

# Immigrants' Rights in Portugal

SUPPORT FOR AND OPPOSITION TO IMMIGRATION  
IN PORTUGAL IN A COMPARATIVE PERSPECTIVE  
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## **1. Introduction**

### **a. Methodological notes**

This report was produced within the scope of the research project entitled Support and Opposition to Migration in Portugal and describes the evolution of the legal framework for the integration of immigrants in Portugal. It covers the period between 1995 and 2014 and draws on the framework provided by the Migration Integration Policy Project (MIPEX), which evaluates migrants' opportunities to participate in European societies.

For the purpose of this report, MIPEX 2007 was employed as a reference framework. It utilises 140 indicators across six policy areas, in which an index allows for the measurement of Portugal's proximity to the best practices defined by current legislation at the European Union (EU) level.

MIPEX indicators were collected for the years 1995, 2000 and 2004<sup>1</sup>, while MIPEX data was used for the years 2007, 2011 and 2014<sup>2</sup>.

MIPEX analyses the following policy strands: labour market status, family reunion, long-term residence, political participation, access to nationality and anti-discrimination policies. Within each policy area, each indicator is given a score along a three point-scale of 0, 50 and 100 (which reflects alignment with best practice). Each policy area contains different dimensions (e.g. the labour market access policy area contains the dimensions of eligibility, labour market integration measures, security of employment, and rights associated with status). The score of the policy strands is the result of the average of the scores reached in each dimension.

Data collected for each year reflects the situation as of 31 December.

### **b. Evolution of the portuguese legal and policy framework for Immigration**

The Portuguese legal framework for the regulation of immigration was not developed until the 1980s, when immigration started to be an important element of the country's demography. Development of immigration policy began as a reaction to the increase in the foreign population settled in Portugal and the country's accession to the European Economic Community.

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<sup>1</sup> Although MIPEX 2004 already included Portugal, changes were made for MIPEX II in 2007 and an update was needed, so we decided to use the 2007 framework and re-evaluate the policy areas for 2004.

<sup>2</sup> All the information on MIPEX is available at: <http://www.mipex.eu/>. Data for Portugal available at: <http://www.mipex.eu/portugal>.

The first diploma aiming to control immigration flows was Decree-Law no. 59/93, which brought the first revision of the preceding Decree-Law no. 264-B/81. This legislation was one of the main sources of information for 1995, along with the first revision of the Nationality Law enacted in 1981, Law no. 95/94.

For the year 2000, Decree-Law no. 244/98 was the main source of data. Some diplomas regarding the political participation of immigrants had an effect on the evaluation of that year, as they were produced in the late 1990s. It must be highlighted that other specific diplomas, such as Decree-Law no. 3-A/96, which created the High Commissariat of Immigration and Ethnic Minorities, or the anti-discrimination Decree-Law no. 134/99, were also the basis for some improvements in that year's scores.

Regarding the year 2004, Decree-Law no. 65/2000, Decree-Law no. 4/2001 and Decree-Law no. 34/2003 reformed Decree-Law no. 244/98 and provided the legislative framework to score the strands of labour market status, family reunion and long-term residence.

For the following years, the MIPEX was the main source of data. Regarding that period, there are three legislative developments that should be highlighted, as they help explain some variations in the scores: the approval of a National Plan for the Integration of Immigrants, in 2007; the enactment of Law no. 23/2007 of 4 July, which revises the conditions concerning entry, settlement and removal of TCNs (third-country nationals) introduces the long-term residence authorization, for instance; and Organic Law no. 2/2006 of 17 April, which amends the 1994 Nationality Act.

**Table 1** - Portuguese legislation on immigration and integration policies, 1995-2014<sup>3</sup>

Legislation Diário da República (Official Journal of the Republic of Portugal)
General Law on the permanence of foreign citizens in national territory
<u>Decree-Law no. 264-B/81, of 3 September 1981</u>
- Establishes the general regulations for the entry, stay and expulsion of foreigners from national territory.
<u>Decree-Law no. 212/92, of 12 October 1992</u>
- The first regularization programme for irregular immigrants.
<u>Decree-Law no. 59/93, of 3 March 1993</u>

<sup>3</sup> This table includes legislation applicable to TCN and relevant for this report. Data for the years 2007, 2011 and 2014 comes directly from MIPEX project, so we are not including all legislation, which can be consulted on MIPEX Portugal website available at <http://www.mipex.eu/portugal>.

