Chapter 23

Migrants' Access to Social Protection in Portugal

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23.1 Overview of the National Social Security System and Key Migration Features in Portugal

23.1.1 *Main Characteristics of the National Social Security System*

The institution of a democratic regime, after the 1974 Revolution, and the enactment of the 1976 Constitution,¹ also meant – with respect to the characterization of the Portuguese Welfare State – the transition from a pure Bismarckian model that marked the preceding regime to a Beveridgean model, at least of a partial nature (see also the seminal work of Esping-Andersen 1990 regarding the three models (“worlds”) of Welfare Capitalism). The right to social security is currently described in the Constitution as a citizenship right (article 63), whereas the Constitutional basis for the creation of a general and universal National Health Care System (NHCS) was established by article 64.²

These two systems have a different nature in Portugal and are managed by different institutions. The Social Security system maintains, for its most important

¹Constitutional Law of April, 2, 1976, with revisions: <http://www.parlamento.pt/Legislacao/Paginas/ConstituicaoRepublicaPortuguesa.aspx>

²The effective implementation of this NHCS took place with the approval of Law 56/1979 (*Lei n.º 56/1979, de 15 de Setembro*). The Portuguese Parliament has recently approved the new Basic Law for the NHCS (replacing the Law 48/90) It is the Law 95/2019 (*Lei n.º 95/2019 de 4 de setembro*).

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benefits, a contributory profile, and is managed by Social Security institutions (e.g. the Social Security Institute – *Instituto da Segurança Social, ISS* – and the Social Security Financial Management Institute – *Instituto de Gestão Financeira da Segurança Social*),³ under the responsibility of the Minister of Labour and Social Security. In contrast, the NHCS is mostly non-contributory in nature (financed through general taxation) and managed by the Central Management of the Health Care System (*Administração Central do Sistema de Saúde – ACSS*)⁴ under the responsibility of the Minister of Health.

As for the Social Security system, despite the maintenance of its traditional contributory profile (inherited from the previous Bismarckian regime), it has rapidly evolved to become a more comprehensive (universal) system which covers a broader range of social risks. In 1980, the non-contributory regime was created, aiming to ensure protection against certain social risks (old-age, incapacity and family expenses) in the event of the inexistence or insufficiency of a contribution period. Later on, in the 1990s, Portugal introduced a minimum income guarantee (*Rendimento Mínimo Garantido*), with the fight against poverty and social exclusion becoming an autonomous goal as one of the purposes of traditional social security.⁵

The first public pension reform took place in 1993. The Portuguese system, included in the so-called ‘Mediterranean model of social protection’ (Ferrera et al. 2000), had been an immature late development and asymmetric in nature, at least in comparison with central and northern European countries. Indeed, before the 1980s, the Portuguese Bismarckian-type system was incomplete, since many groups of workers (notably the considerable agrarian population and workers in some industries) were simply not included in the system’s coverage. Contributory histories therefore started to be made at a late stage and during the 1990s, they still had a rather short duration. The 1993 pension reform involved creating incentives to increase workers’ contribution periods. It also raised the retirement age for women (from 62 to 65 years of age) the same as it was for men (principle of equal treatment).⁶ This trend continued with the 2002 and 2007 reforms that brought significant novelties to the rules regarding the calculation of pensions, notably the increase in the number of contributory years required for establishing the reference income used to determine the value of the pension.⁷ Additionally, the so-called ‘sustainability factor’ (*factor de sustentabilidade* – FS) was also introduced in 2007, aiming to reflect in the pension amount the demographic changes occurring since the starting reference date and the (future) date of the pension request.

³ISS website: <http://www.seg-social.pt/iss-ip-instituto-da-seguranca-social-ip>; IGFSS website: <http://www.seg-social.pt/igfss-ip-instituto-de-gestao-financeira-da-seguranca-social-ip>

⁴<http://www.acss.min-saude.pt/>

⁵Law 19-A/96. Later on, the minimum income guarantee was replaced by Social Integration Income (*Rendimento Social de Inserção – RSI*), under Law 45/2005 (*Lei n.º 45/2005, de 29 de agosto*).

⁶Decree-Law 329/93 (Decreto-Lei n.º 329/93, de 25 de setembro).

⁷Decree-Law 187/2007 (Decreto-Lei n.º 187/2007, de 10 de maio).

