



# UNODC

United Nations Office on Drugs and Crime

## United Nations Convention against Corruption

Self-assessment Name: UNCAC 2  
Country: Portugal  
Date of creation: 13-05-2011  
Assessor: Eurico Pedrosa  
Assessor Position: Legal Adviser  
Comments:

Completed self-assessment checklists should be sent to:

Corruption and Economic Crime Section  
Division for Treaty Affairs  
United Nations Office on Drugs and Crime  
Vienna International Centre  
PO Box 500  
1400 Vienna, Austria

Attn: Giovanni Gallo

Telephone: + (43) (1) 26060-5179  
Telefax: + (43) (1) 26060-75179  
E-mail: [uncacselfassessment@unodc.org](mailto:uncacselfassessment@unodc.org)

## A. General information

### A. General information

#### 1. General information

Please provide general information on the ratification and status of UNCAC in your country (use the "Use template answer" button in the answer field to see a generic text)

#### Mechanism for the Review of Implementation of the United Nations Convention against Corruption

First year of the first cycle

(Chapter III on "Criminalization and law enforcement" and Chapter IV on "International Cooperation")

Response of Portugal to the comprehensive self-assessment checklist

Portugal covers an area of 92 152 Km<sup>2</sup>, and is located at the southwest corner of Europe. To the south and west, mainland Portugal borders the Atlantic Ocean and to the north and east it shares territorial boundaries with Spain. Portugal comprises 18 administrative districts on the mainland and two autonomous regions in the Atlantic (Madeira and Azores).

**Official name:** Portuguese Republic

**Capital:** Lisbon

**Area:** 92.152 Km<sup>2</sup>

**Population:** About 11.000.000

**Currency:** € - Euro

**Political system:** Republic

**Language:** Portuguese

Portugal is one of the oldest states in Europe and has been a republic since 1910. It is governed by a Constitution establishing a democratic state of law, in force since 2 of April

1976, with a number of important amendments introduced since then, being the last one the seventh revision (Constitutional Law no. 1/2005, of 12 August).

The Portuguese legal system is based on Civil Law.

The constitutional system establishes the following sovereign bodies: the President of the Republic, who represents the Portuguese Republic, the Parliament (*Assembleia da República*), representing the citizens of Portugal, the Government and the courts of law, which administer justice in the name of the people. The courts are subject solely to the law and their decisions (through the Constitutional Court, Supreme Court of Justice, Judicial courts, Court of auditors, Administrative courts and Tax courts) are binding for all public and private entities.

The President and the Parliament are elected by the people through universal, direct, secret and set-period ballot.

Portugal is a founding member of NATO, the OECD and of the Community of Portuguese Speaking Countries created in 1996. Portugal is also member of the United Nations since 1955, of the Council of Europe since 1976, of the European Union since 1986, and of FATF since 1990.

### **Respect for the principles of transparency and good governance**

In accordance with the Portuguese Constitution and concerning the organization of political power (specifically Article 276), Public Administration must look after the public interest respecting the rights and interests of citizens. Those who work in Administration, and the public bodies and institutions themselves, are subordinate to the Constitution and the Law.

Public officials, in the performance of their tasks, should act with respect for the principles of equality, proportionality, justice, impartiality and good faith. Seen from this point of view, Public Administration is guided by the principles of transparency and good governance.

The constitutional right of access to information in the public sector is guaranteed to all citizens (Article 37 (1)). This includes archives and administrative records, along with any cases and procedures in which they are personally involved (Article 268 (1)).

Law no. 83/95 of 31 August defines the terms of participation by the people in

administrative procedures and the right to popular action to prevent and repress offences caused by diffuse interests. This concept includes public health, the environment, the quality of life, consumer protection in goods and services, the nation's cultural heritage and everything in the public domain.

Access to administrative documents is regulated by Law no. 65/93 of 26 August, known as LADA (Law to the Access on Administrative Documents).

From the substantive point of view, LADA lays out the right of access to administrative documents, irrespective of their purpose and intent. It defines the concepts of administrative documents, nominative documents and personal data; it stipulates general principles and specifies exceptions to the rule of universality; and it sets out the rules relating to the exercise of this right. Improving public administration includes more measures aimed at bringing Government closer to the people, who should be treated as customers. One of the ways of bringing about this closer relationship is the stipulation of the open file, expressed in LADA, Article 1 and explained in more detail in Article 7 (1) in the following way: "Everyone has the right to information through access to administrative documents containing no specific names".

LADA in fact went further than the constitutional law itself. The Constitution enshrines the citizens' right of access and LADA makes it clear that this right covers not only natural persons but also legal persons. And it can be concluded from an analysis of the law that the right to exercise this requires neither justification nor specific grounds. It is also independent of any administrative process or even the invocation of a specific interest. One of the aims of this law is to give people the possibility of monitoring how tax or other public revenue is used, seeing how public administration carries out the tasks and responsibilities entrusted to it, and thus being in a position to fight against omissions by the public powers, for example duly elected representatives who are in parliament or in municipal or regional assemblies.

In terms of control and oversight of the activities of those who hold political office or important functions in public administration, Law no. 34/87 of 16 July also enshrines the concept - in line with the logic of good governance - that the holders of high office are responsible for the criminal actions they engage in during their period in office.

### **Judicial system**

As far as the courts are concerned, they are enshrined in the Constitution of the Portuguese Republic as independent sovereign bodies separate from any other powers of the State, subject only to the law (Article 203). They alone have the right to administer justice in the name of the people. It is incumbent on the courts to ensure the defence of the rights and legitimate interests of all citizens, prevent and sanction the breaches of law and resolve conflicts of public and private interests (Article 202).

*The decisions of the courts are binding on all public and private entities, and prevail over any other entity (Article 205 (1)).* The law governs the terms under which sentences of the court must be carried out by each and every authority and it specifies the sanctions to be imposed for those responsible for the law not being carried out (Article 205 (3)).

In terms of the courts, it is important to note that *magistrates* (judges and public prosecutors) cannot be removed from office and they cannot be transferred, suspended, asked to tender their resignation or dismissed except under the terms of the law. They are completely independent and their hearings and sentences follow the Constitution and the law and no other authority. They cannot be held responsible for their decisions (*in a court of law*), except as set out in the Constitution (Article 216). The Public Prosecution (*Ministério Público*) is the body charged with representing the State in a court of law, carrying out the penal action and procedure and defending the law and the interests determined by it (Article 219, (1)). The body has its own statute and is fully autonomous. The Public Prosecutors (*magistrados do Ministério Público*) perform their duties under the heading of the Attorney General and are subject to legal and objective criteria (Article 219).

The courts are organized in accordance with the Law on the Organisation of Courts and Tribunals in Portugal (Law no. 3/99 of 13 January). In hierarchical terms, there are county courts (*tribunais de comarca*), appeal courts (*tribunais da relação*) and the high court (*Supremo Tribunal de Justiça*). The Portuguese system ensures that everyone concerned can appeal against a decision, legal decisions are effectively carried out and sanctions are duly imposed in cases of non-compliance.

### **Ethical and professional requirements of Magistrates and Public Administration**

In terms of *the fundamental principles and the ethics of public service*, both the initial and the ongoing training of employees give these concepts a salient role in the development and awareness of best practice.

The concept of professional training is defined in Decree-Law no. 50/98 of 11 March, and

focuses on targets for human resources in the public service - better qualified, more conscientious, more highly motivated and more professional. Article 3 defines professional training as “*the total ongoing process by which employees, agents and candidates for recruitment are readied for carrying out their professional activity, through acquiring and developing skills and competence that lead to suitable behaviour for fully integrated professional performance and both personal and professional advancement.*”

It is also worth noting that the National Institute of Administration (*Instituto Nacional de Administração*) has a first line programme which includes a course on “The ethics and Social Responsibility in Public Service.”

There is also a *Centre for Judicial Studies*, the fundamental purpose of which is to provide professional training for judges and public prosecutors (*magistrados*). This covers initial training, complementary studies and ongoing training. In the first course, there is study and analysis of professional practice, the ethical nature of the office and inter-professional relations.

Judges and Public Prosecutors perform their duties under a Code of ethical and professional conduct. The conduct of the judiciary is governed by also a legal statute for Judges and Public Prosecutors (*Estatuto dos Magistrados Judiciais* and *Estatuto do Ministério Público*), which includes provisions on disciplinary issues.

In 1988, a brochure was put together for the Secretariat for Administrative Modernisation. It was entitled “*Code of Conduct and the Ethics of Public Service*”. It was widely circulated by central, regional and municipal authorities. In 1990, the same service published an “*Ethical Charter for Public Administration*”. This was widely circulated in the public service.

More recently, following the practice of earlier years, approval was given to the “*Ethical Charter - Ten Ethical Principles for Public Service*”. This can be found on the home page of the General Directorate of Public Administration, which is the main portal for the public service. These are the ten ethical principles:

1. The Principle of Public Service - Public servants must dedicate themselves exclusively to service for the general public and the citizens, not for any specific or group interest.
2. The Principle of Legality - Public servants must act in accordance with the principles enshrined in the Constitution and within the law.

3. The Principle of Justice and Impartiality - Public servants, during the performance of their activity, must treat all citizens fairly and impartially, acting according to rigorous standards of neutrality.

4. The Principle of Equality - Public servants cannot give undue advantage or cause harm to any citizen on account of parentage, sex, race, language, political, ideological or religious convictions, economic situation or social status.

5. The Principle of Proportionality - Public servants, during the performance of their activity, can only demand of any citizen what is strictly necessary for the execution of the public activity.

6. The Principle of Collaboration and Good Faith - Public servants, during the performance of their tasks, must perform their activity on the basis of good faith, having regard for the interests of the community and enhance its participation in the administrative activity.

7. The Principle of Information and Quality - Public servants should supply information and/or clarification in a clear, simple, polite and speedy fashion.

8. The Principle of Loyalty - Public servants, during the performance of their tasks, should act with loyalty, solidarity and cooperation.

9. The Principle of Integrity - Public servants should be governed by criteria of personal honesty and integrity.

10. The Principle of Competence and Responsibility - Public servants should act in a responsible and competent way, they should be dedicated and self-critical, working always to be better professionals.

As a final point, we should state that a Commission - established in January 2010 - worked in the elaboration of a “Reference framework” for codes of conduct and ethical issues of the public sector (including central, regional and local levels as well as to publicly owned companies). This document is to serve as a guideline for the entities concerned when drawing up or amending their particular ethical codes and rules of conduct and accompanying sanctions. The Commission was chaired over by the Justice Secretary of State and was composed of representatives of the Presidency of the Council of Ministers,

the Ministries of Finance and Public Administration and Justice and by the Secretary-General of the Council for the Prevention of Corruption. The Commission has, in accordance with its mandate (Order no. 376/2010), prepared a draft text for the “Reference Framework”, which currently is being considered by various ministries, including the Ministry of Justice, prior to its submission to Parliament for approval.

The “Management plans on risks of corruption and related offences” to be established by the various entities concerned, which will be monitored by the CPC - Council for the prevention of Corruption, an independent body competent for the definition of corruption preventive policies, will also to serve as a basis for the elaboration of codes of conduct and ethics in various institutions at different levels of the public administration and in the public companies. The elaboration of such plans is aimed at identifying the situation in terms of risks of corruption and, thus, to assist in defining not only preventive and corrective measures, but also to prepare follow-up measures, including training needs and awareness-raising.

### **General measures for the prevention of corruption**

There is a full and inclusive legislative framework in Portugal regarding the prevention and repression of corruption. The United Nations Convention against Corruption is ratified and a number of international legal instruments have been brought into force, as detailed below:

- Within the European Union: the Convention on the Protection of Financial Interests of the Community and its two supplementary protocols, the Convention relating to the combat against corruption where public officials of the Community or of Member States are involved. The provisions of the Common Action against Corruption have been transposed into Portuguese law.

- Within the scope of the Council of Europe, the Penal Convention against Corruption.

- Within the scope of the OECD, the Convention on the Combat against Corruption among foreign public officials in international commercial transactions.