- Establishes the new rules for the entry, stay, departure and expulsion of foreigners from national territory.

Law no. 17/96, of 24 May 1996

- The second regularization programme for irregular immigrants.

Law no. 20/98, of 12 May 1998

- Regulates the work of foreigners in Portugal, eliminating the quota system

Decree-Law no. 244/98, of 8 August 1998

- Regulates the entry, stay, departure and expulsion of foreigners from national territory.

Law no. 97/99, of 26 July 1999

- First revision of Decree-Law no. 244/98.

Decree-Law no. 65/2000, of 26 April 2000

- Regulates Decree-Law no. 244/98 on the entry, stay, departure and expulsion of foreigners from national territory.

Decree-Law no. 4/2001, of 10 January 2001

- Establishes new rules for the entry, stay, departure and expulsion of foreigners from national territory.

Decree-Law no. 34/2003, of 25 February 2003

- Establishes new rules for the entry, stay, departure and expulsion of foreigners from national territory.

Ordinance no. 297/94, of 18 May 1994, Ordinance no. 73/99, of 29 January 1999 and Ordinance no. 27-A/2002, of 4 January 2002

- All establish the costs of renewal and issuance of Residence and other permits/documents.

Decree-Law no. 283/83 of 21 June

- Regulates the equivalence between tertiary diplomas obtained abroad and ones obtained in Portugal.

Law on support and political participation of immigrants

Decree-Law no. 594/74, of 7 November

- Establishes the right to free association as a basic guarantee for the personal fulfilment of individuals living in society

Decree-Law no. 319-A/76, of 3 May 1976

- Electoral law on Presidential elections (has suffered several changes until present)

Law no. 14/79 of 16 March (which was later revised)

- Law on the right to vote

Decree-Law no. 3-A/96, of 26 January 1996

- Creates ACIME (High Commissariat for Immigration and Ethnic Minorities).

Law no. 50/96

- Transposes the Directive no. 94/80/CE and extends the right to vote, in conditions of transnational agreements including reciprocity regarding voting rights, to some foreign citizens.

Decree-Law no. 39/98, of 28 February 1998

- Creates the Advisory Council for Immigration Issues.

Decree-Law no. 115/99 of 3 August 1999

- Establishes the legal framework for the Associations of Migrants.

Organic Law 1/2001 of 14 August

- Regulates who can be elected in local elections.

Regional Implementing Decree-no. 20/2002/A of 22 November 2002

- Creates the Regional Consultative Council for Immigration Affairs

Organic Law 2/2003 of 22 August

- Law on Political Parties

Nationality Law and Regulatory Decrees

Law no. 37/81, of 3 October 1981

Decree-Law no. 322/82 of 12 August

Law no. 95/94, of 19 August

Decree-Law no. 253/94, of 20 October

Decree-Law no. 37/97, of 31 January

Organic Law no. 2/2006 of 17 April

Anti-discrimination

Law 134/99 of 3 August

- Prohibits discrimination on grounds of race, colour, nationality or ethnic origin.

Law no. 16/2001 of 22 June

- Establishes religious freedom.

Law 111/2000 of 4 July

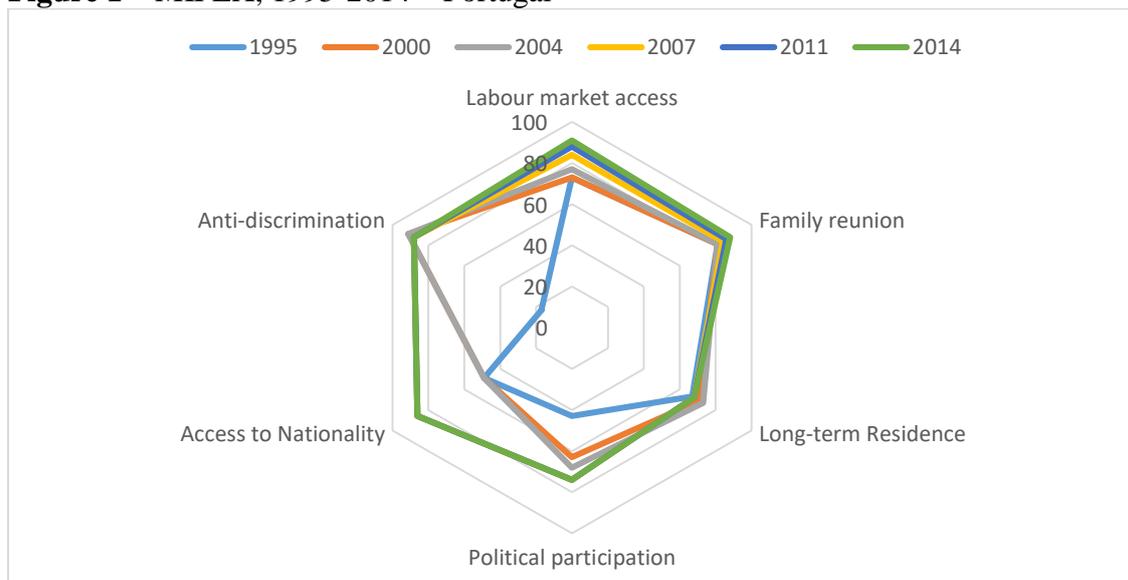
- Regulates Law no. 134/1999 of 28 August on the prevention and prohibition of discrimination in the exercise of rights on grounds of race, colour, national origin or ethnic origin.