The creation of the FS took place under the current Social Security Framework Law (Law 4/2007- *Lei n.º 4/2007, de 16 janeiro de 2007*). According to this Law, the Portuguese Social Security System – with its universal and comprehensive nature – was structured into three subsystems. The first- entitled ‘Citizenship Social Protection System’ (*Sistema de Proteção Social de Cidadania*) – includes all non-contributory benefits under residence and means-testing conditions. This first sub-system is mostly tailored to address poverty and social exclusion and it includes a broad spectrum of benefits ranging from the ‘Social Integration Income’ and ‘Social Assistance’ to social protection in old age, incapacity, family expenses and unemployment. This sub-system is financed mostly through general taxation (transfers from the general Government budget to the Social Security budget) and earmarked taxes.

The second sub-system – named ‘Contributory System’ (*Sistema Previdencial*) – is meant to address social risks (old-age, incapacity, temporary disability, unemployment, maternity, paternity and adoption, and death) in a Bismarckian fashion. It is financed through payroll contributions paid by self-employed/employed workers and employers.⁸ This system is managed according to a ‘pay-as-you-go’ and defined benefit model.⁹ The third sub-system, of a voluntary nature (unlike the previous ones), is the ‘Complementary system’ (*Sistema Complementar*). It includes both private and government complementary pension schemes, managed in accordance with a ‘funded’ financial model (see also Cabral and Rodrigues 2017).

23.1.2 Migration History and Key Policy Developments

In the EU, Portugal is traditionally considered as a country of emigration. Portugal is – after Malta – the second EU country with most emigrants (about 2.3 million people), meaning that more than 22% of the Portuguese citizens live abroad.¹⁰ Between 1955 and 1974, the main causes for emigration were economic (low income per capita, unemployment, insufficient industrialization, and overall economic fragility related to a rural economic structure), but also political (due to the repressive nature of the political regime of the ‘Estado Novo’). After 1974, a

⁸The contributory regimes (for employed workers, self-employed and other regimes) are currently defined in the ‘Social Security Contributory Code’, approved by Law 110/2009 (*Código Contributivo dos Regimes da Segurança Social, Lei n.º 110/2009, de 16 de setembro*), with amendments.

⁹Note that the aforementioned changes that aimed to adjust the system to demographic changes, in fact changed the Portuguese system from a purely defined benefit model to a (partially) defined contribution model. Concerning the transition within pay-as-you-go systems from defined benefit models to defined contribution models, see Barr and Diamond (2010), Mendes (2011), Cabral (2014), Fall (2014) and Fall and Bloch (2014).

¹⁰Information from the latest Report of the Emigration Observatory (*‘Observatório da Emigração’*), for the year 2015, and available here: <https://www.dn.pt/sociedade/interior/portugal-e-o-segundo-pais-da-europa-com-mais-emigrantes-5688739.html>

significant decrease in the number of annual citizens leaving the country occurred. Whereas before the democratic regime the major destinations of Portuguese emigrants were European countries (e.g. France, Luxembourg and Germany) and countries in the American continent (e.g. the United States, Canada, Brazil and Venezuela), after that date, there was a predominance of European countries as destinations. Moreover, accession to the European Economic Community (EEC) in 1986 favoured this shift.

Within the decolonization process that took place along with the institution of a democratic regime (from 1974 onwards), many Portuguese citizens that lived in former African colonies returned to Portugal (the so-called '*retornados*'). This involved a massive intake of new citizens (about 500 thousand) and the concomitant increase in the Portuguese population. Simultaneously, throughout the years, Portugal became a targeted destination for new immigrants – citizens from those same former Portuguese colonies (e.g. Angola, Mozambique, Cape Verde, and Guinea-Bissau). This process further intensified in the aftermath of the accession of Portugal to the EEC. In fact, Portugal has since then received significant amounts of structural Funds that were primarily allocated to construction and infrastructure. Work force needs increased the demand for more immigrants that at that time came mostly from Cape Verde (Baganha et al. 2009). Furthermore, following the collapse of the Eastern bloc in Europe and the subsequent enlargement of the European Community (or European Union), Portugal increasingly became a host country for Eastern migrants (in the case of EU members, mostly from Romania; in the case of non-EU members, from Ukraine, Russia and Moldavia). Simultaneously, Portugal became a destination country also for Asian migrants originating mainly from China. Since the 2000s, a significant increase of Brazilian migrants occurred, and they have become the largest number of foreign citizens currently living in Portugal. Last but not least, in these first decades of the twenty-first century, Portugal has also become an increasing destination for many EU citizens, notably from the UK, Spain, France and Italy, with these two latter countries undergoing a significant rise in the last couple of years (SEF 2017).¹¹

The recent financial and economic crisis has had a significant impact on migration movements in Portugal, affecting both emigration (with a significant increase) and immigration (with a decrease). The migration balance was negative (net emigration) between 2010 and 2016, this changing to a positive balance in 2017 (net migration).¹² Figure 23.1 captures this evolution in recent years by juxtaposing the number of (new) permanent emigrants and (new) permanent immigrants.