The duties deriving from these legal instruments are integrated in Portuguese law. The criminal Penal Code makes various forms of corruption a criminal offence - passive for an illicit act, passive for a licit act, active or the electors.

Other types of corruption are covered in different legal instruments, such as active or



passive corruption in the private sector and corruption in international business (Law no. 20/2008, of 21 of April); Law no. 34/87 of 16 July on the responsibilities of holders of political offices also includes norms on corruption. Law no. 50/2007 of 31 August should also be mentioned, covering corruption in the sports framework.

As a general comment, it must be stress that, especially in the last years, Portuguese authorities are taking the issue of prevention and repression of the different types of corruption very seriously. Corruption issues are still in the top level of priorities of Portuguese authorities at all different levels..

Since June 2009 some *new legislation* was enacted, directly or indirectly related to the prevention and repression of all types of corruption:

- Law no. 25/2009, of 5<sup>th</sup> June, establishing a legal regime on the issue and on the execution in the European Union of orders freezing property or evidence, in compliance with the Council Framework Decision 2003/577/JHA, of 22 July;

- Law no. 88/2009, of 31<sup>st</sup> August, approving the legal regime on the issue and execution of confiscation orders in the European Union, and transposing into the national legal order the Council Framework Decision n. 2006/783/JHA, of 6 October, on the application of the principle of mutual recognition to confiscation orders, with the reading given by the Council Framework Decision n. 2009/299/JHA, of 26 February.

- Law no. 38/2009, of 20<sup>th</sup> July, defining the objectives, priorities and criminal political guidelines for the biennium 2009-2011 whereby corruption is given priority in the prevention and investigation framework.

- Law no. 114/2009, of 22<sup>nd</sup> September, adapting the criminal identification regime to the criminal liability of the legal persons.

- Law no. 49/2009, of 5<sup>th</sup> August, that rules on the conditions of access and on the performance of commercial and industrial activities related to goods and military technologies.

In the 1st of March 2010 the Assembly of the republic approved resolution no. 18/2010 where several measures related to the prevention and fight against corruption were recommended. In 10th August, the Assembly of the Republic approved a new Resolution no. 91/2010, recommending the Government to adopt measures to reinforce the prevention

and fight against corruption.

In September 2010, after the work of the *Ad-hoc Commission for the Political Follow-up of the Corruption Phenomenon* that has been set up by Resolution of the Assembly of the Republic no. 1/2010, of 5 January, which has been charged to gather contributions and to analyse the measures addressed to the prevention and to the fight against corruption and, in particular, among other legal instruments, within the scope of criminal law and other related issues, several legal instruments have been approved or amended:

- Law no. 32/2010, of 2<sup>nd</sup> September - 25<sup>th</sup> amendment to the Criminal Code;
- Law no. 34/2010, of 2<sup>nd</sup> September - Amendment to the professional legal regime of public officials (prohibiting the accumulation of public and private functions);
- Law no. 36/2010, of 2<sup>nd</sup> September - Amendment to the Credit Institutions and Financial Companies Legal Framework (creation in the Bank of Portugal of a detailed banking accounts central database that could be accessed by judges and public prosecutors in the framework of criminal investigations and criminal cases).
- Law no. 37/2010, of 2<sup>nd</sup> September - Derogation to the banking secrecy regime;
- Law no. 38/2010, of 2<sup>nd</sup> September - amendment to Law no. 4/83 on the public control of richness of the ones holding political positions;
- Law no. 41/2010, of 3<sup>rd</sup> September - 3<sup>rd</sup> amendment to Law 34/87 applicable to the ones holding political duties including members of domestic public assemblies;
- Law no. 42/2010, of 3<sup>rd</sup> September - 2<sup>nd</sup> amendment of Law 93/99 on the application of measures for the witness protection on criminal procedures;
- Law no. 26/2010, of 30<sup>th</sup> August - 19<sup>th</sup> amendment of the Code of Criminal Procedure.
- Council of Ministers Resolution no. 71/2010, of 2<sup>nd</sup> September with the purpose to strength the coordination and preparation of measures for the enforcement of measures for the fight against corruption adopted by the Assembly of the Republic.

Regarding the preventive side of corruption it should be highlighted the important role that the Council for the Prevention of Corruption (CPC), set up in September 2008, by Law no. 54/2008, of 4 September as an independent entity, is performing in the preventive side of this phenomenon. Bearing in mind the need for transparency, this Council has adopted several Deliberations and Recommendations with the purpose to prevent corruption. Reference should further be made to Recommendation of 1<sup>st</sup> July 2009, on the elaboration and application of Plans on the prevention of risks of corruption and related offences,

published in the *Official Gazette, II Série*, no. D 140, of 22 July 2009, that determines that Public Administration entities and the senior managing bodies of the funds, values or public property management entities, are to be entrusted with the elaboration of this type of plans.

In 2010, more than 1000 entities have delivered to the CPC their Plans, having the Council recommended, on 7 April 2010, that these entities make them publicly known in their internet site. The Council for the Prevention of Corruption has meanwhile known that all entities and bodies of the Public Administration at national, regional and local level, as well as the internal and external control bodies of the entities, part of the Public Sector, have included in their actions the follow-up of the application of the Plans on the prevention of risks of corruption and related offences.

A number of actions, especially in the legislative side and related to raising awareness have been taken by Portuguese public authorities as stated before. Portugal is fully committed in the prevention and fight against corruption and the initiatives adopted internally since the end of June 2009 in the global context of the prevention and fight against corruption, including the corruption in international transactions are a good example of such commitment.

### **Ratification of the UN Convention against Corruption**

The UN Convention against Corruption has been ratified by the Parliament in 19 July 2007 and signed by the President of the Republic in 21 September 2007 (Official Gazette no. 183, I Series, 21<sup>st</sup> September 2007).

### **The UN Convention against Corruption in the Portuguese legal system**

According to paragraph 2 of Article 8 of the Constitution of the Portuguese Republic, international conventions regularly ratified become part of ordinary domestic law.

As the UN Convention against Corruption has been already ratified, it is now part of the Portuguese domestic law. However, according to the domestic constitutional system all provisions related to criminalization should be approved by the Parliament through domestic legislation. The criminalization of the offences referred to in the UN Convention against Corruption are foreseen in criminal legislation.

**Please attach any gap analysis you might have carried out here**

## II. Preventive measures

### 14. Measures to prevent money-laundering

#### 60. Subparagraph 1 (a) of article 14

1. Each State Party shall:

(a) Institute a comprehensive **domestic regulatory and supervisory regime for banks and non-bank financial institutions**, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, **beneficial owner identification, record-keeping and the reporting of suspicious transactions**;

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), regulation(s) or other measure(s)*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no.25/2008**

Article 3

**Financial entities**

The following entities, having their head office in the national territory, shall be subject to the provisions of this Law:

Credit institutions;

Investment companies and other financial companies;

Entities in charge of the management or trading of hedge funds;

Collective investment undertakings marketing their units;

Insurance undertakings and insurance intermediaries carrying on the activities referred to in subparagraph *c*) of Article 5 of Decree-Law No 144/2006 of 31 July, with the exception of connected insurance mediators as mentioned in Article 8 of the aforementioned Decree-Law, when they act in respect of life insurance;

Pension-fund management companies;

Credit securitisation companies;

Risk capital companies and investors;

Investment consultancy companies;

Companies trading goods or services related to investment in fixed assets.

Branches in the Portuguese territory of the entities referred to in the foregoing paragraph having their head office abroad, as well as financial off-shores shall also be covered by the above provisions.

This Law shall also apply to entities providing postal services and to *Instituto de Gestão da Tesouraria e do Crédito Público, I. P.* (Portuguese Treasury and Government Debt Agency), where they provide financial services to the public.

For the purposes of this Law, the entities referred to in the foregoing paragraphs shall be

called «financial entities».

Article 4  
**Non-financial entities**

The provisions of this Law shall apply to the following entities, carrying on activities in the national territory:

- Casino operators;
- Operators awarding betting or lottery prizes;
- Real estate agents as well as construction entities selling directly real property;
- Persons trading in goods, only to the extent that payments are made in cash in an amount of EUR 15000 or more, whether the transaction is executed in a single operation or in several operations which appear to be linked;
- Certified auditors, chartered accountants, external auditors and tax advisors;
- Notaries, registrars, lawyers, *solicitadores* and other independent legal professionals, acting either individually or as a legal person, when they participate or assist, by acting for a client or otherwise in transactions concerning:
  - Purchase and sale of real property, business entities and shareholdings;
  - Management of client money, securities or other assets;
  - Opening or management of bank, savings or securities accounts;
  - Creation, operation or management of companies or similar structures, as well as legal arrangements;
  - Financial or real estate operations representing a client;
  - Acquisition and sale of rights over professional sportspersons;
- Service providers to companies and other legal entities or arrangements that are not covered by the provisions of subparagraphs e) and f).

**Decree-Law no. 298/92**

Article 3

**Types of credit institutions**

The following are credit institutions:

- a) Banks;
- b) Caixas económicas (savings banks);
- c) Caixa Central de Crédito Agrícola Mútuo (central mutual agricultural credit bank) and caixas de crédito agrícola mútuo (mutual agricultural credit banks);
- d) Credit financial institutions;
- e) Investment companies;
- f) Financial leasing companies;
- g) Factoring companies;
- h) Credit purchase financing companies;
- i) Mutual guarantee companies;
- j) Electronic money institutions;

l) Other undertakings, which, in meeting the definition in the preceding Article, are classified as such according to the law.

#### Article 5

##### **Financial companies**

A financial company is an undertaking other than a credit institution, whose principal activity is to carry on one or more of the activities referred to in Article 4 (1) (b) to (i) except for financial leasing and factoring.

#### Article 6

##### **Types of financial companies**

1 The following are financial companies:

- a) Dealers;
- b) Brokers;
- c) Foreign-exchange or money-market mediating companies;
- d) Investment fund management companies;
- e) Credit card issuing or management companies;
- f) Wealth management companies;
- g) Regional development companies;
- h) (*Revoked*);
- i) Exchange offices;
- j) Credit securitisation fund management companies;
- l) Other companies classified as such by law.

2. FINANGESTE - Empresa Financeira de Gestão e Desenvolvimento, S.A. (Management and Development Financial Undertaking) is also a financial company.

3. For the purposes of this Decree-Law, insurance undertakings and pension fund management companies are not considered as financial companies.

##### **Please describe the type of institutions which are considered to be non-bank financial institutions and designated non-financial business and professions**

The financial and non financial subject to Law no. 25/2008 are foreseen in Articles 3 and 4 of this legal instrument. In addition, Decree-Law no. 298/92 identifies the types of credit institutions and financial institutions.

##### **Please explain how they are covered by your regulatory regime**

As stated before financial institutions (banking and non-banking) as well designated non-financial businesses and professions are covered by Law no. 25/2008, the anti-money

laundering and terrorism financing law.

**Please cite the text(s)**

Banks and other financial institutions are under the supervision of the Banco de Portugal (Central Bank) and should comply with the so-called Banking Law, approved by Decree-Law no. 298/92 of 31 December, regulating the Legal Framework of Credit Institutions and Financial Companies.

The comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including money remittance services - informal services for the transmission of money or values are prohibited - and , where appropriate other bodies particularly susceptible to money-laundering, is set forth in Law no. 25/2008, of 5 June setting out preventive and repressive measures to combat money laundering and terrorist financing, transposing into Portuguese law Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 and Commission Directive 2006/70/EC of 1 August 2006 on the prevention of the use of the financial system and designated non-financial businesses and professions for the purposes of money laundering and terrorist financing.

Mentioned law includes provisions about beneficial owner's identification and verification of such identification, record-keeping and the duty to report suspicious transactions.

**Please attach the text(s)**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related disciplinary actions**

**If any sanctions have been imposed on non-compliant institutions, please provide relevant reports, examples, analyses or statistics**

**If available, please provide information on the number of suspicious/unusual activity/transaction reports, including amount and type. Please provide per annum figures since the year 2003 (or further back, if available).**

*Have you ever assessed the effectiveness of the measures adopted to deter and detect all forms of money-laundering?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**



## 61. Subparagraph 1 (b) of article 14 (part 1)

1. Each State Party shall:

...

