@upt.pt](mailto:upt@upt.pt)