¹¹ So, the tenth main resident communities in Portugal are, according to data from SEF (2017): Brazil (85426), Cape Verde (34986), Ukraine (32453), Romania (30750), China (23197), UK (22431), Angola (16856), France (15319), Guinea-Bissau (15198) and Italy (12925).

¹² Information from the Migration Observatory ('*Observatório das Migrações*'). Statistical Reports available here: <https://www.om.acm.gov.pt/publicacoes-om/colecao-imigracao-em-numeros/relatorios-aneais>

Fig. 23.1 New permanent emigrants and immigrants in Portugal. (Source: INE, PORDATA)

23.2 Migration and Social Protection in Portugal

Considering the applicability of the European rules on social security coordination deriving from the Treaty on the Functioning of the European Union (TFEU), the EU Charter of Fundamental Rights (CFR) and Regulation (EC) 883/2004 and its Implementing Regulation (EC) 987/2009, Portugal has managed – with respect to non-national EU citizens living and working in the country – to achieve abolition of discrimination on grounds of nationality (principle of equal treatment) in relation to employment, remuneration and other working conditions, and the adoption of measures in the field of social security in order to ensure this. Portugal has been involved in the on-going revision process of Regulation (EC) 883/2004 and some areas were given special attention: (i) treatment of economically inactive persons moving from one Member State to another – the vicious circle between ‘working and activating conditions to obtain residence and the residence condition to access social protection’; (ii) the qualification of long-term care as sickness benefits, as family benefits (due to family dependence) or possibly as a new social risk; (iii) cross-border health care provision and expenses reimbursement (see, on this issue, Giubonni et al. 2017).

As for citizens from non-EU countries, it is necessary to distinguish between the treatment given to migrants from countries with which Portugal has signed bilateral/multilateral Social Security Agreements¹³ and those with which those Agreements have not been signed. For the latter, with respect to contributory benefits, non-EU

¹³ Portugal has signed such agreements with 18 countries, including Andorra, Argentina, Australia, Bolivia, Brazil, Cape Verde, Canada, Canada-Québec, Chile, Ecuador, El Salvador, United States of America (U.S.), the Islands of Jersey, Guernsey, Herm, Jethou and Man, Mozambique, Moldavia, Paraguay, Tunisia, Ukraine, Uruguay and Venezuela. In 1978, Portugal also signed the (multilateral) Ibero-American Convention on Social Security.

foreigners are treated as Portuguese citizens if they are working and insured in the Portuguese social security system. Nevertheless, they cannot make use of social security coordination principles – notably the principle of aggregation of periods and the principle of exporting benefits – whenever they come to Portugal with a past contributory record in the country of origin. On the contrary, the former can make use of these principles – at least for some benefits. Also, the material scope of the Social Security Bilateral Agreements signed by Portugal with other countries has increased over time. The former Agreements mostly included old-age and invalidity (e.g. the Agreements signed with the United States and Canada in the 1980s),¹⁴ whereas in the more recent Agreements signed with some of the non-EU countries from which more migrants enter Portugal (e.g. Mozambique, Cape Verde and Ukraine), the majority of social risks are included. Moreover, in these cases, principles of reciprocity, equal treatment, aggregation of contributory periods (for all kinds of benefits) apply. Family members are included in the scope of protection and there are also specific rules to prevent overlapping. In the case of Mozambique and Cape Verde, some non-contributory benefits are also included in the scope of the coordination rules (e.g. old-age and invalidity social pensions) and this represents a major improvement in the traditional conception of social security coordination rules that in the past were meant mostly for Bismarkian-type social benefits (that is, involving the idea of insured workers).

23.2.1 Unemployment

Unemployment benefit (*subsídio de desemprego*) is a contributory benefit financed through payroll contributions paid by workers and employers. To claim this benefit, workers must satisfy the basic conditions either with respect to a past contribution period (a minimum qualifying period of 360 days of paid employment with registered earnings in the 24 calendar months immediately prior to the date of unemployment) or to the fulfilment of obligations vis-à-vis the employment centre (*centro de emprego*) while unemployed (e.g. searching for and/or acceptance of suitable work) (European Commission 2017, p. 51).

