

MIRREM

Measuring Irregular Migration

www.irregularmigration.eu

Portugal Country Brief on Irregular Migration Policy Context

AUTHORS:

João Carvalho and Thais França



Co-funded by:



Table of contents

THE MIRREM PROJECT	3
1.1 POLICY PRIORITIES	4
1.2 OVERVIEW OF THE PORTUGUESE POLICY FRAMEWORK	5
1.2.1 Policy implementation measures	5
1.2.2 Policy evolution: Main turning points	5
1.2.3 Policy impact	6
1.2.4 Policy Challenges in Addressing Migrant Irregularity	6
1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN PORTUGAL: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY	8
1.3.1 Pathways into and out of irregularity	9
1.3.2 Regularisation	10
References	12
ANNEX 1: Policy and Legal Frameworks	13
ABOUT THE AUTHORS	17

LIST OF TABLES

Table 1: Relevant Portuguese institutions	7
Table 2: Categories of migrant irregularity in Portugal	8

THE MIRREM PROJECT

MIRREM examines estimates and statistical indicators on the irregular migrant population in Europe as well as related policies, including the regularisation of migrants in irregular situations.

MIRREM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRREM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

TO CITE:

Carvalho, J. & T. França. 2024. Portugal Country Brief on Irregular Migration Policy Context. MIRREM Report. Krems: University for Continuing Education Krems (Danube University Krems). <https://doi.org/10.5281/zenodo.12624936>

KEYWORDS

Irregular migration; policy measures; pathways into and out of irregularity

FUNDING ACKNOWLEDGEMENT

Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the Research Executive Agency. Neither the European Union nor the granting authority can be held responsible for them.

In addition, MIRREM benefits from funding provided by UK Research and Innovation (UKRI) under the UK government's Horizon Europe funding guarantee. The Canadian research component of this project is undertaken, in part, thanks to funding from the Canada Excellence Research Chairs Program of the Government of Canada.

Portugal

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

- **Regulate irregular migration**

In the absence of the ability to manage migratory inflows from countries of origin, the Portuguese state provides legal pathways for regularisation for those migrants who are irregularly present in the country to obtain authorisations of residence on different grounds, such as economic activity, family reunion, student or humanitarian purposes. No distinction is made between long-term and short-term irregularly present individuals. Forced removals are mostly restricted to migrants who commit serious legal offences.

- **Tackle the influence of criminal networks that support irregular immigration and engage in exploitation of irregular immigrants**

The Portuguese state seeks to tackle the influence of networks that support irregular immigration, and then engage in the exploitation of irregular immigrants. In the absence of Portugal's capacity to organize legal migration and provide sustainable routes from origin countries (mostly in Eastern Europe and Asia), the migration flows into Portugal are supported by labour recruitment networks that have been labelled as the 'merchants of labour' in the literature (Martin, 2017). These networks operate irregularly in Portugal, and some engage in exploitation of irregular immigrants. Portugal seeks to tackle the activity of these unlawful networks and to decrease the vulnerability of irregular migrants.

- **Emphasise the contribution of immigration to the national economy**

Based on the analysis of costs and benefits derived from irregular immigration, Portugal adopts an instrumental approach to immigration that emphasises the intense demand for unskilled workers in the national economy plus the immigrants' annual contribution to social security, which was estimated at €968 million in 2022.

1.2 OVERVIEW OF THE PORTUGUESE POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

- **Establishment of an exceptional mechanism for the regularisation of irregular immigrants in 2007**

The centre-left government established a permanent regularisation mechanism in the immigration law in order to prevent the deployment of mass regularisation programmes or legal amnesties for irregular immigrants like those previously implemented in 2001-2002 that enabled the regularisation of 170,000 immigrants (Malheiros & Peixoto, 2023).

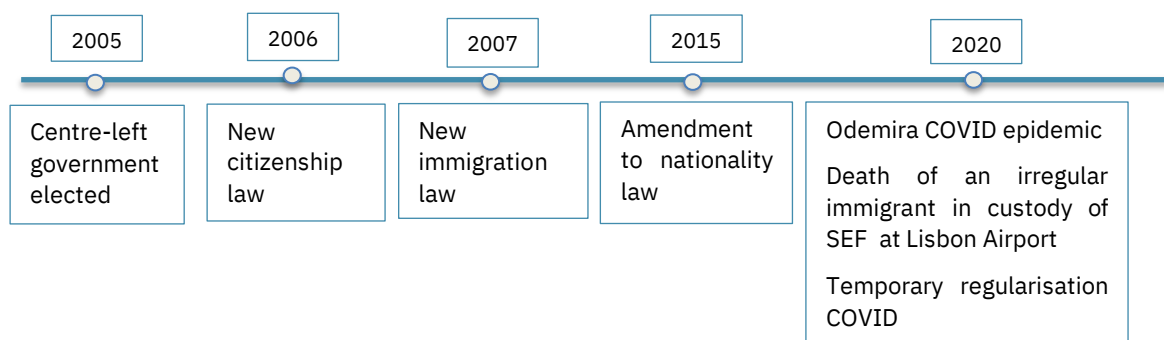
- **Establishment of a new law on access to Portuguese nationality in 2006**