(b) Without prejudice to article 46 of this Convention, ensure that **administrative, regulatory, law enforcement and other authorities** dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to **cooperate and exchange information at the national and international levels** within the conditions prescribed by its domestic law...

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please cite the text(s)**

The cooperation and exchange of information at national and international level between administrative, regulatory, law enforcement and judicial authorities is foreseen domestically.

Regarding supervisory authorities of the financial sector, this issue is covered by Decree-Law no. 298/92, concerning banking and financial sector in general; by Decree-Law n° 94-B/98, respecting insurance sector; and by the Statutes of the Market Securities Commission and the Securities Code, as regards financial intermediation activity. Furthermore, emphasis should be given to the provisions laid down in Decree-Law n° 228/2000, of 23rd September, which set up the National Council of Financial Supervisors, comprising the three supervisory authorities.

The provisions laid down in Law n° 25/2008 should also be considered for internal, as well as the activity of the Portuguese FATF Delegation.

In order to enhance cooperation between the three supervisory authorities, the National Council of Financial Supervisors (CNSF) was set up in 2000 encompassing the Central Bank (BdP), the Portuguese Insurance Institute (ISP) and the Securities Market Commission

(CMVM). These authorities act within their supervision powers of, respectively; credit institutions, investment firms and other financial companies (BdP), insurance and re-insurance companies, insurance intermediaries, pension funds and their management companies (ISP) and securities markets and financial intermediaries activities (CMVM).

According to Article 2 of Decree-Law n° 228/2000, the CNSF has, namely, the following main responsibilities, within the coordination of the mentioned three authority's activity:

- Facilitate and coordinate the information exchange between the three supervisory authorities;
- Promote the development of supervisory rules and mechanisms of financial conglomerates;
- Formulate proposals for the regulation of issues related to the scope of activity of more than one of the supervisory authorities;
- Promote the definition or adoption of coordinated policy measures with foreign entities and international organizations.

It should be stressed that money laundering prevention is one of the matters where the three supervisory authorities have responsibilities and are subject to institutional coordination, within the context of the Council.

In the context of the Council's activities, it should be noted that a cooperation arrangement between BdP and ISP has been established through a MoU, which comprises cooperation procedures related to anti-money laundering and irregular situations. Similar provisions are going to be incorporated in the MoU between BdP and CMVM that is being subject to a revision.

FIU encompasses the Portuguese FATF Delegation and collaborates regularly with its initiatives and promotes regularly working meeting with the supervision authorities and oversight authorities of DNFPBs. Regarding internal co-operation, the FIU maintains regular contacts with financial entities and supervision authorities through working meetings and seminars. The same type of contacts was already initiated with non-financial entities and with the monitoring authorities of this sector.

The exchange of information is usually made between all these entities as well as with the Criminal Police and the judiciary and we should mention as well that all the entities are able to cooperate internationally with counterparts directly, through MoUs, police channels like EUROPOL and INTERPOL, and using the mutual legal assistance in criminal matters.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review (e.g., indicate whether your country has a central information-sharing database which authorities dedicated to combating money-laundering have access to)**

**Please outline any available means or procedures for other information sharing among domestic agencies**

Law n° 37/2008, of August, approving the Organisation Law of the Criminal Police, was amended by Decree-Law n° 304/2002, of 13 December, which created the Financial Intelligence Unit as an independent body in the performance of its competences.

The FIU centralises, processes and disseminates information concerning the investigation of money laundering and tax-related offences. The FIU receives the suspicious transaction reports (STRs) directly from all the entities subject to Law no. 25/2008 (AML/CFT Law).

**If applicable, please list any bilateral or multilateral cooperation agreements aimed at combating money-laundering to which you are a party**

*Have you ever assessed the effectiveness of the measures adopted to ensure that authorities dedicated to combating money-laundering, as listed above, have the ability to cooperate and exchange information?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

### III. Criminalization and law enforcement

#### 15. Bribery of national public officials

##### 69. Subparagraph (a) of article 15

Each State Party shall adopt such legislative and other measures as may be necessary to **establish as criminal offences, when committed intentionally:**

(a) The **promise, offering or giving, to a public official, directly or indirectly, of an undue advantage**, for the official himself or herself or another person or entity, **in order that the official act or refrain from acting in the exercise of his or her official duties;**

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Criminal Code (as amended by Law no. 32/2010, of 2 September)**

##### **Article 374**

Active corruption

1 - Whoever by himself, or through another person, with his consent or ratification, gives or promises to a public official, or to a third party with the public official's knowledge, any undue advantage whether of economic nature or not, with the purpose mentioned in Article 373 (1), is punished with imprisonment from one to five years.

2 - If the purpose is the one mentioned in Article 373 (2), the agent is punished with imprisonment of up to three years or with a fine penalty of up to 360 days.

##### **Article 372**

Undue accepting of advantage

1 - The public official who, in the course of his duties or because of them, by himself or through another person, with his consent or ratification, either demands or accepts, for himself or a third party, any undue advantage, whether of economic nature or not, is punished with imprisonment up to five years or with a fine up to 600 days.

2 - Whoever, by himself or through another person, with his consent or ratification, either gives or promises to a public official or to a third party with the public official's knowledge any undue advantage, whether of economic nature or not which the public official is not entitled to in the performance of his duties or because of them, is punished with imprisonment up to three years or with a fine up to 360 days.

3 - The behaviours socially appropriate and which are in accordance with the praxis and customary behaviours are excluded from the preceding paragraphs.

##### **Article 373**

Passive corruption

1 - The public official who by himself, or through another person, with his consent or ratification, demands or accepts, for himself or a third party, any undue advantage whether of economic nature or not, or its promise, for any act or omission contrary to the duties of his position, even if prior to such demand or acceptance, is punished with imprisonment from one to eight years.

2 - If the act or omission is not contrary to the duties of his position and if the advantage is

undue the offender is punished with imprisonment from one to five years.

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

Active corruption is foreseen in Article 374 of the Criminal Code.

**Please attach the text(s)**

**Please describe how such information is collected and analysed**

Statistic information is collected and analyzed within the Ministry of Justice - Directorate General for Justice Policy which is charged to prepare and publish the so-called «Statistics of Justice», the official statistic information in the field of justice in Portugal. All these statistics are available on-line in the website of Directorate General for Justice Policy.

**Please provide examples of cases and attach case law if available**

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

Before 2007, the collect of statistic data was different and not allowing for detailed information about the existing types of corruption offences.

### **Corruption**

1997

Criminal Proceedings: 52

Defendents:67

Convicted: 46

1998

Criminal Proceedings: 40

Defendents: 50

Convicted: 33

1999

Criminal Proceedings: 32

Defendents: 43

Convicted: 24

2000

Criminal Proceedings: 46

Defendants: 62

Convicted: 43

2001

Criminal proceedings: 46

Defendants: 68

Convicted: 38

2002

Criminal Proceedings: 45

Defendants: 82

Convicted: 57

2003

Criminal Proceedings: 53

Defendants: 63

Convicted: 55

2004

Criminal Proceedings: 48

Defendants: 69

Convicted: 49

**Active corruption**

Year 2007

Defendants - 53

Convictions - 32

Acquittals - 12

Year 2008

Defendants - 68

Convictions - 30

Acquittals - 33

Year 2009

Defendants - 55

Convictions - 32

Acquittals - 25

[http://www.siej.dgpj.mj.pt/webeis/index.jsp?username=Publico&pgmWindowName=pgmWindow\\_634419235864531250](http://www.siej.dgpj.mj.pt/webeis/index.jsp?username=Publico&pgmWindowName=pgmWindow_634419235864531250)

*Have you ever assessed the effectiveness of the measures adopted to criminalize active bribery of national public officials?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

### **70. Subparagraph (b) of article 15**

Each State Party shall adopt such legislative and other measures as may be necessary to **establish as criminal offences, when committed intentionally:**

...

**(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.**

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

Passive corruption is foreseen in Article 373 of the Criminal Code.

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Criminal Code (as amended by Law no. 32/2010, of 2 September)**

**Article 373**

Passive corruption

1 - The public official who by himself, or through another person, with his consent or ratification, demands or accepts, for himself or a third party, any undue advantage whether of economic nature or not, or its promise, for any act or omission contrary to the duties of his position, even if prior to such demand or acceptance, is punished with imprisonment from one to eight years.

2 - If the act or omission is not contrary to the duties of his position and if the advantage is undue the offender is punished with imprisonment from one to five years.

**Please provide examples of cases and attach case law if available**

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

**Passive corruption for illicit act**

Year 2007

Defendants - 20

Convictions - 10

Acquittals - 5

Year 2008

Defendants - 38

Convictions - 25

Acquittals - 13

Year 2009

Defendants - 47

Convictions - 23



Acquittals - 24

**Passive corruption for licit act**

Year 2007

Defendants - 5

Convictions - 3

Acquittals - 4

Year 2008

Defendants - 3

Convictions - 3

Acquittals - 0

Year 2009

Defendants - 4

Convictions - 4

Acquittals - 0

[http://www.siej.dgpj.mj.pt/webeis/index.jsp?username=Publico&pgmWindowName=pgmWindow\\_634419235864531250](http://www.siej.dgpj.mj.pt/webeis/index.jsp?username=Publico&pgmWindowName=pgmWindow_634419235864531250)

**Please describe how such information is collected and analysed**

Statistic information is collected and analyzed within the Ministry of Justice - Directorate General for Justice Policy which is charged to prepare and publish the so-called «Statistics of Justice», the official statistic information in the field of justice in Portugal. All these statistics are available on-line in the website of Directorate General for Justice Policy.

***Have you ever assessed the effectiveness of the measures adopted to criminalize passive bribery of national public officials?***

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

## 71. Paragraph 1 of article 16

1. Each State Party shall adopt such legislative and other measures as may be necessary to **establish as a criminal offence**, when committed **intentionally**, the **promise, offering or giving to a foreign public official or an official of a public international organization**, directly or indirectly, **of an undue advantage**, for the official himself or herself or another person or entity, **in order that the official act or refrain from acting in the exercise of his or her official duties**, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**Please cite the text(s)**

The criminalization of the corruption of foreign public officials and officials of international public organizations is foreseen in Law n° 20/2008 of 21 April.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

### **Law n° 20/2008 of 21 April**

#### Article 7

#### **Active corruption in international trade**

Whoever, per se or, by his/her own consent or ratification, or through an intermediary, offers or promises to a national, foreign or an international organization official or to a national or international holder of a political office, or to a third party, with their consent, undue patrimonial or non-patrimonial advantage, in order to obtain or maintain a business, a contract or other undue advantage in international trade, is punished by imprisonment for a term between one to eight years.

#### Article 2

#### **Definitions**

For the purposes of this law:

- a) "Foreign official" means any person who, serving for a foreign country as an employee, agent or in any other capacity, even if temporarily, either for free or paid, in a voluntary or compulsory manner, is called to work or take part in the administrative or judicial public service or, in similar circumstances, is called to work or take part in national bodies, or has a management position or holds a supervisory post or is an employee in a state-owned company, nationalized

company, public capital company or in a company with controlling public interest or in any public concession company;

- b) “Official of an international organization” shall be understood as any person who, working for a public international organization as an employee, agent or in any other other capacity, even if temporarily, either for free or paid, in a voluntarily or compulsory manner, is called to work or take part in an activity;
- c) “Person holding a foreign political office” is any person who, working for a foreign country, holds a legislative, judicial or administrative office, at national, regional or local level, weather appointed or elected;
- d) “Employee in the private sector” means any person who works, or holding a management position or a supervisory post, under an individual working contract, or under a professional agreement or in any other capacity, even if temporarily, either for free or paid, at a private sector entity;
- e) “Private sector entity”, shall be understood as a private law legal person, a civil company and a *de facto* association.