The duration and amount of unemployment benefits vary according to the beneficiary's age and contributory record. Notwithstanding this, unemployment benefits may be paid as a lump sum if the beneficiary presents a project proposal to the employment centre for creating his/her own employment. Workers may also claim 'partial unemployment benefits' (cash benefit paid to workers who claimed or were

¹⁴With respect to old-age and invalidity pensions, Portuguese internal legislation (Decree-Law 187/2007) also ensures coordination mechanisms, notably through the applicability of the principle of the aggregation of periods.

receiving unemployment benefits, and who subsequently resume employment on a part-time contract or who start self-employed work).¹⁵

In contrast, the 'social' unemployment benefit (*subsídio social de desemprego*) is a universal-type benefit financed through general taxation. This benefit is granted to unemployed people who possess a contributory record (although insufficient to obtain the normal unemployment benefit) and fulfil residence and means-tested conditions. Hence, this cash benefits aims to compensate unemployed for lack of income due to involuntary unemployment if they do not meet the conditions for unemployment benefits (initial social unemployment benefits) or after these unemployment benefits came to an end (subsequent social unemployment benefits). The duration and amount of the social unemployment benefits vary according to the beneficiary's age and contributory record.¹⁶

In 2012, an allowance for cessation of work for self-employed workers (*subsídio por cessação de atividade*) was created. This allowance is of a contributory nature and financed through contributions from self-employed workers and from the respective contracting company. The duration and amount of the allowance also vary according to the beneficiary's age and contributory record.¹⁷

Foreigners (EU and non-EU) need to comply with the same eligibility requirements as national residents, both with respect to unemployment benefit and 'social' unemployment benefit. Foreigners must have legal residence in Portugal, or permit, allowing them to celebrate an employment contract. For all these unemployment benefits, residence conditions remain highly active. This means that claimants must keep some contact through residence with the Portuguese system, at the least because they have to satisfy 'integration' conditions vis-à-vis the employment centre. For this reason, when beneficiaries (either Portuguese nationals or foreigners) leave Portugal, the benefit is suspended for three months, a period after which – if they do not return – it ceases to be paid. Ultimately, the export of unemployment benefits (as admitted in the European Regulations) can be impaired by this residence-type obligation regarding the State of origin.

¹⁵The basic legislation for unemployment benefit is Decree-Law 220/2006 (Decreto-Lei n.º 220/2006, de 3 de Novembro), with amendments.

¹⁶The basic legislation for social unemployment benefit is Decree-Law 220/2006 (Decreto-Lei n.º 220/2006, de 3 de Novembro), with amendments. See also Decree Law 70/2010 (Decreto-Lei n.º 70/2010, de 16 de junho) – rules on the determination of incomes and household composition.

¹⁷The basic legislation for Allowances for Cessation of Work for Self-Employed Workers is Decree Law 35/2012 (Decreto-Lei n.º 35/2012, de 15 de março), Law 20/2012 (Lei n.º 20/2012, de 14 de maio), with amendments including those from Decree-Law 2/2018 (Decreto-Lei n.º 2/2018, de 9 de janeiro).

23.2.2 Health Care

The Portuguese Constitution enacted in 1976 defines the right to health as a universal social right and states that this is achieved through the creation of a universal, general and free National Health Care System – NHCS (for all citizens or alike), regardless of their economic, professional or statutory situation. The system was therefore to be financed through general taxation. The implementation of the NHCS (SNS – *Serviço Nacional de Saúde*) was carried out by Law 56/1979 (*Lei no. 56/1979, de 15 de setembro*). The NHCS has its own legal status and includes all official institutions and services that provide health care under the Ministry of Health. The national network of healthcare covers SNS facilities, private institutions and independent professionals with whom contracts have been signed. The NHCS is characterized by providing universal coverage and global health care in an integrated way or else guaranteeing its provision. It is usually being free to its users, taking into account the social and financial position of citizens; and it guarantees equal access to its users.