In the face of a significant contingent of second-generation migrants born in Portugal holding only the nationalities of their parents (even if they never visited or lived in the parents' origin countries), the Portuguese government sought to decouple access to Portuguese nationality from the parents' regular legal status (dependent on possession of regular labour contracts). Consequently, routes were established for individuals who completed their primary education to access Portuguese nationality independently of their parents' legal status (Carvalho, 2020).

- **Covid health crisis**

The centre-left government provided temporary regularisation for all irregular migrants who presented a request for the exceptional regularisation of their legal status under articles n. 88 and n. 89 of the 2007 immigration law before 18 March 2020. This decree also guarantees full access to health services and the provision of a national health service number. Three months later, access to the national health service was enlarged to the entire stock of irregular migrants settled in the country.

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- **Management of irregular migration according to the needs of the labour market**

Through the establishment of the permanent regularisation mechanism, the Portuguese government possesses a mechanism to regulate the contingent of irregular migrants in the country based on labour market demands by binding regularisation to a work contract. In the absence of demand for foreign workers due to a lack of job opportunities in the labour market, the possibilities for irregular migrants to subsist or to obtain regularization are diminished, as having a working contract is the main requirement. Notwithstanding the observation of the permanent regularisation mechanism, net migration into Portugal was deeply negative from 2011 to 2016 (Carvalho, 2022)
- **Highest rates of naturalisation of immigrants**

According to data collected by Eurostat, in 2020 Portugal registered the second-highest naturalisation rate of foreign citizens in the EU, only behind Sweden. In 2020, citizenship was granted to 5.5 people per 100 foreign citizens residing in Portugal. As the national government directly associates the management of immigration with the demographic deficit observed in Portugal, granting nationality is a strategy to address this issue.
- **Contribution to the welfare state/social security**

Contribution to social security and tax payment have consistently been the criteria to access the permanent regularisation mechanism, as well as the amnesties for irregular immigrants, which were implemented prior to 2007. Consequently, irregular migrants often strive to maintain their contributions, even when working in informal or precarious employment arrangements. As a result, their contributions to social security are notable.

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- **Labour visas**

Portugal faces challenges in issuing labour visas in the origin countries through the national network of consulates and embassies. Through the provision of legal entry visas, immigrants would not need to pay for the services of recruiter networks that operate irregularly in Portugal. The demand for the services of these networks is far greater when migrants lack access to social networks in the destination countries or are unable to speak the native language of the host country (Martin, 2017).
- **Preventing the exploitation of irregular immigrants in the labour market**

A second main challenge of the Portuguese authorities is to curb the exploitation of irregular migrants by the networks of recruiters that operate in Portugal (Pereira et al., 2021). Irregular immigrants find jobs through these networks of recruiters and there is intense variation in the compliance with national labour laws, related to

wages, taxes and social security deductions. There have been efforts to tackle these abuses by criminalising employers who hire labour agents/agencies that fail to comply with national legislation. However, the work of labour inspectors is very difficult due to the flexibilisation of the labour market and the proliferation of subcontractors. When judicial action is taken, the subcontractors simply close the company and reopen a new one in a different name.

- **Inefficiencies in the process of granting authorisations of residence**

The issuance process for pending applications for an authorisation of residence is exceptionally bureaucratic and slow, lacking clearly defined completion deadlines (Pereira et al., 2021). Throughout this protracted waiting period, the well-being of irregular migrants is significantly compromised, as they endure prolonged periods of intense stress while awaiting a final decision on their applications. Moreover, it is a frequent occurrence for additional documents to be repeatedly requested. In the meantime, these individuals are also barred from leaving the country, even for essential visits to their home countries.