Source: Author's own work.

### c. Key findings

The shifts in the different policy areas of relevance to the integration of immigrants can be seen in Figure 1, which shows how legislation regulating immigration improved over the years and how the strands' scores were so different when immigration started to intensify, as was the case in 1995 (see Figure 2). The strand with most variation is anti-discrimination, followed by access to nationality and political participation. In general, legislation has kept pace with EU directives and has been moving towards creating better conditions for the integration of TCNs. There is, still, margin for improvement.

Figure 1 – MIPEX, 1995-2014 – Portugal



Source: Author's own work for 1995 and 2000; MIPEX II, MIPEX III and MIPEX IV for 2004, 2011 and 2014.

Some differences can be found in some indicators between 1995 and 2011, in part because, in 2007, a National Plan for the Integration of Immigrants (Plano para a Integração dos Imigrantes – PII) set up some measures to promote: the tackling of school dropout and failure rates among descendants of immigrants; the strengthening of vocational training for immigrant communities; investment in the expansion of programs aimed at teaching of the Portuguese language; the easing of immigrants' ability to fully

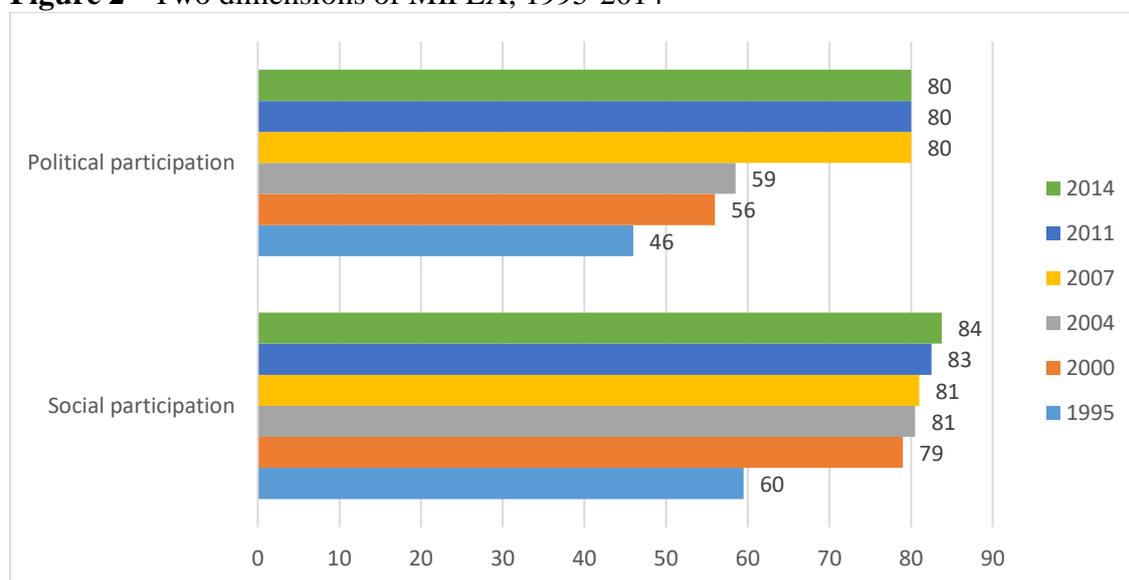
exercise their individual and social rights, especially in the areas of health, housing and justice.

The combined indicator of the political participation of immigrants (including political participation and access to nationality) and the combined indicator of the social participation of immigrants (including labour market access, family reunion, anti-discrimination and long-term residence) improved during the second half of the 1990's and the first decade of the 2000's.