While health care benefits in kind are provided by the NHCS on a universal basis, sickness cash benefits (*subsídio de doença*) – for temporary disability/incapacity – are paid by the social security system and are of a contributory nature. The overall conditions access sickness benefit, applicable both to nationals and foreigners legally resident, are: (i) beneficiaries must be gainfully employed for a total of six calendar months, whether consecutive or aggregate, prior to the date that the sickness started; (ii) beneficiaries must have registered earnings for at least twelve days of work in the four months immediately before the month preceding the onset of incapacity (professionalism index, *índice de profissionalidade*) – this condition does not apply to self-employed workers or to seafarers covered by the voluntary social security scheme; (iii) self-employed workers and persons covered by the voluntary social security scheme must have paid their social security contributions for the quarter preceding the onset of incapacity.¹⁸

Sickness benefits are due either to nationals or foreigners as long as these legal conditions are met. Benefits are paid up to 1095 days and the replacement rate depends on the duration of the disability (between a rate of 55% to a duration up to 30 days and 75% for a duration higher than 365 days). Individuals in principle should not leave the country, since they are disabled (unless for medical treatment abroad also certified).

Unlike sickness benefits that are temporary in nature, invalidity pensions (*pensão de invalidez*) are awarded to individuals in the event of permanent incapacity for work for a reason not related to their occupation, as certified by the Incapacity Verification System (*Sistema de Verificação de Incapacidades*).¹⁹ According to the degree of incapacity, invalidity may be relative (when the beneficiaries' earning

¹⁸ See Decree-Law 28/2004 (*Decreto-Lei n.º 28/2004, de 4 de fevereiro*) (with amendments).

¹⁹ See Decree-Law 187/2007 (*Decreto-Lei n.º 187/2007, de 10 de maio*), with changes – social protection in old age and legal invalidity framework.

capacity for their own occupation is reduced, they are not expected to recover within the next three years, and have registered earnings for at least five calendar years) or absolute (when the beneficiary is permanently and definitively incapable of working in any occupation and has registered earnings for at least three calendar years).²⁰ Furthermore, invalidity pensions can be either of a contributory nature, depending on the contributory history and the level of earnings,²¹ or of a non-contributory nature ('social' invalidity pensions), which in turn are dependent on residence and are means-tested.

Although the NHCS is a universal system, financed through general taxation and therefore dependent on the residence condition (only residents in Portugal should be entitled), in some cases – notably under Regulation (EC) 883/2004 and the (new) Cross Border Health Care Directive (Directive 2011/24/EU) – access to health care provision (benefits in kind) can be 'opened' to residents abroad (either foreigners or even national citizens) either in the case of temporary stay or permanent stay in Portuguese territory – and both for unplanned or scheduled treatment in the Portuguese NHCS. One can thus say that in these particular cases (within the EU), the residence condition (set as the primary condition in the Portuguese NHCS) is outweighed by a labour insurance-type link with a (different EU) social security system (which is, by its nature, a non-universal, non-residence-based link).

In the case of sickness benefits, the movement of workers/citizens across different (EU or non-EU) countries determines the applicability of typical coordination rules on social security – respectively enshrined in EC Regulations or in Bilateral Agreements – and therefore, in specific cases, allowing for the export of benefits. Finally, with respect to invalidity pensions of a contributory nature, coordination mechanisms (e.g. aggregation of periods and benefit export) are firstly recognized in Portuguese internal law (Decree-Law 187/2007), notably through the applicability of the principle of the aggregation of periods, provided an international instrument of coordination involving the Portuguese State has been signed. On the contrary, social invalidity benefits are based on residence and for this reason export of benefits is prevented.

23.2.3 Pensions

In the Portuguese system, there are two types of benefits related to old-age. Firstly, there is the old-age contributory pension (*pensão de velhice*) financed by employers, employees, or self-employers in a pay-as-you-go regime. To claim this pension,

²⁰ Absolute invalidity is considered as an incapacity of 100% for any type of work and relative invalidity the incapacity to obtain at least 50% of the earnings obtained in the previous profession.

²¹ For this reason, nationals residing abroad can still access this pension under the same conditions as Portuguese nationals residing in Portugal.

individuals must prove a minimum period of contributions of 15 years²² and have legal age to require the old age pension (for 2019, 66 years and 5 months old). The pension amount is determined according to the beneficiary's social security contribution record and registered earnings. The pension is a percentage of the income referenced (with the rules laid down in 2007, it corresponds to the average of earnings registered over the contributory period – and a full contributory period is of at least 40 years) multiplied by an annual accrual rate of between 2% and 2.3%, multiplied by the years of contribution.

Early retirement is possible in three situations: (i) specific early retirement regimes for exacting professions (e.g. miners, air traffic controllers and pilots, dockworkers, etc.); (ii) long-term unemployment (and under age conditions); (iii) the age retirement flexibility regime. In this latter case, early retirement is only possible under strict conditions – e.g. long periods of insurance and a minimum age for retirement, never less than 60 years of age – and implies a reduction in the amount of the pension.