Table 1: Relevant Portuguese institutions

Sr. No.	Institution/ Department	Responsibilities	Web link
1.	Serviços Estrangeiros e Fronteira (Border Police)	Its main tasks are conducting first instance procedures relating to entry, residence and removal of foreign citizens. It evaluates requests for regularisation. Responsible for border control. Determines the removal of irregular migrants.	Link (EN)
2.	ACM/ Consultative Council of Immigration Issues	Receives notifications of the rejected requests related to visas, or residence authorisations. The council includes representatives of migrant associations.	Link (PT)
3.	Tribunal da Relação /Court of Appeal	Evaluates appeals against the forced removal of irregular migrants.	Link (PT)
4.	Autoridade para as condições do trabalho (labour inspectorate)	Conducts inspections of working conditions and reports cases of migrant irregularity to SEF.	Link (PT)
5.	IOM (International Organization for Migration)	Implements the voluntary return programme.	Link (EN)
6.	Portuguese Agency for Integration, Asylum and Migration (Agência Portuguesa para as Minorias, Migrações e Asilo)	New agency that integrates SEF and ACM in a single entity.	Link (PT)

7.	Portuguese criminal police (Polícia Judiciária)	Includes the border police inspectors, responsible for conducting criminal investigations.	Link (PT)
8.	Portuguese police forces (PSP and GNR)	PSP will supervise the international border in airports, GNR will supervise maritime and terrestrial borders. These police forces are responsible for supervising voluntary returns and forced removals.	n/a

1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN PORTUGAL: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in Portugal

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Overstayer	<p>A person who has legally entered but then stayed in an EU Member State beyond the allowed duration of their permitted stay without the appropriate visa (typically 90 days or six months), or of their visa and /or residence permit.</p> <p>Penalties in Portugal include: fine, potential deportation or even getting banned from entering Portugal for a specific amount of time.</p> <p>Migrants who were removed by force from Portugal cannot enter the country for a period of 5 years.</p>
Failed asylum seeker	<p>A person who requested asylum from the Portuguese authorities but whose request was denied. In 2021, there were 1,537 requests of asylum and 228 were accepted whilst another 78 individuals obtained authorisation of residence for subsidiary protection.</p>
Migrants whose request for exceptional regularisation was rejected	<p>A person who unsuccessfully requested regularisation under the permanent regularisation mechanisms included in the immigration law. According to interviews, these cases constitute less than 1 per cent of the annual requests, and the most common reason for rejection is the possession of a criminal record in the origin country.</p>
Former students who failed to obtain a job within one year of finishing studies	<p>Students who finish their studies in Portugal are entitled to an authorisation of residence valid for one year only. If they fail to get a job in this period, they fall into the overall category of overstayers.</p>

UK Citizens	UK citizens that fail to register their residence in accordance with the Withdrawal Agreement signed with the European Union.
Most relevant categories of migrants with a reasonable claim to a provisional status	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
Ukrainian Citizens	Ukrainians are entitled to a programme of temporary humanitarian protection that is valid for one year, and renewable for periods of 6 months. The renewals cannot exceed two requests. In March 2023 there was a resolution that extended the validity for another 6 months, with the possibility to extend again until March 2024.
Irregular migrants who deliver request for regularisation to Portuguese authorities	These individuals cannot be deported from the country until there is an official decision of the Portuguese authorities regarding their requests for regularisation.
Irregular migrants whose children were born in Portugal	These individuals cannot be deported from the country as their children are considered citizens if the parents have lived in the country for a period of one year. Second generation of immigrants that were not born in Portugal but who completed primary school, can also apply for citizenship. Parents obtain automatically a long-term authorisation of residence, which is valid until their descendants attain 18 years of age.

1.3.1 Pathways into and out of irregularity

- **Difficulty to initiate and renew authorisation of residence can lead to loss of legal status**

The temporary authorisation of residence is valid for one year, and subsequently renewable for periods of two years. Since the enactment of the law no. 18/2022, the initial validity of the authorisation of residence was increased to 2 years, and it is renewable for periods of three years. Migrants need to provide proof of means of subsistence (presentation of labour contract) and the regular payment of taxes and contributions to social security. However, the existence of a large informal economic sector makes it more difficult to hold legal labour contracts, as well as migrants' increasing employment in seasonal occupations related with the activity of agroindustry (Pereira et al., 2021).