**Please provide examples of cases and attach case law if available**

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

Regarding statistics:

Year 2009

Investigations: 10  
Accusations: 6  
Convictions: 5  
Acquittals: 1

Year 2010

Investigations: 6  
Accusations: 4  
Convictions: 2  
Acquittals: 1

[http://www.siej.dgpj.mj.pt/webeis/index.jsp?username=Publico&pgmWindowName=pgmWindow\\_634419413540156250](http://www.siej.dgpj.mj.pt/webeis/index.jsp?username=Publico&pgmWindowName=pgmWindow_634419413540156250)

**Please describe how such information is collected and analysed**

Statistic information is collected and analyzed within the Ministry of Justice - Directorate General for Justice Policy which is charged to prepare and publish the so-called «Statistics

of Justice», the official statistic information in the field of justice in Portugal. All these statistics are available on-line in the website of Directorate General for Justice Policy.

*Have you ever assessed the effectiveness of the measures adopted to criminalize active bribery of foreign public officials and officials of public international organizations?*

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

## 72. Paragraph 2 of article 16

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her duties.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please attach the text(s)**

**Please cite the text(s)**

Law nº 20/2008 of 21 April

Article 7

### **Active corruption in international trade**

Whoever, per se or, by his/her own consent or ratification, or through an intermediary, offers or promises to a national, foreign or an international organization official or to a national or international holder of a political office, or to a third party, with their consent, undue patrimonial or non-patrimonial advantage, in order to obtain or maintain a business, a contract or other undue advantage in international trade, is punished by imprisonment for a term between one to eight years.

Article 2

## Definitions

For the purposes of this law:

- a) "Foreign official" means any person who, serving for a foreign country as an employee, agent or in any other capacity, even if temporarily, either for free or paid, in a voluntary or compulsory manner, is called to work or take part in the administrative or judicial public service or, in similar circumstances, is called to work or take part in national bodies, or has a management position or holds a supervisory post or is an employee in a state-owned company, nationalized company, public capital company or in a company with controlling public interest or in any public concession company;
- b) "Official of an international organization" shall be understood as any person who, working for a public international organization as an employee, agent or in any other other capacity, even if temporarily, either for free or paid, in a voluntarily or compulsory manner, is called to work or take part in an activity;
- c) "Person holding a foreign political office" is any person who, working for a foreign country, holds a legislative, judicial or administrative office, at national, regional or local level, weather appointed or elected;
- d) "Employee in the private sector" means any person who works, or holding a management position or a supervisory post, under an individual working contract, or under a professional agreement or in any other capacity, even if temporarily, either for free or paid, at a private sector entity;
- e) "Private sector entity", shall be understood as a private law legal person, a civil company and a *de facto* association.

**Please provide examples of cases and attach case law if available**

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

**Please describe how such information is collected and analysed**

The information is collected by the Directorate General for Justice Policy in the criminal courts and analysed by the Statistics Department, which is responsible for the elaboration of the official "Statistics of Justice".

*Have you ever assessed the effectiveness of the measures adopted to criminalize passive bribery of foreign public officials and officials of public international organizations?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### 73. Article 17

Each State Party shall adopt such legislative and other measures as may be necessary to **establish as criminal offences**, when **committed intentionally**, the **embezzlement, misappropriation or other diversion by a public official** for his or her benefit or for the benefit of another person or entity, **of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position**.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**Please cite the text(s)**

The criminalization of embezzlement is set forth in Article 375 of the Criminal Code.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

#### **Criminal Code**

#### **Article 375**

#### **Embezzlement**

1 - The officer who illegitimately appropriates, in own benefit or for the benefit of another, of money or any movable property, public or private, which has been handed to him, is in his possession or is accessible to him by virtue of his duties, is punished with sentence of imprisonment from one to eight years, if a more serious sentence is not applicable to him by virtue of another legal provision.

2 - If the objects or values mentioned in the previous number are of slight value, pursuant to paragraph c) of article 202, the agent is punished with sentence of imprisonment for not more than three years or with fine penalty.

3 - If the officer grants as loan, pledges or otherwise encumbers values or objects mentioned in no. 1, is punished with sentence of imprisonment for not more than three years or with fine penalty, if a more serious sentence is not applicable to him by virtue of another legal provision.

**Please provide examples of cases and attach case law if available**

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per**

**annum figures since the year 2003 (or further back, if available)**

Regarding statistics about **embezzlement**:

Year 2007

Defendants - 124

Convictions - 73

Acquittals - 38

Procedures filled - 13

Year 2008

Defendants - 182

Convictions - 129

Acquittals - 41

Procedures filled - 12

Year 2009

Defendants - 150

Convictions - 100

Acquittals - 40

Procedures filled - 10

**Please describe how such information is collected and analysed**

Statistic information is collected and analyzed within the Ministry of Justice - Directorate General for Justice Policy which is charged to prepare and publish the so-called «Statistics of Justice», the official statistic information in the field of justice in Portugal. All these statistics are available on-line in the website of Directorate General for Justice Policy.

***Have you ever assessed the effectiveness of the measures adopted to criminalize embezzlement, misappropriation or other diversion of property by a public official?***

**(N) No**

The assessment of the domestic measures adopted to comply with the provision of the UNCAC was not promoted by Portuguese authorities. Usually, the option is to use the gaps and insufficiencies identified and recommendations made in the framework of mutual evaluations - EU evaluations as well FATF and GRECO evaluations related, respectively, with money laundering / terrorism financing and corruption.

However we should mention Resolution no. 71/2010 of the Council of Ministers, approved

in September 2<sup>nd</sup>, which main goals are (i) to enhance the coordination means and the preparation of the implementation of the measures against corruption approved by the Assembly of the Republic, at the plenary session of 22 July 2010, in the regulation, organic and operational scope, coordinating all the entities and intervening bodies in the implementation and management process and in the application of new legal regimes and (ii) to determine that, for such purpose and under the Ministry of Justice's coordination, the necessary measures be urgently taken, in order to: (a) prepare the regulation of the legal instruments that lack such regulation, as well as other measures required to implement the approved legislation; (b) propose the measures deemed indispensable to apply the recommendations made to Portugal by specialized international bodies, namely the Group of States against Corruption (GRECO), the Organisation for the Economic Co-operation and Development (OECD), the Financial Action Task Force (FATF ) and the United Nations; and (c) Assess the measures required to comply with the recommendations made to the Government, by the Assembly of the Republic.

The tasks will be performed by representatives of different Ministries under coordination of the Ministry of Justice and cooperation of the services and bodies of direct and indirect State administration could be requested.

The approval of mentioned Resolution should be highlighted taking into consideration that is the first time in Portugal that this kind of tasks has been assigned in order to assess the measures adopted domestically, the implementation of international legal instruments and the recommendations made to Portugal in order to improve the national system in different aspects of criminal law and international cooperation.

Consequently, a working group was sent under mentioned Resolution no. 71/2010, of 10th October, envisaging to evaluate and monitor the implementation of the anti-corruption legislation package approved by the Assembly of the Republic in 2010, as well as to prepare the regulation of those legal instruments that need so and to prepare the implementation measures for the full application of those laws. The areas under monitoring are among others banking secrecy, types of corruption and witness protection.

This working group was also instructed with the task of propose measures to implement the recommendations in this field addressed to Portugal by international organizations such as the United Nations, GRECO - Council of Europe, OECD and FATF.

The working group will prepare and submit a report to the Minister of Justice until the end of May 2011. This report will be based on auditions made to the entities responsible for the application of the laws comprised in the 2010 package and also on the analysis of the first outcomes of these laws.

The referred package comprises the legislation already identified in A. General Information.



We should also mention that, in accordance with article 6 of Law no. 19/2008 of 21 of April, approving measures to combat corruption, portuguese authorities should elaborate biannually an assessment report where a specific chapter on crimes is included. The report should also include, among other information, information on the nunmber of criminal files distributed, acquittals, accusations and convictions; areas where active and passive corruption was detected; seizures and confiscations; assessment of the support provided by the investigation police qualitatively and quantitatively; reference to international cooperation with the lack of time used to answer to requests received from other countries.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

#### **74. Subparagraph (a) of article 18**

Each State Party shall consider adopting such legislative and other measures as may be necessary to **establish as criminal offences, when committed intentionally:**

(a) The **promise, offering or giving to a public official or any other person**, directly or indirectly, **of an undue advantage** in order that the **public official** or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**Please attach the text(s)**

**Please cite the text(s)**

The criminalization of the trading in influence is foreseen is Article 335 of the Criminal Code.

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or**

legislation pending official publication):

Criminal Code

### Article 335

#### Trading in influence

1 - Whoever, by himself or through another, with his consent or ratification, requests or accepts, for himself or for a third party, an advantage, whether of economic nature or not, or its promise, to abuse of his influence, actual or supposed, before any public entity, is punished:

a) With imprisonment from six months to five years, if a more serious penalty is not applicable to the offender through another legal provision, and if the purpose is to obtain any unlawful favourable decision;

b) With imprisonment of up to six months, or with a fine of up to 60 days, if a more serious penalty is not applicable to the offender through another legal provision, and if the purpose is to obtain any lawful favourable decision;

2 - Whoever, by himself or through another, with his consent or ratification, gives or promises, an advantage, whether of economic nature or not, to the persons mentioned in the previous number for the purposes mentioned in paragraph a) is punished with imprisonment of up to three years or with a fine.

**Please provide examples of cases and attach case law if available**

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

**Please describe how such information is collected and analysed**

The information is collected by the Directorate General for Justice Policy in the criminal courts and analysed by the Statistics Department, which is responsible for the elaboration of the official "Statistics of Justice".

*Have you ever assessed the effectiveness of the measures adopted to criminalize trading in influence?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### 75. Subparagraph (b) of article 18

Each State Party shall consider adopting such legislative and other measures as may be necessary to **establish as criminal offences, when committed intentionally:**

...

(b) The **solicitation or acceptance by a public official or any other person**, directly or indirectly, **of an undue advantage** for himself or herself or for another person in order that the **public official** or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Criminal Code

**Article 335**

Trading in influence

1 - Whoever, by himself or through another, with his consent or ratification, requests or accepts, for himself or for a third party, an advantage, whether of economic nature or not, or its promise, to abuse of his influence, actual or supposed, before any public entity, is punished:

a) With imprisonment from six months to five years, if a more serious penalty is not applicable to the offender through another legal provision, and if the purpose is to obtain any unlawful favourable decision;

b) With imprisonment of up to six months, or with a fine of up to 60 days, if a more serious penalty is not applicable to the offender through another legal provision, and if the purpose is to obtain any lawful favourable decision;

2 - Whoever, by himself or through another, with his consent or ratification, gives or promises, an advantage, whether of economic nature or not, to the persons mentioned in the previous number for the purposes mentioned in paragraph a) is punished with imprisonment of up to three years or with a fine.

**Please cite the text(s)**

The criminalization of the trading in influence is foreseen in Article 335 of the Criminal Code.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please provide examples of cases and attach case law if available**

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

**Please describe how such information is collected and analysed**

The information is collected by the Directorate General for Justice Policy in the criminal courts and analysed by the Statistics Department, which is responsible for the elaboration of the official "Statistics of Justice".

*Have you ever assessed the effectiveness of the measures adopted to criminalize trading in influence?*

**(N) No**

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

## 76. Article 19

Each State Party shall consider adopting such legislative and other measures as may be necessary to **establish as a criminal offence**, when **committed intentionally**, the **abuse of functions or position**, that is, the performance or failure to perform an act, in violation of laws, by a **public official** in the discharge of his or her functions, **for the purpose of obtaining an undue advantage** for himself or herself or for another person or entity.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Criminal Code

### **Article 382** Abuse of power

The officer who, outside the cases foreseen in the previous articles, abuses of powers or breaches obligations inherent to his duties, with the intent to obtain, for himself or for a third party, an unlawful benefit or cause harm to another person, is punished with sentence of imprisonment for not more than three years or with fine penalty, if a more serious sentence is not applicable to him by virtue of another legal provision.

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

The criminalization of the abuse of functions or position is foreseen in Article 382 of the Criminal Code.