Foreigners (legally residing in Portugal) and nationals residing abroad have the right to access the old-age contributory pension as long as legal conditions (*supra*) are met.

Secondly, there is also a 'social' old-age pension (*pensão social de velhice*) of a non-contributory nature which is granted under the following conditions: (i) being legally resident in Portugal (as long as EU foreigners or coming from countries with BSSA in place); (ii) income lower than a given threshold (for 2018, 428.90€); (iii) legal age to request the social pension (the same as for the old-age pension – *supra*); (iv) not benefiting from any other kind of pension and if so, the respective amount should be inferior to the value of the social pension.²³

An additional remark should be added to the applicability of internal rules on old-age protection in the case of migrant citizens. As in the case of contributory invalidity pensions, coordination mechanisms (e.g. aggregation of periods and benefit export) are firstly recognized in Portuguese internal law (Decree-Law 187/2007), notably with the applicability of the principle of the aggregation of periods, provided an international coordination instrument involving the Portuguese State has been signed.²⁴ On the contrary, social old-age pensions are based on the residence condition and for this reason export of benefits is prevented.

Finally, there are certain supplements of a non-contributory nature that may be paid on top of the old-age pension. These are the Dependency Supplement (*Complemento de Dependência*) paid to pensioners in a state of dependency, and the

²² See Decree-Law 187/2007 (*Decreto-Lei n.º 187/2007, de 10 de maio*), with changes – social protection in old age and legal invalidity framework.

²³ Decree-Law 160/80 (*Decreto-lei n.º 160/80, de 27 de maio*) and Decree-Law 46/80 (*Decreto-lei n.º 464/80, de 13 de outubro*).

²⁴ Pension exportability is allowed either by international rules (article 7 of Regulation EC 883/04 in the case of EU residents, or some Bilateral Agreements signed), and first and foremost by the internal Portuguese legislation (article 76/3 of the Decree-Law 187/2007) setting that the pension request – in the case of residents abroad – can be presented in the social security service or website.

Solidarity Supplement for the Elderly (*Complemento Solidário para Idosos – CSI*), paid to pensioners with limited means who have reached or passed the normal state pension age under the general social security scheme and who are resident in Portugal.²⁵

23.2.4 Family Benefits

With respect to maternity/paternity, a significant innovation was introduced by the 2009 Labour Code: the current regime no longer distinguishes, as it did in the past, between maternity and paternity leaves, but uses common expressions of 'parental leaves' that can be shared, within certain conditions, between mothers and fathers. The idea of equal treatment between women and men was therefore reinforced in the Portuguese regime.

Parental leaves include maternity, paternity and adoption²⁶ and they can be of two types: (i) initial parental leaves (to be used immediately before or after birth/adoption) that can be shared between parents²⁷; (ii) subsequent parental leaves (to be used in a subsequent period of the child's life). The latter, for example, includes an extended parental leave (three more months added to the initial period, and this can be taken by one or both parents, but never at the same time) and a leave for childcare. Furthermore, the social security system also pays subsidies for motherhood specific risks such as benefits for clinical risk during pregnancy, for termination of pregnancy and for special risk.

Parental leaves are of a contributory nature, being financed by payroll contributions paid by workers and employers, if applicable. Foreign citizens are entitled to all these benefits in the same conditions as nationals and citizens residing abroad can also claim these benefits as long as contributory conditions are fulfilled. Moreover, some specific and limited benefits, entitled 'social parental benefits' can be granted to nationals or foreigners without a (sufficient) contributory history – in this case being residence-based and means-tested benefits. In either cases, entitlement conditions are related to the mother and the father, not the child: notably, there

²⁵ Decree-Law 232/2005 with amendments (Decreto-lei n.º 232/2005, de 29 de dezembro).

²⁶ See Law 7/2009 (*Lei n.º 7/2009, de 12 de fevereiro*), with amendments – 'Labour Code'; Decree-Law 91/2009 (*Decreto-Lei n.º 91/2009, de 9 de abril*) - parental benefits.