- **Overstaying leads to loss of temporary legal status**

Most irregular migrants in Portugal possess a valid entry visa for different temporary purposes or have travelled from another EU Member State that issued a temporary visa to enter the Schengen space. In some cases, migrants are channelled by recruiting networks into Portugal before the expiration of their temporary labour visas in other EU countries because it is easier to access regularisation in Portugal due to the high demand for unskilled workers and the existence of a legal route for regularisation. In other cases, they can have direct access to the Portuguese territory, for example as is the case for Brazilians that are exempted from the EU visa regime to enter Portugal.
- **Presentation of regularisation request**

The main gateway out of irregularity in Portugal is to request exceptional regularisation from the Portuguese authorities on the basis of the existence of a formal linkage between the candidate and the labour market, which is attested by the presentation of a labour contract or job offer and a minimum of 12 months of contributions to the social security (Malheiros & Peixoto, 2023). Irregular migrants who do not fulfil the criteria to access regularity through the multiple pathways available in the legislation can present an exceptional request for regularisation under humanitarian grounds, which is evaluated by the Portuguese authorities.
- **Presentation of request of naturalisation**

Irregular migrants whose children were born in Portugal can ask for naturalisation if they have lived in the country for a single year before the child was born. The parents obtain a long-term authorisation of residence. Irregular migrants can access Portuguese citizenship if they provide proof of living in Portugal for the past ten years and possess knowledge of the Portuguese language.

1.3.2 Regularisation

- **2007, Permanent regularisation mechanism, Law no. 23, amended in 2015, 2017**
 - Presentation of a valid labour contract, a minimum of 12 months of contributions to the social security and 12 months of tax payments, proof of legal entry in the country.
 - Descendent of a migrant, either born in Portugal or having completed their primary education, regardless of the parents' legal status.
 - Parent of a minor born in Portugal.
 - Victim of serious labour exploitation who cooperates with national authorities in a criminal investigation.
 - Those not covered by the above may submit an exceptional request for regularisation under humanitarian grounds, grounds of national interest, and general public interest, which will be evaluated by the Portuguese authorities.

- **2020, COVID-related regularisation, Administrative acts no. 3863-B/2020 and 10944/2020**
 - Presentation of a regularisation request under the 2007 mechanism before 18 March 2020, then subsequently extended to those who presented a regularisation request before 15 October 2020.
 - The objective consisted of facilitating irregular migrants' access to health services and to provide a provisional regular status to foreign workers. According to an interview, by 2023, the Portuguese authorities received 300,000 requests for regularization, as the economy expanded from the mid-2010s onwards.

References

- Carvalho, J. M. D. de. (2020). Immigrants' acquisition of national citizenship in Portugal and Spain: The role of multiculturalism? *Citizenship Studies*, 24(2), 228–246. <https://doi.org/10.1080/13621025.2019.1707483>
- Carvalho, J. M. (2022). Emigration and Immigration in Portugal. In *The Oxford Handbook of Portuguese Politics*. Oxford University Press.
- Malheiros, J., & Peixoto, J. (2023). Challenges and Ambiguities of the Policies for Immigrants' Regularisation: The Portuguese Case in Context. In C. Finotelli & I. Ponzio (Eds.), *Migration Control Logics and Strategies in Europe* (pp. 111–129). Springer.
- Martin, P. (2017). *Merchants of Labor: Recruiters and International Labor Migration*. Oxford University Press. <https://doi.org/10.1093/oso/9780198808022.001.0001>
- Pereira, C., Pereira, A., Budal, A., Dahal, S., Daniel-Wrabetz, J., Meshelemiah, J., Carvalho, J., Ramos, M. J., Carmo, R. M., & Pires, R. P. (2021). 'If you don't migrate, you're a nobody': Migration recruitment networks and experiences of Nepalese farm workers in Portugal. *Journal of Rural Studies*, 88, 500–509. <https://doi.org/10.1016/j.jrurstud.2021.04.019>

ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Web link to source
1	Law no. 23 of 4 of July that sets the conditions of entry, permanence, removal of foreign citizens	2007	<p>Article 2 provides typology of legal definitions, article 6 sets the conditions of legal entry and exit from the country, Article 45 sets the typology of visas of entry, article 88 sets the mechanism for the exceptional regularization of irregular migrants that possess proof of legal entry in the country, a valid work contract and contributed to the social security services for a period of 12 months.</p> <p>Article 89 – allows the exceptional regularization of self-employed migrants that fulfil the legal criteria set above.</p> <p>Section VII, sets the conditions for the concession of authorizations of residence in special situations. Section VII defines the concession of authorizations of residence under special situations.</p> <p>Article 122 grants authorization of residence without presentation of visa of residence: B) to all descendants of immigrants born in Portugal with parents with legal status or enrolled in the education system. L) provides authorization of residence to the parents with minor descendants resident/born in Portugal. N) provides authorization of residence those immigrants that suffered serious labour exploitation and collaborated with national authorities and denounced the perpetrators.</p>	Link (PT)