Regarding political participation, two major changes had effects on the increase in the score: on the one hand, the creation of a Consultative Council for Immigrant Affairs, in 1998; and, on the other hand, the revision of the nationality law in 2006, which is detailed in the corresponding strand and contributed to the increase between 2004 and 2007.

In what concerns social participation, one contributing factor for the increase in the score between 1995 and 2000 was Law no. 134/99, which prohibits discrimination on grounds of race, colour, nationality or ethnic origin. Since it was non-existent before, the score for its indicators are zero for 1995.

**Figure 2** - Two dimensions of MIPEX, 1995-2014



**Source:** Author's own work for 1995 and 2000; MIPEX II, MIPEX III and MIPEX IV for 2004, 2011 and 2014.

## **2. Tracing legal developments**

### **a. Labour market access**

Access to the labour market reached a high score in 2014, following years of continual increase and, also, because of two National Plans for Immigrant Integration, the first in 2007 and the second in 2013.

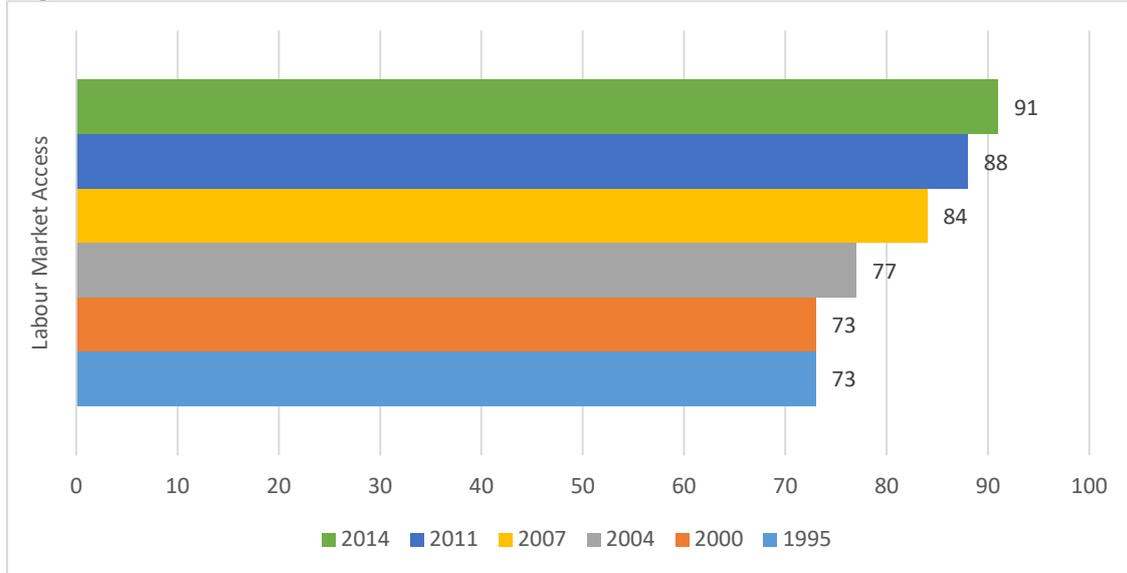
The scores were best practice except on four indicators, that scored zero or 50 until 2004: the recognition of skills and qualifications obtained outside the EU, measures to further the integration of TCN into the labour market; state facilitation of the recognition of skills and qualifications obtained outside the EU; revoking or refusing to renew a TCN's work/residence permit due to termination of their work contract.

The recognition of skills and qualifications obtained outside the EU scored 50. Even though the 2007 National Plan for Immigrant Integration created some conditions for more justice regarding this indicator, this score of 50 remained unaltered.

The facilitation by the state of the recognition of skills and qualifications improved, in 2002, with a project related to the recognition of medical doctors' degrees/diplomas (Gulbenkian and Serviço Jesuíta aos Refugiados) and with the creation of the National Immigrant Support Centre. The Qualifications Support Office (Gabinete de Apoio ao Acesso e Creditação de Qualificações) at this Centre provides information on methods of qualification, within the framework of the National Catalogue of Qualifications, as well as on the processes of equivalence/recognition for various courses. The score for this indicator was zero in 1995 and 2000 and increased to 50 in 2004.