²⁷ Granted for a period of up to 120 or 150 consecutive days (paid at 100% of the reference income in the former case, at 80% in the latter), according to the parents' choice, without prejudice to the rights of the mother (*infra*). Both parents may take this period at the same time. If the baby is stillborn, then the entitlement is only 120 days. The benefit is extended by 30 consecutive days per child, in the case of multiple live births. The 120 days or 150 days may be extended for shared leave. Each parent is exclusively entitled to specific days of leave: (a) mothers are exclusively entitled to take parental leave of up to 30 days before the birth, but must take 6 consecutive weeks of leave following the birth; (b) fathers are required to take ten working days of parental leave, five of which must be consecutive, within the 30 days immediately following the birth. The remaining days may be taken in a single stretch or at intervals.

are no specific requirements regarding the country of residence or nationality of the child.

As for family benefits, since the enactment of the Social Security Framework Law of 2007, these benefits are basically financed by budget transfers and taxes. Family benefits are considered ‘universal-type’, non-contributory social benefits relying on residence and means-testing conditions. The basic condition for accessing child benefit is that children should reside in Portugal. It should be noted that in Portugal, children, not parents, are the direct beneficiaries of these family benefits.²⁸ For children, residence in Portugal is therefore required, but the respective parents can live and/or work abroad. The main eligibility conditions thus include: (i) being legally resident in Portugal; (ii) not working; (iii) family reference income is equal to or less than the fourth income bracket amount²⁹; (iv) the total value of the entire household’s movable assets is less than €101,116.80. Children aged up to 16 years old are hence entitled to receive the benefit as long as they fulfil the previous conditions (after the age of 16, family benefits are also granted depending on age and education level).

Non-national children are also entitled to these benefits as long as they reside in Portugal, even if this is not the case with respective parents and regardless nationality.

23.2.5 *Guaranteed Minimum Resources*

The guaranteed minimum resources, in Portugal known as Social Integration Income (*Rendimento Social de Inserção*, RSI) is mostly meant to address poverty and social exclusion amongst residents in Portugal. The RSI is a cash means-tested benefit (considering household incomes and real estate) established to help beneficiaries with their basic needs, but also a measure aiming at fostering their integration professionally and within society. Therefore, beneficiaries must be actively engaged in job search or accept other activating measures (e.g. training).³⁰ Being based on residence, this benefit cannot be exported to other countries.

²⁸ See Decree-Law 176/2003, of 2nd of August 2003 (*Decreto-Lei n.º 176/2003, de 8 de agosto*) with several changes.

²⁹ The reference income is calculated by taking the total earnings of the household and dividing this by the number of children in the same household, plus one. However, the benefit is only given to children who meet the eligibility conditions and providing that the household income does not exceed the fourth income bracket ceiling. Reference income brackets (for 2018): 1st Bracket: $0.5 \times \text{IAS}^* \times 14 = \text{Up to } €3002.3$ (inclusive); 2nd Bracket: More than $0.5 \times \text{IAS} \times 14$ to $1 \times \text{IAS} \times 14 = \text{More than } €3002.3$ to $€6004.6$ (inclusive); 3rd Bracket: More than $1 \times \text{IAS} \times 14$ to $1.5 \times \text{IAS} \times 14 = \text{More than } €6004.6$ to $€9006.9$ (inclusive); 4th Bracket: More than $1.5 \times \text{IAS} \times 14$ to $2.5 \times \text{IAS} \times 14 = \text{More than } €9006.9$ to $€15011.5$ (inclusive); 5th Bracket: More than $2.5 \times \text{IAS} \times 14 = \text{More than } €15011.5$. *€428.90 for 2018.

³⁰ Law 13/2003 (*Lei n.º 13/2003, de 21 de maio*), with amendments – establishing Social Integration Income, and Decree-Law 1/2016 (*Decreto-Lei n.º 1/2016, de 6 de janeiro*).

The eligibility conditions for accessing the RSI have been progressively restricted during the Euro crisis (between 2009 and 2015), as was noted in the European Commission (2015, p. 7) study. Problems of adequacy, effectiveness and 'non-take-up' arose during this dramatic period (which ultimately added to the increase of poverty rates in Portugal). In this study, the Portuguese regime was included in the category of "simple and non-categorical schemes but with rather restricted eligibility and coverage" (European Commission 2015, p. 7), and the main conclusion was that amongst EU countries, Portugal was one of the seven where benefit coverage had deteriorated since 2009 (*Idem*, p. 8).

The eligibility conditions are (still) very restrictive: (i) the household must not have movable assets or goods subject to registration worth more than €25,279.20; (ii) the claimant must be a legal resident of Portugal; (iii) the claimant must face serious financial need; (iv) sign and comply with the Integration Contract (*Contrato de Inserção*); (v) be over 18 years of age, with few exceptions; (vi) be registered with the employment centre (*centro de emprego*) in his/her area (if unemployed and capable of working); (vii) not be detained in prison; (viii) not have been placed in any institutions financed by the State. These conditions apply to EU foreign citizens alike. As for non-EU foreign citizens (from a country with no agreement of free movement with EU), residence condition is more demanding, because he/she must have lived in Portugal for at least one year.