			Article 123 – exceptional regime: The law allows the exceptional concession of authorizations of residence to those who do not fulfil the regulations under humanitarian circumstances.	
2	Law n. 29/2012 of August 9	2012	Incorporates the European “Return Directive” into national legislation.	Link (PT)
3	Law no. 63/2015 of June 30	2015	Art 122, o) Grants a temporary authorization of residence (valid for 1 year) to students who finished their studies and seek to search for employment.	Link (PT)
4	Law no. 102/2017	2017	Simplifies pathways for regularization by decreasing the level of bureaucracy through the simplification of procedures necessary to obtain an entry visa or an authorization of residence. Removes the discretionary power of the border police to reject the requests for regularization under article 88 and 89: “law no. 59/2017, of 31st July introduced a profound change in the very nature of Articles 88 and 89, which no longer foresaw administrative discretionary powers, but rather subjective rights to regularisation. The new wording no longer provided any margin of opportunity, by objectively decreeing that everyone who fulfilled specific conditions would be entitled to a residence permit with a visa exemption.” (Gil, 2021). The presentation of a work contract to apply for regularization under article 88 was replaced by the presentation of mere offer of employment letter.”	Link (PT)
5	Law no. 26/2018 of July 5	2018	Increases the protection granted to unaccompanied foreign minors with irregular status who are hosted in Public Institutions or similar institutions. Minors are entitled to authorization of residence on behalf of article 123 of law 23/2007.	Link (PT)

6	Law no. 28/2019	2019	Proof of valid entry in the country is legally supposed when the immigrant proves that is registered in social security for a period of 12 months before making the request for exceptional regularization under articles 88 and 89.	Link (PT)
7	Administrative act no. 3863-B/2020	2020	Provides a regular status to all irregular immigrants and asylum seekers that presented a regularization request before the 18th of March.	Link (PT)
8	Administrative act no. 10944/2020	2020	Provides a regular status to all irregular immigrants and asylum seekers that presented a regularization request before the 15 of October .	Link (PT)
9	Law no.18/2022	2022	Establishes a new visa for job seeking purposes. Introduces the Agreement of Mobility with Portuguese speaking countries in the legislation that allows presentation of regularization requests to irregular immigrants settled in Portuguese of the nationality included in the agreement.	Link (PT)
10	Decree Law no.41/2023	2023	Abolishes SEF and enacts the Agency for Migration, Integration and Asylum.	Link (PT)

Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1	Law no. 2/2006 of 17 April that sets access to the Portuguese nationality	2006	Article no. 2 allows access to Portuguese nationality to the minors of irregular immigrants that completed primary education in the country. Article no-5 c) the law allows the naturalization of individuals who make proof of living in the country for 5 years, independently of their legal status. Article no. 3 grants right to naturalization to foreigners married to a Portuguese citizen for a period of 3 years.	Link (PT)
2	Decree law no. 368/2007	2007	Grants authorization of residence to foreign citizens who are victims of human trafficking.	Link (PT)

3	Law no. 28/2016	2016	Tackles the modern versions of forced labour or exploitation of labour. The employer that subcontracts recruiters that violate the labour regulations will be also criminalized by the Portuguese authorities.	n/a
4	Organic Law no. 2/2020, of 10 of November	2020	Article 1.(f) Grants automatic Portuguese nationality to all the new-born babies in Portuguese soil descendants of immigrants that lived in Portugal for the period of 1 year independently of their legal status. Article 6. Grants right of naturalization to all the descendants of immigrants born in Portuguese soil whose parents lived in Portugal for the period of 5 years independently of their legal status.	Link (PT)

ABOUT THE AUTHORS

João Carvalho is an invited principal investigator at the CIES-ISCTE, Lisbon, Portugal.

Thais França is an integrated researcher at the CIES-ISCTE, Lisbon, Portugal.

COPYRIGHT CLAUSE



This work is licensed by the MIRreM Consortium under a Creative Commons Attribution-ShareAlike 4.0 International License, 2020. For details, see <http://creativecommons.org/licenses/by-sa/4.0/>

THE MIRREM CONSORTIUM

University for Continuing Education Krems (Coordinator)

European University Institute

University of Osnabrück

University of Maastricht

University of Turku

Complutense University Madrid

Hellenic Foundation for European and Foreign Policy (ELIAMEP)

University of Milan

University of Potsdam

Platform for International Cooperation on Undocumented Migration (PICUM)

International Centre for Migration Policy Development (ICMPD)

Migration Policy Institute Europe (MPI-E)

University of Warsaw

Vrije Universiteit Brussel

Instituto Universitário de Lisboa (ISCTE-CIES)

Associated Partners:

Toronto Metropolitan University

University of Leicester

University of Oxford