**Please attach the text(s)**

**Please provide examples of cases and attach case law if available**

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

### **Abuse of functions**

2007

Defendants - 23  
Convictions - 6  
Acquittals - 17

2008

Defendants - 32  
Convictions - 9  
Acquittals - 23

2009

Defendants - 11  
Convictions - 3  
Acquittals - 8

**Please describe how such information is collected and analysed**

The information is collected by the Directorate General for Justice Policy in the criminal courts and analysed by the Statistics Department, which is responsible for the elaboration of the official "Statistics of Justice".

*Have you ever assessed the effectiveness of the measures adopted to criminalize abuse of functions?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **77. Article 20**

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to **establish as a criminal offence, when committed intentionally, illicit enrichment**, that is, a significant increase in the assets of a **public official** that he or she cannot reasonably explain in relation to his or her lawful income.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(N) No

*Which challenges and issues are you facing in (fully) adopting/implementing the provision under review? (Check all the answers that apply and provide an explanation in the "Comments" field)*

(INAD) Inadequacy of existing normative measures (constitution, laws, regulations, etc. )

**Please provide an account of your country's efforts to date to implement the provision under review:**

The illicit enrichment is not a criminal offence in Portugal by the time being.

**Please outline the steps or action (and related timeframe) that domestic or other authorities would need to take to ensure full compliance with the provision under review**

However we should state that the Parliament is discussing four draft bill in order to criminalize this behaviour.

*Which of the following forms of technical assistance, if available, would assist your country in adopting or better implementing the provision under review? (Check all the answers that apply)*

(NO) No assistance would be required

*Are any of the forms of technical assistance previously mentioned already provided? (Check one answer)*

(N) No

## **78. Subparagraph (a) of article 21**

Each State Party shall consider adopting such legislative and other measures as may be necessary to **establish as criminal offences, when committed intentionally** in the course of economic, financial or commercial activities:

(a) The **promise, offering or giving**, directly or indirectly, **of an undue advantage to any person who directs or works**, in any capacity, **for a private sector entity**, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, **act or refrain from acting**;

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Law no 20/2008, of 21 April

### Article 8

#### **Passive corruption in the private sector**

1 - Whoever works for a private sector entity and who, per se or by his/her own consent or ratification, through an intermediary, requests or accepts, for itself or for a third party undue patrimonial or non-patrimonial advantage, or the promise to act or to refrain from acting in relation to the performance of official duties, is punished by imprisonment up to two years or with a fine.

2 - If the action or the omission referred to in the previous paragraph is liable to lead to a distortion of competition or to cause a patrimonial damage to third parties, the agent is punished by imprisonment up to five years or with a fine up to 600 days.

### Article 9

#### **Active corruption in the private sector**

1 - Whoever, per se or, by his/her own consent or ratification, or through an intermediary, offers or promises to the person referred to in the article 8, or to a third party, with his/her consent, an undue patrimonial or non-patrimonial advantage, in order to pursue the aim defined in mentioned provision, is punished by imprisonment up to a year or with a fine.

2 - If the conduct set out in the previous paragraph aims to obtain or is liable to lead to a distortion of competition or to cause a patrimonial damage to third parties, the agent is

punished by imprisonment up to three years or with a fine.

**Please cite the text(s)**

The criminalization of corruption in the private sector is foreseen in Articles 8 and 9 of Law no 20/2008, of 21 April.

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please attach the text(s)**

**Please provide examples of cases and attach case law if available**

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

**Please describe how such information is collected and analysed**

No statistics available.

*Have you ever assessed the effectiveness of the measures adopted to criminalize bribery in the private sector?*

(N) No

No assessment has been made regarding the corruption in the private sector offence.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **79. Subparagraph (b) of article 21**

Each State Party shall consider adopting such legislative and other measures as may be necessary to **establish as criminal offences, when committed intentionally** in the course of economic, financial or commercial activities:

...

*(b)* The **solicitation or acceptance**, directly or indirectly, **of an undue advantage by any person who directs or works**, in any capacity, **for a private sector entity**, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, **act or refrain from acting**.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or**

**legislation pending official publication):**

Law no 20/2008, of 21 April

Article 8

**Passive corruption in the private sector**

1 - Whoever works for a private sector entity and who, per se or by his/her own consent or ratification, through an intermediary, requests or accepts, for itself or for a third party undue patrimonial or non-patrimonial advantage, or the promise to act or to refrain from acting in relation to the performance of official duties, is punished by imprisonment up to two years or with a fine.

2 - If the action or the omission referred to in the previous paragraph is liable to lead to a distortion of competition or to cause a patrimonial damage to third parties, the agent is punished by imprisonment up to five years or with a fine up to 600 days.

Article 9

**Active corruption in the private sector**

1 - Whoever, per se or, by his/her own consent or ratification, or through an intermediary, offers or promises to the person referred to in the article 8, or to a third party, with his/her consent, an undue patrimonial or non-patrimonial advantage, in order to pursue the aim defined in mentioned provision, is punished by imprisonment up to a year or with a fine.

2 - If the conduct set out in the previous paragraph aims to obtain or is liable to lead to a distortion of competition or to cause a patrimonial damage to third parties, the agent is punished by imprisonment up to three years or with a fine.

**Please cite the text(s)**

The criminalization of corruption in the private sector is foreseen in Articles 8 and 9 of Law no 20/2008, of 21 April.

**Please attach the text(s)**

**Please provide examples of cases and attach case law if available**

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

**Please describe how such information is collected and analysed**

No statistics available.

***Have you ever assessed the effectiveness of the measures adopted to criminalize bribery in the private sector?***

**(N) No**

No assessment has been made regarding the corruption in the private sector offence.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**



## 80. Article 22

Each State Party shall consider adopting such legislative and other measures as may be necessary to **establish as a criminal offence**, when **committed intentionally** in the course of economic, financial or commercial activities, **embezzlement by a person who directs or works**, in any capacity, **in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position**.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(N) No

*Which challenges and issues are you facing in (fully) adopting/implementing the provision under review? (Check all the answers that apply and provide an explanation in the "Comments" field)*

(INAD) Inadequacy of existing normative measures (constitution, laws, regulations, etc. )

The offence of embezzlement in the private sector is not foreseen as such in the Portuguese criminal legislation. However, we should state that the behavior, as described in Article 22 of the Convention, could be punished through the application of other provisions of the Criminal Code, as Article 203 (Theft) and Article 204 (Aggravated theft).

The Criminal Code only foresees the illicit appropriation (Article 234) related to the public sector.

*Which of the following forms of technical assistance, if available, would assist your country in adopting or better implementing the provision under review? (Check all the answers that apply)*

(NO) No assistance would be required

**Please provide an account of your country's efforts to date to implement the provision under review:**

To the date, embezzlement has not been criminalized.

**Please outline the steps or action (and related timeframe) that domestic or other authorities would need to take to ensure full compliance with the provision under review**

Please, see answer to the implementation of this provision.

*Are any of the forms of technical assistance previously mentioned already provided? (Check one answer)*

(N) No

## 81. Subparagraph 1 (a) (i) of article 23

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to **establish as criminal offences, when committed intentionally**:

(a) (i) The **conversion or transfer of property, knowing that such property is the proceeds of crime**, for the **purpose of concealing or disguising the illicit origin** of the property or of **helping any person who is involved in the commission of the predicate offence to evade the legal consequences** of his or her action;

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

The criminalization of the laundering of the proceeds of crime is foreseen in Article 368-A of the Criminal Code. The conversion or transfer of property is set forth in paragraph 2.

**Please attach the text(s)**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

### **Criminal Code**

#### **Article 368-A**

##### **Laundering**

1 - For the purposes of the following paragraphs, property considered to be the proceeds of crime is property which derives from unlawful acts such as living on earnings of prostitution, child sexual abuse or sexual abuse of dependant minors, extortion, illegal trafficking of drugs and psychotropic substances, arms trafficking, trafficking in human organs or tissues, trafficking in protected species, tax fraud, trafficking of influences, corruption and other offences referred to in Article 1(1) of the Law no. 36/94 of 29 September, as well as the property obtained through the unlawful conduct, defined as such under the law and punishable by a minimum term of imprisonment exceeding six months or by a maximum term of imprisonment exceeding five years.

2 - A person who converts, transfers, assists or facilitates, whether directly or indirectly, any operation of conversion or transfer of proceeds, obtained by that person or others, for the purpose of disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions is punished by imprisonment for a term between two and twelve years.

3 - The same applies when the person conceals or disguises the true nature, source, location, disposition, movement, rights with respect to, or ownership of proceeds.

4 - The offences laid down in paragraphs 2 and 3 are punished even if the acts which constitute the predicate offence have been committed outside the national territory, or if the place where the offence was committed or the identity of the offenders remain unknown.

5 to 10 - (...)

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

Regarding statistics about **money laundering**:

Year 2007

Defendants - 16

Convictions - 6

Acquittals - 10

Year 2008

Defendants - 15

Convictions - 9

Acquittals - 6

Year 2009

Defendants - 19

Convictions - 10

Acquittals - 8

Procedures filled - 1

**Please provide examples of cases and attach case law if available**

**Please describe how such information is collected and analysed**

Statistic information is collected and analyzed within the Ministry of Justice - Directorate General for Justice Policy which is charged to prepare and publish the so-called «Statistics of Justice», the official statistic information in the field of justice in Portugal. All these statistics are available on-line in the website of Directorate General for Justice Policy.

*Have you ever assessed the effectiveness of the measures adopted to criminalize money-laundering?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

## **82. Subparagraph 1 (a) (ii) of article 23**

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to **establish as criminal offences, when committed**

**intentionally:**

...

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**Please cite the text(s)**

The criminalization of the laundering of the proceeds of crime is foreseen in Article 368-A of the Criminal Code. The concealment or disguise is set forth in paragraph 3.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

### **Criminal Code**

#### **Article 368-A**

#### **Laundering**

1 - For the purposes of the following paragraphs, property considered to be the proceeds of crime is property which derives from unlawful acts such as living on earnings of prostitution, child sexual abuse or sexual abuse of dependant minors, extortion, illegal trafficking of drugs and psychotropic substances, arms trafficking, trafficking in human organs or tissues, trafficking in protected species, tax fraud, trafficking of influences, corruption and other offences referred to in Article 1(1) of the Law no. 36/94 of 29 September, as well as the property obtained through the unlawful conduct, defined as such under the law and punishable by a minimum term of imprisonment exceeding six months or by a maximum term of imprisonment exceeding five years.

2 - A person who converts, transfers, assists or facilitates, whether directly or indirectly, any operation of conversion or transfer of proceeds, obtained by that person or others, for the purpose of disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions is punished by imprisonment for a term between two and twelve years.

3 - The same applies when the person conceals or disguises the true nature, source, location, disposition, movement, rights with respect to, or ownership of proceeds.

4 - The offences laid down in paragraphs 2 and 3 are punished even if the acts which constitute the predicate offence have been committed outside the national territory, or if the place where the offence was committed or the identity of the offenders remain unknown.

5 to 10 - (...)

**Please provide examples of cases and attach case law if available**

**Please describe how such information is collected and analysed**

Regarding statistic please the answer provided to the previous question.

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

Regarding statistic please the answer provided to the previous question.

*Have you ever assessed the effectiveness of the measures adopted to criminalize money-laundering?*

**(Y) Yes**

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

### **83. Subparagraph 1 (b) (i) of article 23**

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to **establish as criminal offences, when committed intentionally:**

...

(b) Subject to the basic concepts of its legal system:

(i) **The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;**

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**Please cite the text(s)**

The criminalization of the laundering of the proceeds of crime is foreseen in Article 368-A of the Criminal Code. The acquisition, possession and use is set forth, in a different way in order to avoid misinterpretations with the offence of receiving (Article 231 of the Criminal Code).