23.3 Conclusions

Social benefits in Portugal are not, in principle, conditional on nationality: a foreign citizen is granted treatment identical to that of a Portuguese national as long as the specific conditions are met (basically, a contribution record for contributory benefits and residence and means-testing conditions for non-contributory benefits).³¹ This is a consequence of a national treatment principle (prohibition of discrimination) that is of general application. Moreover, due to the same principle, Portugal has not implemented any kind of specific social benefits scheme only for foreigners or for citizens residing abroad.

In turn, for most benefits (either contributory or not), the condition of a minimum period of residence is not imposed by the Portuguese legislation. The only exception concerns the Social Integration Income, for which a minimum period of one year of residence is required. Moreover, claiming and receiving social benefits should not affect – at least in legal terms – the access of foreigners to the Portuguese citizenship (naturalization process), their residence permits, or their right to family reunification. In practical terms, though, and since the residence visa (*visto de residência*) is mostly granted to foreigners (notably those coming from non-EU countries) that

³¹ Some exceptions can be nevertheless highlighted, as the aforementioned case with old-age 'social' pension, in which non-EU foreign citizens experience restrictions.

enter the country to work, and with an employment contract, the lack of this contract may delay or making the granting of the visa more difficult.

In general, when assessing the applicability of coordination rules and international mechanisms to the framing of migration issues, and in particular the applicability of the residence criterion, the following patterns can be observed with regard to the Portuguese menu of social benefits.

Firstly, the minimum guarantee of resources (*Rendimento Social de Inserção*) is only granted to citizens with (legal) residence in Portugal – including the case of Portuguese citizens – therefore, the residence condition is very strong in this case. The same happens typically with other non-contributory benefits, such as social pensions and family benefits (the beneficiaries of which are the children).

Secondly, regarding health care benefits (in kind), although the NHCS is a universal system financed through general taxation and therefore dependent on the residence condition (only residents in Portugal should be entitled), in some cases – notably under Regulation (EC) 883/2004 and the (new) Cross Border Health Care Directive (Directive 2011/24/EU) – access to health care provision can be ‘opened’ to citizens insured abroad (foreigners and national citizens). It is thus possible to state that in these particular cases (within the EU), the residence condition (set as the primary condition in the Portuguese NHCS) is outweighed by a labour insurance-type link with a (different EU) social security system (which is, by its nature, a non-universal, non-residence-based link).

Thirdly, regarding contributory social benefits, two extremely different outcomes occur, both resulting from the Portuguese internal law. The first one concerns the case of parental allowances including both maternity and paternity in the Portuguese system. In this case, the residence condition is weak and almost irrelevant, meaning that parental benefits can be claimed even by those beneficiaries (Portuguese nationals or foreign citizens) that no longer live in Portugal, as long as the six month request period (after the date of birth) is fulfilled (which is the same as for residents in Portugal) and regardless of the place of birth of the child. The second scenario is in the field of unemployment benefits. Despite the contributory nature of these benefits, the residence conditions remain highly active, meaning that claimants must keep some contact with the Portuguese system through residence, not the least because they have to fulfil activating conditions vis-à-vis the employment centre (e.g. searching for and/or acceptance of suitable work). For this very reason, when beneficiaries leave the national territory, the benefit is suspended for three months, a period after which – if they do not return – it ceases to be paid. Ultimately, the export of unemployment benefits (as allowed for in the European Regulations) can be impaired by this residence-type obligation towards the State of origin.

Finally, between these two extreme opposite outcomes, the Portuguese regime with respect to contributory benefits may be closer, in certain cases, to the former solution (weak residence condition) – which is the case with old-age and invalidity pensions, whereas in other cases the solution is closer to the latter (strong residence condition) – which is the case with sickness benefits.

Acknowledgements This chapter is part of the project “Migration and Transnational Social Protection in (Post) Crisis Europe (MiTSoPro)” that has received funding from the European Research Council (ERC) under the European Union’s Horizon 2020 research and innovation programme (Grant Agreement No. 680014). In addition to this chapter, readers can find a series of indicators comparing national social protection and diaspora policies across 40 countries on the following website: <http://labos.ulg.ac.be/socialprotection/>.

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