The reasons for the termination or non-renewal of permits are not fully represented by the possibilities presented in the MIPEX and scored 50 in the three years analysed. In 2001, a new kind of legal permit was established, in Portugal, in order to regularize undocumented immigrants in Portugal. It was a temporary residence authorisation established by the Decree-Law no. 4/2001 and, in practice, was a work visa granted to foreign citizens living irregularly in Portugal, if they had a work contract with an employer.

**Figure 3 - Labour market access, 1995-2014**



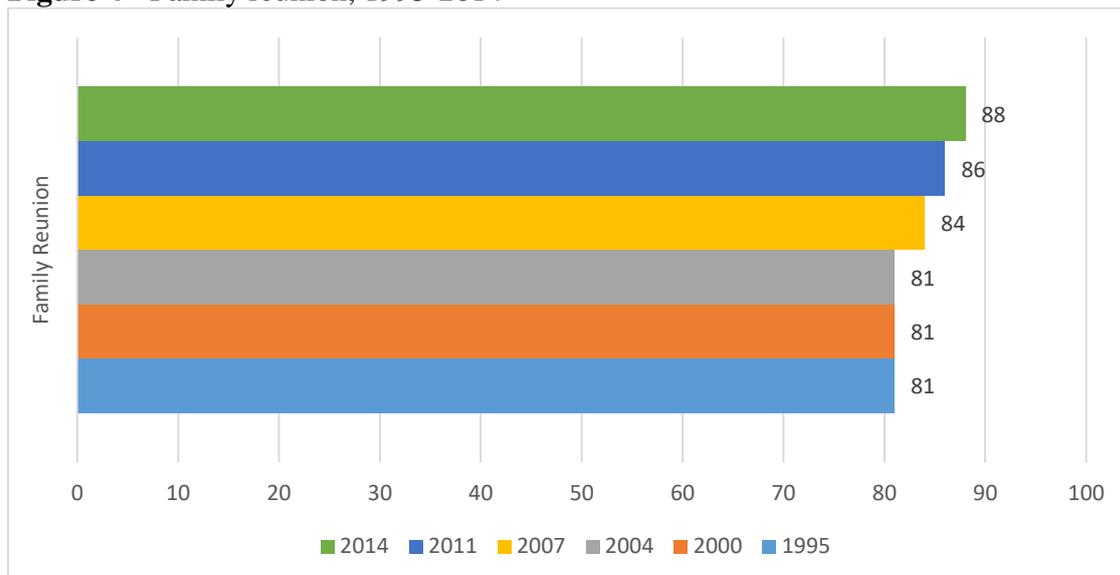
**Source:** Author's own work for 1995 and 2000; MIPEX II, MIPEX III and MIPEX IV for 2004, 2011 and 2014.

### **b. Family reunion**

Family reunion was not a topic deserving of much detail in the first diplomas attempting to regulate flows. However, a certain degree of legal vacuum allowed for the emergence of favourable conditions for immigrants, in this regard. Since the enactment Decree-Law no. 244/98, up until the latest diplomas, this strand has become more detailed, which shows that it has become more salient.

The following requirements were not ranked best practice: one year of legal residence for the sponsor to apply for family reunion, the economic requirement or the requirement related to accommodation, the length of the application procedure and the costs of the application, and/or the issuance of the permit or its renewal. There is no need for an assessment of language proficiency or other integration assessments to access family reunion.

**Figure 4 - Family reunion, 1995-2014**



**Source:** Author’s own work for 1995 and 2000; MIPEX II, MIPEX III and MIPEX IV for 2004, 2011 and 2014.

### **c. Long-term residence**

Until 2007, a status of long-term residence was not defined in law. The permanent residence authorization was the one we considered for the purpose of this analysis.