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or**

legislation pending official publication):

## **Criminal Code**

### **Article 368-A**

#### **Laundering**

1 - For the purposes of the following paragraphs, property considered to be the proceeds of crime is property which derives from unlawful acts such as living on earnings of prostitution, child sexual abuse or sexual abuse of dependant minors, extortion, illegal trafficking of drugs and psychotropic substances, arms trafficking, trafficking in human organs or tissues, trafficking in protected species, tax fraud, trafficking of influences, corruption and other offences referred to in Article 1(1) of the Law no. 36/94 of 29 September, as well as the property obtained through the unlawful conduct, defined as such under the law and punishable by a minimum term of imprisonment exceeding six months or by a maximum term of imprisonment exceeding five years.

2 - A person who converts, transfers, assists or facilitates, whether directly or indirectly, any operation of conversion or transfer of proceeds, obtained by that person or others, for the purpose of disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions is punished by imprisonment for a term between two and twelve years.

3 - The same applies when the person conceals or disguises the true nature, source, location, disposition, movement, rights with respect to, or ownership of proceeds.

4 - The offences laid down in paragraphs 2 and 3 are punished even if the acts which constitute the predicate offence have been committed outside the national territory, or if the place where the offence was committed or the identity of the offenders remain unknown.

**Please provide examples of cases and attach case law if available**

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

Regarding statistic please the answer provided to Question 81.

**Please describe how such information is collected and analysed**

Regarding statistic please the answer provided to Question 81.

*Have you ever assessed the effectiveness of the measures adopted to criminalize money-laundering?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

### **84. Subparagraph 1 (b) (ii) of article 23**

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to **establish as criminal offences, when committed**

**intentionally:**

...

(b) Subject to the basic concepts of its legal system:

...

(ii) **Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established** in accordance with this article.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please attach the text(s)**

**Please cite the text(s)**

The general rules of the Criminal Code apply to the participation in association, the attempt to commit and aiding, abetting, facilitating and counseling the commission of any offences established in criminal laws (Articles 22, 27 and 28)

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

### **Criminal Code**

#### **Article 22**

##### Attempt

1. Attempt exists when the agent performs acts for the execution of a crime he has decided to perpetrate, which he failed to consummate.

2. Execution acts are:

- a) Those that fulfil a constituent element of a type of crime;
- b) Those that are proper to produce a typical result; or
- c) Those that, according to common experience and excepting unexpected circumstances, are of a nature as being expected to be followed by acts of the types named in the previous paragraphs.

#### **Article 23**

##### Punishability of attempt

1. Except when there is contrary legislation, attempt is only punishable when the respective consummated crime corresponds to a penalty over three years of imprisonment.

2. Attempt is punishable with the penalty applied (applicable) to the consummated crime, specially mitigated.

3. Attempt is not punishable when the means used by the agent is obviously improper, or

when the object essential to the commitment of the crime is not existent.

**Article 27**

Complicity

1. He who, intentionally or in whatever form, materially or morally helps other person to perform an intentional act, is punishable as accomplice.
2. The penalty applicable to the accomplice is the one which is fixed for the principal, specially mitigated

**Article 28**

Illicitude in participation

1. If illicitude or the degree of illicitude of the act depends on certain qualities or special relations of the agent, to make the respective penalty applicable to all participants it is enough that these qualities or relations occur in any of them, except if the incriminatory rule is different.
2. Whenever owing to the rule provided for in the previous number it results in a more severe penalty for some of the comparticipants, this may be substituted, in consideration of the circumstances of the case, for the one that would occur if that rule did not intervene.

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

Regarding statistics on attempt:

Active corruption and embezzlement

Year 2007

**Active corruption**

Defendants - 4

Convictions - 4

**Embezzlement**

Defendants - 3

Convictions - 0

Acquittals - 0

Year 2008

**Active corruption**

Defendants - 4

Convictions - 4



**Embezzlement**

Defendants - 0

Convictions - 0

Acquittals - 0

Year 2009

**Active corruption**

Defendants - 0

Convictions - 0

**Embezzlement**

Defendants - 0

Convictions - 0

Acquittals - 0

**Please provide examples of cases and attach case law if available**

**Please describe how such information is collected and analysed**

Statistic information is collected and analyzed within the Ministry of Justice - Directorate General for Justice Policy which is charged to prepare and publish the so-called «Statistics of Justice», the official statistic information in the field of justice in Portugal. All these statistics are available on-line in the website of Directorate General for Justice Policy.

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

**85. Subparagraph 2 (a) of article 23**

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the **widest range of predicate offences;**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or**

legislation pending official publication):

## **Criminal Code**

### **Article 368-A**

#### **Laundering**

1 - For the purposes of the following paragraphs, property considered to be the proceeds of crime is property which derives from unlawful acts such as living on earnings of prostitution, child sexual abuse or sexual abuse of dependant minors, extortion, illegal trafficking of drugs and psychotropic substances, arms trafficking, trafficking in human organs or tissues, trafficking in protected species, tax fraud, trafficking of influences, corruption and other offences referred to in Article 1(1) of the Law no. 36/94 of 29 September, as well as the property obtained through the unlawful conduct, defined as such under the law and punishable by a minimum term of imprisonment exceeding six months or by a maximum term of imprisonment exceeding five years.

#### **Please cite the text(s)**

The Portuguese criminal law foresees as predicate offences of laundering a wide range of offences, not only the offences that could be found in the Criminal Code (or annex to Recommendation 1 of FATF) but also another offences set forth in other criminal laws.

#### **Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

#### **Please provide examples of cases and attach case law if available**

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

The statistic data have been provided to the answer to question 82.

#### **Please describe how such information is collected and analysed**

The statistic data have been provided to the answer to question 82.

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

## **86. Subparagraph 2 (b) of article 23**

2. For purposes of implementing or applying paragraph 1 of this article:

...

(b) Each State Party shall include as **predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**Please cite the text(s)**

The previous answer applies. All the offences set forth in the UN Convention against Corruption are money laundering predicate offences.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of cases and attach case law if available**

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

**Please describe how such information is collected and analysed**

Statistic information is collected and analyzed within the Ministry of Justice - Directorate General for Justice Policy which is charged to prepare and publish the so-called «Statistics of Justice», the official statistic information in the field of justice in Portugal. All these statistics are available on-line in the website of Directorate General for Justice Policy.

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

## **87. Subparagraph 2 (c) of article 23**

2. For purposes of implementing or applying paragraph 1 of this article:

...

(c) For the purposes of subparagraph (b) above, **predicate offences** shall include offences **committed both within and outside the jurisdiction of the State Party in question.** However, offences committed outside

the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**Please cite the text(s)**

According to paragraph 4 of Article 368-A the laundering offence is punishable in Portugal even if the acts which constitute the predicate offence have been committed outside the national territory, or if the place where the offence was committed or the identity of the offenders remain unknown.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Criminal Code**

**Article 368-A**

Laundering

4 - The offences laid down in paragraphs 2 and 3 are punished even if the acts which constitute the predicate offence have been committed outside the national territory, or if the place where the offence was committed or the identity of the offenders remain unknown.

**Please provide examples of cases and attach case law if available**

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

The statistic data have been provided to the answer to question 82.

**Please describe how such information is collected and analysed**

Please see above answer 82

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(Y) Yes**

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

## 88. Subparagraph 2 (d) of article 23

2. For purposes of implementing or applying paragraph 1 of this article:

...

(d) Each State Party shall **furnish copies of its laws that give effect to this article** and of any subsequent changes to such laws or a description thereof to the **Secretary-General of the United Nations**;

*Has your country furnished copies of its laws to the Secretary-General of the United Nations as prescribed above? (Check one answer)*

(N) No

**Please provide the requisite information here**

A description of the relevant articles of the Criminal Code and Law n° 25/2008 (the AML/CFT Law) will be sent to the Secretary-General of the United Nations.

## 89. Subparagraph 2 (e) of article 23

2. For purposes of implementing or applying paragraph 1 of this article:

...

(e) If required by fundamental principles of the domestic law of a State Party, it **may be provided** that the **offences** set forth in paragraph 1 of this article **do not apply to the persons who committed the predicate offence**.

*Do fundamental principles of your domestic law require that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**Please cite the text(s)**

Portuguese allow for the so-called self laundering. Therefore, according to the wording of paragraph 2 (...*obtained by that person or others*) the person who committed the predicate offences could be punished as well by the commission of laundering provided in Article 368-A of the Criminal Code.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Criminal Code**

**Article 368-A**  
Laundering

2 - A person who converts, transfers, assists or facilitates, whether directly or indirectly, any operation of conversion or transfer of proceeds, obtained by that person or others, for the purpose of disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions is punished by imprisonment for a term between two and twelve years.

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

**Please provide examples of cases and attach case law if available**

**Please describe how such information is collected and analysed**

The statistic data have been provided to the answer to question 82.

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## 90. Article 24

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to **establish as a criminal offence**, when **committed intentionally** after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the **concealment or continued retention of property** when the person involved **knows that such property is the result of any of the offences established in accordance with this Convention**.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**Please cite the text(s)**

The concealment or continued retention of property referred to in Article 24 are elements of an offence and not an autonomous offence. Both, concealment and continued retention of property are elements of the offences of laundering (Article 368-A of the Criminal Code) and receiving (Article 231 of the Criminal Code).

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable**

if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

### **Criminal Code**

#### **Article 231**

#### **Receiving**

1 - Whoever, with the intent to obtain for himself or a third party a property benefit, deceives a property which was attained by another by means of a typical unlawful act against the property, receives it in pledge, acquires it by any title, maintains it, keeps it, transfers it or contributes to its transfer, or by any way assures, for himself or another person, its possession, is punished with sentence of imprisonment for not more than five years or with fine penalty for not more than 600 days.

2 - Whoever, without previously having assured of its legitimate origin, acquires or receives, at any title, a property that, by its quality or condition of who offers it or by the amount of the proposed price, makes it reasonable to expect that it arises from a typical unlawful act against the property is punished with sentence of imprisonment for not more than six months or with fine penalty for not more than 120 days.

3 - It is correspondently applicable:

- a) Article 206; and
- b) Paragraph a) of article 207, if the familiar relationship intercedes between the receiver and the victim of the typical unlawful act against property.

4 - If the agent makes of the receiving of stolen goods his way of living, is punished with sentence of imprisonment from one to eight years.

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

#### **Receiving**

2007

Defendants - 1362

Convictions - 622

Acquittals - 634

Procedures filled - 25

2008

Defendants - 1323

Convictions - 557

Acquittals - 604

Procedures filled - 18

2009

Defendants - 1144

Convictions - 490  
Acquittals - 470  
Procedures filled - 25

**Please describe how such information is collected and analysed**

The information is collected by the Directorate General for Justice Policy in the criminal courts and analysed by the Statistics Department, which is responsible for the elaboration of the official "Statistics of Justice".

**Please provide examples of cases and attach case law if available**

*Have you ever assessed the effectiveness of the measures adopted to criminalize the concealment or continued retention of property knowing that such property is the result of any of the offences established in accordance with the Convention?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **91. Subparagraph (a) of article 25**

Each State Party shall adopt such legislative and other measures as may be necessary to establish as **criminal offences, when committed intentionally:**

(a) The **use of physical force, threats or intimidation** or the **promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence** in a proceeding in relation to the commission of offences established in accordance with this Convention;

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**Please cite the text(s)**

There isn't a single criminal provision with such title (obstruction to justice).

However, we should state that the goal of Article 25 of UN Convention against Corruption could be reached through the application of other provisions, as follows:

- use of physical force, threats or intimidation: Articles 143, 144, 153, 154 and 155 of the Criminal Code.

- promise or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a criminal proceeding: Article 363 (and 359 and 360) of the Criminal Code.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one**



of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

### **Criminal Code**

#### **Article 143**

##### Simple bodily injury

1 - Whoever harms the body or the health of another person is punished with sentence of imprisonment for not more than three years or with a fine.

2 - The criminal procedure depends upon complaint, unless the harm is committed against agents of the security forces or services, in the performance of their duties or because of them.

3 - The court may discharge without punishment:

a) In the case of reciprocal injuries and if it was not proved which one of the contenders has attacked in first place; or

b) In the case where the agent has solely exercised retort over the aggressor.