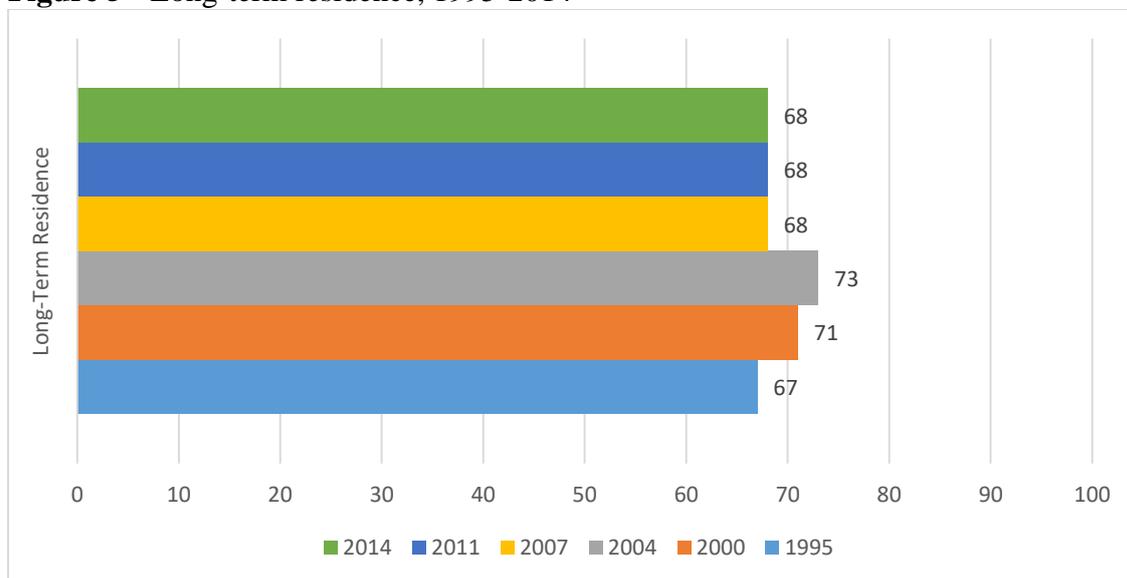
In 1995, this permanent residence authorization was designated as being “for life”. To be entitled to it, 20 years of legal residence were required. This period was reduced with the introduction of Decree-Law no. 244/98, which imposed a requirement of 10 years of legal residence for TCNs to gain access to a permanent authorization. In 2003, a factor of positive discrimination was introduced when it was established that TCN from PALOP (Portuguese-speaking African countries) only required six years of legal residence to apply for a permanent residence authorization, instead of the requirement of eight years imposed on all others TCNs. Because the length of time decreased, the required period of habitual residence scored 50 in 2004.

The requirement of economic resources, the length of the application procedure, freedom of movement within the EU and the simultaneous possession of a permit to stay in more than one Member State had a score of zero until 2004.

The conditions and procedures for the acquisition of long term resident status were established by Law no. 23/2007 of 4 July, transposing Council Directive no. 2003/109/CE, of 25 November 2003, concerning the status of long-term residence for TCN. Along with the introduction of the long-term resident status into law, more demanding conditions came into effect. The requirements, including the assessment of

language proficiency and the costs associated with acquiring the permits, contributed to the lower scores after 2004 (see Figure 5).

**Figure 5** - Long-term residence, 1995-2014



**Source:** Author's own work for 1995 and 2000; MIPEX II, MIPEX III and MIPEX IV for 2004, 2011 and 2014.

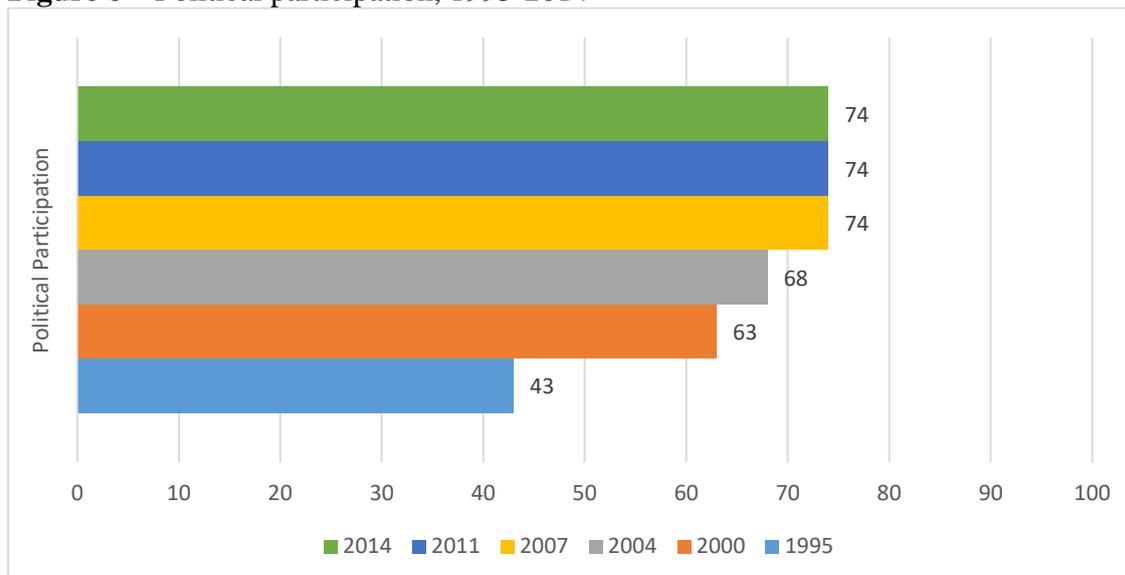
#### **d. Political participation**

The score for the political participation of immigrants' strand increased greatly between 1995 and 2007, with the score then remaining unchanged until 2014.

Regarding the right to vote, nothing changed during the period under study: TCNs are not, in general, eligible to become voters or enjoy the right to vote. The present version of the electoral law governing presidential elections (Decree-Law n.º 319-A/76) extends the right to vote to citizens of Portuguese-speaking countries who are living in Portugal and benefit from equal political rights under transnational agreements, including reciprocity regarding voting rights, provided that they have registered as voters in Portugal. By means of a bilateral international agreement, Brazilian residents in Portugal have the possibility of gaining access to an almost complete set of political rights, including the ability to vote in all the electoral ballots.

The main differences between 1995 and 2007 are the creation of the (National) Consultative Council for Immigration Issues in 1998 (with effects on the 2000 score), the creation of the Regional Consultative Council for Immigration Issues in 2002 (with effects on the 2004 score) and the creation of the (Local) Consultative Council of Communities in Porto (Porto is the second largest city in the country) in 2005.

**Figure 6 – Political participation, 1995-2014**



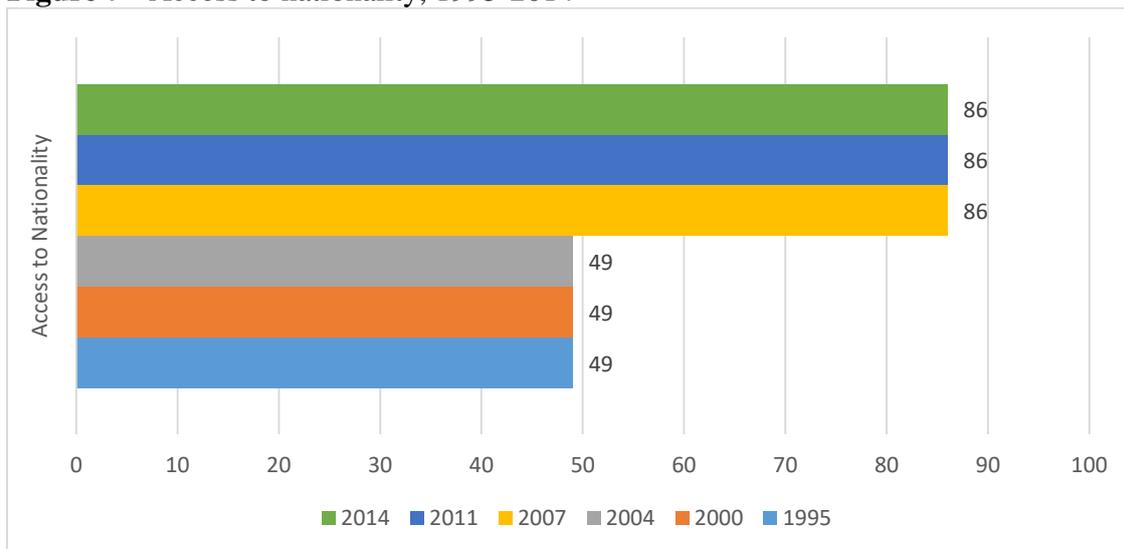
**Source:** Author's own work for 1995 and 2000; MIPEX II, MIPEX III and MIPEX IV for 2004, 2011 and 2014.

#### **e. Access to Nationality**

Access to nationality underwent a major revision in 2006, which had a considerable impact on the score for this strand. From 1995 until 2006, the principle of *jus sanguinis* was prevalent in the legislation, whereby children born in Portugal to foreign parents were only considered Portuguese if their parents had continuously resided in the country with a valid residence permit for at least 6 or 10 years, depending on whether they were, respectively, citizens of countries with Portuguese as an official language or otherwise.

In 2006, with Organic Law no. 2/2006 of 17 April, the prerequisite of 6 years of legal residence became equal for all TCN. Another major change was that minors born on Portuguese soil, children of TCN, who have a sufficient knowledge of the Portuguese language, may have Portuguese nationality if one of the following conditions has also been met: one of the parents has resided lawfully in Portugal for at least five years; the minor has completed his/her compulsory primary education (1<sup>st</sup> cycle). Therefore, principle of *jus solis* gained ground in the national legislation.