#### **Article 144**

##### Grievous bodily injury

1 - Whoever harms the body or the health of another person in a way that:

a) Deprives him from important an organ or limb, or deforms him in a serious and permanent manner;

b) Takes or affects, in a serious way, his work capacity, intellectual capacities, of procreation or of sexual enjoyment or the possibility to use the body, the senses or the language,

c) Causes him a particularly painful or permanent disease or grievous or incurable mental disorder; or

d) Causes a danger for his life; is punished with sentence of imprisonment from two to ten years.

#### **Article 153**

##### Threat

1 - Whoever threatens another person with the commission of a crime against life, bodily integrity, personal freedom, sexual liberty and self-determination or property of considerable value, in an adequate way to cause him fear or worry or to impair his liberty of determination, is punished with sentence of imprisonment for not more than one year or with a fine for not more than 120 days.

2 - The criminal proceeding depends upon complaint.

#### **Article 154**

##### Coercion

1 - Whoever, by means of violence or threat with an appreciable harm, constrains another person to an action or omission or to bear an activity, is punished with sentence of imprisonment for not more than three years or with a fine.

2 - The attempt is punishable.

3 - The act is not punishable:

a) If the use of the means to accomplish the intended purpose is not censurable; or

b) If it is aimed to avoid suicide or the commission of a typical unlawful act.

4 - If the act occurs between spouses, ascendants and descendants, adopting and adopted persons, or between persons of a different or of the same sex, who live in equal conditions as those of spouses, the criminal procedure depends upon complaint.

#### **Article 155**

##### Aggravated coercion

1 - When the acts foreseen in articles 153 to 154 are carried out:

a) By means of threat with the commission of a crime punishable with sentence of imprisonment over three years; or

b) Against a person particularly undefended, due to age, deficiency, disease or pregnancy;

c) Against any of the persons mentioned in paragraph 1) of no. 2 of article 132, in the performance of their duties or because of them;

d) By an officer with serious abuse of authority; the agent is punished with sentence of imprisonment for not more than two years or with a fine for not more than 240 days, in the case of article 153 and with sentence of imprisonment from one to five years, in the case of no. 1 of article 154.

2 - The same sentences are applicable if, by virtue of the threat or coercion, the victim or the person upon whom the harm shall fall commits suicide or attempts to commit suicide.

#### **Article 359**

##### Falsity of testimony or statement

1 - Whoever gives false statements in a party's testimony in relation to facts over which shall testify, after taking oath and having been warned of the criminal consequences to which he is exposed with the false testimony, is punished with sentence of imprisonment for not more than three years or with a fine.

2 - In the same sentence incur the private prosecutor and the civil parties regarding statements given in a criminal procedure as well as the defendant as regards statements about the identity and criminal record.

### **Article 360**

Falsity of testimony, expertness, interpretation or translation

1 - Whoever, as a witness, expert, technician, translator or interpreter, before a court or competent officer to receive as a mean of evidence testimony, report, information or translation, gives testimony, submits report, gives information or makes false translations, is punished with sentence of imprisonment from six months to three years, or with a fine not less than 60 days.

2 - In the same sentence incurs whoever, without a justified reason, refuses to testify or to submit report, information or translation.

3 - If the act mentioned in no. 1 is committed after the agent has taken oath and having been warned of the criminal consequences to which he is exposed, the sentence is of imprisonment for not more than five years or of a fine for not more than 600 days.

### **Article 363**

Bribery

Whoever persuades or tries to persuade another person, through a gift or promise of a benefit of economic nature or not, to commit the acts foreseen in articles 359 or 360, without such acts being committed, is punished with sentence of imprisonment for not more than two years, or with a fine for not more than 240 days.

**Please provide examples of cases and attach case law if available**

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

#### **Simple bodily injury (article 143)**

2007

Defendent: 18.881

Convictions: 5.528

Acquittals: 1.425

Non convictions: 2.340

2008

Defendent: 18.335

Convictions: 5.324

Acquittals: 1.581

Non convictions: 2.464

2009

Defendent: 15.380

Convictions: 4.496

Acquittals: 1.211

Non convictions:2.139

**Grievous bodily injury (article 144)**

2007

Defendent: 219

Convictions 128

Acquittals 9

Non convictions: 39

2008

Defendent: 240

Convictions: 109

Acquittals:13

Non convictions: 66

2009

Defendent: 162

Convictions: 69

Acquittals: ..

Non convictions: 65

**Threat (article 153)**

2007

Defendent: 3.470

Convictions: 847

Acquittals: 251

Non convictions: 632

2008

Defendent: 3.301

Convictions: 772

Acquittals: 316

Non convictions: 597

2009

Defendent: 2.586

Convictions: 606

Acquittals: 215

Non convictions: 560

### **Coercion (Article 154)**

2007

Defendent: 199

Convictions: 97

Acquittals: ..

Non convictions: 77

2008

Defendent: 198

Convictions: 93

Acquittals: 4

Non convictions: 81

2009

Defendent: 198

Convictions: 86

Acquittals: 4

Non convictions: 82

**Falsity of testimony or statement (article 359)**

2007

Defendent: 568

Convictions: 327

Acquittals: 6

Non convictions: 197

2008

Defendent: 513

Convictions: 336

Acquittals: ..

Non convictions: 154

2009

Defendent: 398

Convictions: 265

Acquittals: 4

Non convictions: 116

**Please describe how such information is collected and analysed**

Statistic information is collected and analyzed within the Ministry of Justice - Directorate General for Justice Policy which is charged to prepare and publish the so-called «Statistics of Justice», the official statistic information in the field of justice in Portugal. All these statistics are available on-line in the website of Directorate General for Justice Policy.

*Have you ever assessed the effectiveness of the measures adopted to criminalize obstruction of justice?*

**(N) No**

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **92. Subparagraph (b) of article 25**

Each State Party shall adopt such legislative and other measures as may be necessary to establish as **criminal offences, when committed intentionally:**

...

**(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official** in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of **public official**.

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please cite the text(s)**

Answer for this question has been already provided in answer to question 91.

**Please provide examples of cases and attach case law if available**

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

No statistics available.

**Please describe how such information is collected and analysed**

No statistics available.

*Have you ever assessed the effectiveness of the measures adopted to criminalize obstruction of justice?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **93. Paragraph 1 of article 26**

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to **establish the liability of legal persons for participation in the offences established in accordance with this Convention.**

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

Until 2007 and according to the general rule stated in Article 11 of the Criminal Code, unless a provision states otherwise only natural persons could be criminally liable under the Portuguese legislation.

That was the case of Decree-Law no. 28/84 of 20 of January 1984 which includes in Article 3 the criminal liability of legal persons and where, at the time, the offences of corruption in the private sector and corruption in international transactions are foreseen.

In 2007 the Criminal Code has been amended and a new version of Article 11 (liability of natural and legal persons) has been approved. Mention provision is applicable to a range of offences where the different types of corruption - active and passive - are included (Articles 372 to 374 of the Criminal Code).

Law n° 20/2008, of 21 April, establishing the new criminal regime to combat corruption in international trade and in the private sector, in compliance with the Council Framework Decision n. 2003/568/JHA, of 22 July, also includes a provision about the criminal liability of legal persons (Article 4) stating that legal persons and similar entities shall be held liable, in general terms, for the offences laid down in the present law.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**



**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

## **Criminal Code**

### **Article 11**

#### Liability of natural and legal persons

1. Except for the provisions laid down in the following paragraph and in the special cases envisaged by law, only natural persons can be held criminally liable.
2. Legal persons and equivalent entities, except for the State, other public legal persons and international organisations of public law can be held liable for the crimes foreseen in articles 152°-A and 152°-B, in articles 159° and 160°, in articles 163° to 166° when the victim is under age 18, and in articles 168°, 169°, 171° to 176°, 217° to 222°, 240°, 256°, 258°, 262° to 283°, 285°, 299°, 335°, 348°, 353°, 363°, 367°, 368°-A and 372° to 374° when committed:
  - a) by a natural person holding a senior management position within a legal person's structure acting in the name and allegedly in the interest of the said legal person; or
  - b) by whoever acts under the authority of the natural persons referred to in the foregoing subparagraph, due to a violation of his/her duties of vigilance and control.
3. For the purposes of criminal law, the expression public legal person includes:
  - a) Public law legal persons, where the business public entities are included;
  - b) Entities rendering public services, regardless of their ownership,
  - c) Other legal persons who exercise prerogatives of public power.
4. The organs and representatives of legal persons and whoever has, within the legal person, the authority to exercise the control of its activity are considered as holding a senior management position.
5. For the purposes of criminal liability, civil societies and *de facto* associations are considered equivalent entities to legal persons.
6. The liability of legal persons and equivalent entities shall be excluded when the actor has acted against the orders or express instructions of the person responsible.
7. The liability of legal persons and equivalent entities does not exclude the individual liability of the respective actors nor does it depend on the liability of those.
8. Mergers and splits do not determine the extinction of the criminal liability of the legal person or equivalent entity, being the following criminally liable:
  - a) Legal person or equivalent entity in which the merger has occurred;
  - b) Legal person or equivalent entity resulting from the splitting.
9. Notwithstanding the right to claim reimbursement, persons holding a senior management position shall be subsidiarily responsible for the payment of the fine and/or compensation which the legal person or equivalent entity has been sentenced to pay, regarding crimes:

- a) Practiced during the exercise of his/her post, without his/her express opposition;
- b) Previously practiced, when it has been due to his/her fault that the property of the legal person or equivalent entity has become insufficient for the respective payment or;
- c) Previously practiced, when the final decision to apply the fine and/or compensation mentioned above has been notified while he/she held that senior management position and when the lack of payment is imputable to him/her.

10. Where several persons are liable under the terms of the foregoing paragraph, they shall be jointly liable.

11. If the fine and/or compensation is applicable to an entity without legal personality, the common property and, in its absence or insufficiency, the property of each partner shall be jointly answerable for them.

#### **Law no. 20/2008**

#### **Article 4**

#### **Criminal liability of legal persons or similar entities**

Legal persons and similar entities shall be held liable, in general terms, for the offences laid down in the present law.

**If available, please provide information on cases involving the participation of legal persons in offences established by this Convention (statistics, types of cases, outcome). Please provide per annum figures since the year 2003 (or further back, if available)**

No information on cases involving the participation of legal persons in offences established in the UNCAC is available.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

*Have you ever assessed the effectiveness of the measures adopted to establish liability of legal persons?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

#### **94. Paragraph 2 of article 26**

2. Subject to the legal principles of the State Party, the **liability of legal persons may be criminal, civil or administrative.**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s) and specify the type of liability of legal persons established in your country*

**Please cite the text(s)**

According to the Portuguese legal regime, the liability of legal persons may be criminal, civil or administrative. As stated before, the criminal liability of legal persons is foreseen in Article 11 of the Criminal Code and in Article 4 of Law no. 20/2008 of 20 January.

Legal persons could also be subject to **civil and administrative liability** (through the application of «coimas», which are monetary sanctions). As an example, the Service for Gambling Inspection, of the Tourism Institute, which is the oversight authority for gambling activities has applied an administrative sanction (coima) in the amount of € 63 547,50, for breach of Article 45 a) of former Law no. 11/2004 (replaced by AML/CFT Law no 25/2008) on the prevention of money laundering, through its Deliberation 5/2007/CJ, of 9 of November 2007, to a gambling entity. The administrative liability of legal persons is also set forth in the Code of Administrative Procedure approved by Decree-Law n° 442/91 of 15 November and amended in 2008 by Decree-Law no. 18/2008 of 29 January.

Another example of **civil and criminal liability** of legal persons and similar entities is Article 182 of Law no.23/2007 of 4<sup>th</sup> July establishing the legal regime for the entry, staying, leaving and expulsion of foreigners from the national territory: Mentioned provision states that stating that legal persons and similar entities are held responsible, in general terms, for the commission of the offences foreseen in that Law committed by natural persons, being both responsible according to the civil law, for the payment of fines, “coimas”, reparations and other values applicable by court decision. Together with the criminal liability resulting from the commission of the offences foreseen in Articles 183 to 185, civil liability also applies for the payment of all expenses related to the staying and expulsion of the evolved foreign citizens.