**Figure 7 - Access to nationality, 1995-2014**



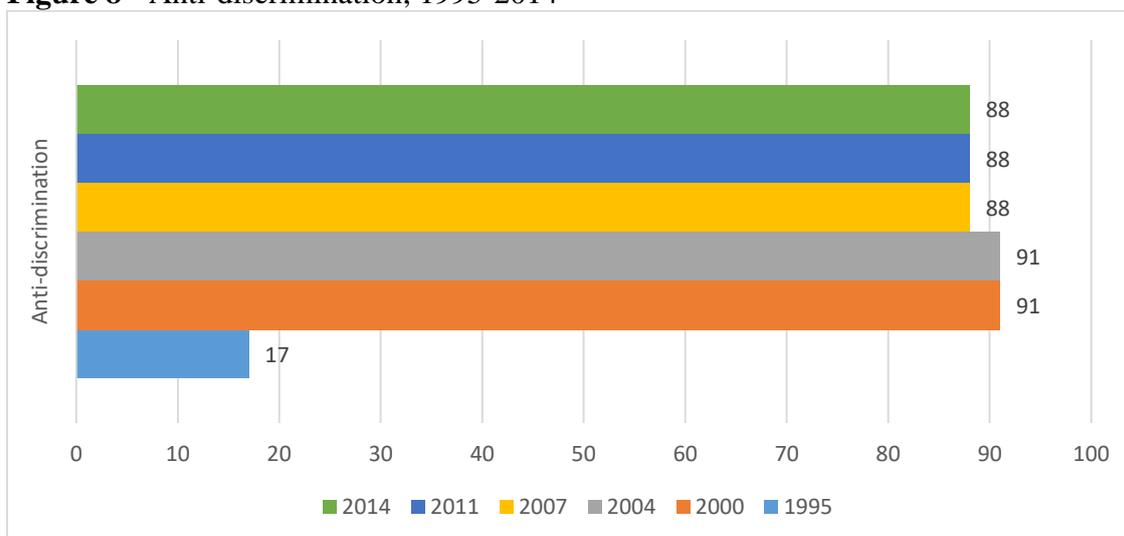
**Source:** Author’s own work for 1995 and 2000; MIPEX II, MIPEX III and MIPEX IV for 2004, 2011 and 2014.

#### **f. Anti-discrimination**

The law on anti-discrimination dates back to 1999. Although immigrants were protected, regarding discrimination, through other legal instruments such as the Constitution of the Portuguese Republic or the Criminal Code, the indicators corresponding to specific legislation were coded with zero for 1995 because no specific legislation existed.

With the legislation, the majority of the indicators were ranked best practice, as can be seen in Figure 8.

**Figure 8 - Anti-discrimination, 1995-2014**



**Source:** Author’s own work for 1995 and 2000; MIPEX II, MIPEX III and MIPEX IV for 2004, 2011 and 2014.

### **3. Conclusion**

The analysis of the legislation that set the framework for the integration of TCN in Portugal between 1995 and 2014 indicates that immigration became a relevant policy issue. Given the list of decrees and laws published during this period, there is evidence of sparse regulation of matters concerning the improvement of conditions for the integration of foreign citizens until 1995. The increase in the scores for the strands, particularly for political participation, access to nationality and anti-discrimination, provided further evidence of the increase in regulation that no longer exclusively aimed at controlling the inflows but also at producing an inclusive policy.

Most strands in Portugal have good scores for 2014. We highlight that the strands concerning long-term residence, political participation, access to nationality and anti-discrimination contain some margin for improvement in the future.

Regarding long-term residence, the bureaucratic process for obtaining this residence authorisation as well as the costs of obtaining the documentation required for the application should be reframed and are responsible for the stagnant scores.

Political participation has great margin for improvement. Extending the right to vote to all immigrants seems to be the only possible path to attain a better practice on the strand of political participation. Foreign citizens can only access full political rights under bilateral agreements including reciprocity regarding voting rights. In all other cases, in general, foreign citizens are deprived of voting rights in national elections.

Regarding access to national citizenship, the conditions linked to the years of legal residence and the assessment of language proficiency (A2) are, currently, the factors inhibiting higher scores for this strand.

The anti-discrimination dimension could be enhanced with the inclusion of the prohibition of discrimination on grounds of religion.