Regarding the **civil responsibility** of legal persons if foreseen for instance in Article 483 (general principle for civil responsibility) of the Civil Code (Section V - Civil responsibility) stating that whatsoever that illegally violates with *dolum* or mere fault, the rights of another person or any other legal provision aimed to protect the interests of persons is obliged to compensate the damaged by the damages resulting from the violation. We can also refer Law no 67/2007 of 31 December establishing the civil extra-contractual

responsibility of the State and other public legal persons, as state owned legal persons.

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide information (statistics, types of cases, outcome) on related court or other cases, including administrative or other disciplinary actions. Please provide per annum figures since the year 2003 (or further back, if available)**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

No assistance is need for the conduction of such an assessment.

## **95. Paragraph 3 of article 26**

**3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

According to paragraph 7 of Article 11 of the Criminal, the liability of legal persons and equivalent entities does not exclude the individual liability of the respective actors nor does it depend on the liability of those.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Criminal Code**

## Article 11

### Liability of natural and legal persons

1. to 6. (...)

7. The liability of legal persons and equivalent entities does not exclude the individual liability of the respective actors nor does it depend on the liability of those.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review, including recent cases where both natural and legal persons were liable**

**Please provide any available statistics of such cases. Please provide per annum figures since the year 2003 (or further back, if available)**

No statistics are available.

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## 96. Paragraph 4 of article 26

4. Each State Party shall, in particular, **ensure that legal persons held liable** in accordance with this article **are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions**, including monetary sanctions.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

According to the domestic law, the commission of the offences foreseen in the UN Convention against Corruption - is subject to effective, proportionate and dissuasive criminal and or non-criminal sanctions, including monetary sanctions (*coimas*). All the legal instruments stated in the previous answers are applicable, as well Law no. 25/2008, of 25 June establishing the legal regime against money laundering and terrorism financing.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one**

of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please describe how such information is collected and analysed

No statistics are available.

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Please provide examples of cases and attach case law if available

*Have you ever assessed the effectiveness of the measures adopted to ensure that legal persons held liable in accordance with this article are subject to criminal or non-criminal sanctions?*

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

## 97. Paragraph 1 of article 27

1. Each State Party shall adopt such legislative and other measures as may be necessary to **establish as a criminal offence**, in accordance with its domestic law, **participation in any capacity** such as an accomplice, assistant or instigator **in an offence established in accordance with this Convention**.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

**Criminal Code**

**Article 27**

Accomplice

1 - Whoever, intentionally and by any form, renders material or moral assistance to the commission by another of an act with wilful conduct, is punishable as an accomplice.

2 - The sentence determined to the perpetrator is applicable to the accomplice, specially mitigated.

**Article 28**

## Unlawfulness in the participation

1 - If the unlawfulness or the level of unlawfulness of the act depend upon certain qualities or special relationships of the agent, in order for the respective sentence to become applicable to all participants, it is sufficient that such qualities or relationships are verified in any of them, except if the intention of the incriminated rule is different.

2 - Whenever, by virtue of the rule foreseen in the previous number, results the applicability of a more severe sentence for any of the participants, this may, taking into account the circumstances of the case, be replaced by the sentence which would have been applicable if such rule did not intervene.

### **Article 29**

#### Guilt in the participation

Each participant is punished according to his guilt, regardless of the punishment or of the level of guilt of the other participants.

### **Article 297**

#### Public instigation for the commission of an offence

1 - Whoever, in a public meeting, through the media, by writing divulgation or through other means of technical reproduction, reward or exalt another person for the commission of an offence, in order to create a danger for the commission of a similar offence will be subject to a penalty up to 6 months imprisonment or a fine up to 60 days, except where a more serious penalty is applicable according to other legal provision.

2 - (...)

According to paragraph 2 of Article 27, the attempt is as well an offence established in accordance with the UN Convention against Corruption.

### **Article 22**

#### Attempt

1 - An attempt exists when the agent performs acts for the execution of a crime that he has decided to commit, without occurring completion of such crime.

2 - Execution acts are:

- a) Those acts which fulfil a constitutive element of a type of crime;
- b) Those acts suitable to produce a typical result; or
- c) Those acts that, according to the common experience and with the exception of unforeseeable circumstances, are of a kind which is expected to be followed by acts of the types referred to in the previous paragraphs.

### **Article 23**

#### Punishment for an attempt

1 - Unless a provision states otherwise, an attempt is punishable only if to the respective completed crime corresponds a sentence higher than three years of imprisonment.

2 - An attempt is punishable with the sentence applicable to the completed crime, specially

mitigated.

3 - An attempt is not punishable when it is clear that the mean used by the agent is improper or the object essential for the completion of the crime does not exist

**Please cite the text(s)**

The general part of the Criminal Code (Chapter II - forms of crimes) establishes as a criminal offence the participation in any capacity such as an accomplice (Article 27) , assistant (Article 28 and 29) or instigator (Article 297) in an offence established in accordance with the UN Convention against Corruption.

**Please provide examples of cases and attach case law if available**

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

**Please describe how such information is collected and analysed**

No statistics are available.

*Have you ever assessed the effectiveness of the measures adopted to criminalize participation in an offence established in accordance with the Convention?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **98. Paragraph 2 of article 27**

2. Each State Party may adopt such legislative and other measures as may be necessary to **establish as a criminal offence**, in accordance with its domestic law, **any attempt to commit an offence established in accordance with this Convention.**

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Criminal Code**

**Article 22**

Attempt



1 - An attempt exists when the agent performs acts for the execution of a crime that he has decided to commit, without occurring completion of such crime.

2 - Execution acts are:

- a) Those acts which fulfil a constitutive element of a type of crime;
- b) Those acts suitable to produce a typical result; or
- c) Those acts that, according to the common experience and with the exception of unforeseeable circumstances, are of a kind which is expected to be followed by acts of the types referred to in the previous paragraphs.

### **Article 23**

#### **Punishment for an attempt**

1 - Unless a provision states otherwise, an attempt is punishable only if to the respective completed crime corresponds a sentence higher than three years of imprisonment.

2 - An attempt is punishable with the sentence applicable to the completed crime, specially mitigated.

3 - An attempt is not punishable when it is clear that the mean used by the agent is improper or the object essential for the completion of the crime does not exist

#### **Please cite the text(s)**

The general part of the Criminal Code (Chapter II - forms of crimes) establishes as a criminal offence the attempt (Article 22), which is punishable according Article 23.

#### **Please provide examples of cases and attach case law if available**

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

**Please describe how such information is collected and analysed**

No statistics available.

*Have you ever assessed the effectiveness of the measures adopted to criminalize the attempt to commit an offence established in accordance with the Convention?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **99. Paragraph 3 of article 27**

3. Each State Party may adopt such legislative and other measures as may be necessary to **establish as a criminal offence**, in accordance with its domestic law, the **preparation for an offence established in**

accordance with this Convention.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(N) No

*Which challenges and issues are you facing in (fully) adopting/implementing the provision under review? (Check all the answers that apply and provide an explanation in the "Comments" field)*

(INAD) Inadequacy of existing normative measures (constitution, laws, regulations, etc. )

(MYSYS) Specificities in our legal system

**Please provide an account of your country's efforts to date to implement the provision under review:**

The preparatory acts are foreseen in Article 21 of the general part of the Criminal Code (Chapter II - forms of crimes).

**Please outline the steps or action (and related timeframe) that domestic or other authorities would need to take to ensure full compliance with the provision under review**

The secondary legislation should clearly state in a case by case situation that mentioned act are punishable.

*Which of the following forms of technical assistance, if available, would assist your country in adopting or better implementing the provision under review? (Check all the answers that apply)*

(NO) No assistance would be required

*Are any of the forms of technical assistance previously mentioned already provided? (Check one answer)*

(N) No

## 100. Article 28

**Knowledge, intent and purpose** required as an elements of an offence established in accordance with this Convention may be inferred from **objective factual circumstances**.

*In your country's legal system, can knowledge, intent and purpose required as an element of an offence established in accordance with the Convention be inferred from objective factual circumstances? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable law(s), policy(ies), or other measure(s)*

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

## **Criminal Code**

### **Article 13**

#### Wilful conduct and negligence

Only an act committed with wilful conduct is punishable or, in the cases specially foreseen in the law, with negligence.

### **Article 14**

#### Wilful conduct

1 - Whoever, representing an act which fulfils a type of crime, carries it on with the intention of accomplishing it, acts with wilful conduct.

2 - Whoever, representing the accomplishment of an act which fulfils a type of crime as a necessary consequence of his conduct, also acts with wilful conduct.

3 - When the accomplishment of an act which fulfils a type of crime is represented as a possible consequence of the conduct, the wilful conduct exists if the agent acts accepting such accomplishment.

### **Article 15**

#### Negligence

1 - Whoever, failing to exercise a duty of care to which, under the circumstances, is obliged to and is capable of:

- a) Represents as possible the accomplishment of an act which fulfils a type of crime but acts without accepting such accomplishment; or
- b) Does not even represent the possibility of accomplishment of the act;

#### **Please cite the text(s)**

According to the Criminal Code and the Code of Criminal Procedure, the knowledge, intent and purpose are required as an element of an offence established in accordance with the UN Convention against Corruption and may be inferred from objective factual circumstances.

Effectively, Articles 13 (Wilful conduct and negligence), Article 14 (Wilful conduct) and 15 (Negligence) of the Criminal Code are constitutive elements of an offence and Article 127 of the Code of Criminal Procedure allows that the evidence or the assessment of facts is weighted according to the rules of experience and free judgement of the Criminal Judge. Therefore, pursuant to the general principles of evidence assessment (according to Article 124 of the code of Criminal Procedure), all the relevant factual circumstances of the case can be studied by the judge, to reach the «factual truth» to determine whether an offence has been committed. So, the intentional element (wilful element or *dolum*) of the offences established in accordance with the UNCAC can therefore be inferred from objective factual circumstances.

**Please provide examples of cases and attach case law if available**

**If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)**

**Please describe how such information is collected and analysed**

No statistics are available.

*Have you ever assessed the effectiveness of the measures adopted for knowledge, intent and purpose to be inferred from objective factual circumstances as prescribed above?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **101. Article 29**

Each State Party shall, where appropriate, **establish** under its domestic law a **long statute of limitations period** in which to commence proceedings for any offence established in accordance with this Convention and establish a **longer statute of limitations period** or provide for the **suspension of the statute of limitations** where the **alleged offender has evaded the administration of justice**.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**Please cite the text(s)**

The Criminal Code, Articles 118 to 120, regulate the issues relating to statutes of limitations in respect of criminal proceedings. These rules imply that the criminal proceedings against offenders are extinguished following a certain period of time counted from the commission of the offence. The limitation period depends on the maximum penalty foreseen for the offence at stake.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Criminal Code**

**Article 118**

## Statute of limitation

1 - The criminal procedure is extinguished due to the statute of limitation as soon as the following terms have elapsed from the commission of the crime:

- a) Fifteen years in case of crimes punishable with an imprisonment with a maximum limit higher than ten years, or in case of the crimes set forth in Articles 372, 373, 374, 374-A, 375(1), 377(1), 379(1), 382, 383 and 384 CC, Articles 16, 17, 18 and 19 of Law 34/87, amended by Laws no. 108/2001, and no. 30/2008 and Articles 8, 9, 10 and 11 of Law no. 50/2007 and also in case of fraud in obtaining subsidies or subventions;
- b) Ten years for crimes punishable with imprisonment with a maximum limit equal to or higher than five years but which does not exceed ten years;
- c) Five years when regarding crimes punishable with sentence of imprisonment with a maximum limit equal or higher than one year, but less than five years;
- d) Two years in the remaining cases.

2 - For the purposes of the previous paragraph, in the determination of the maximum penalty applicable to each crime are considered the elements pertaining to the type of crime but not the aggravating or mitigating circumstances.

3 - If the criminal procedure relates to a legal person or equivalent entity, the terms foreseen in paragraph 1 are determined on the basis of the sentence of imprisonment, prior to proceeding with the conversion foreseen in paragraphs 1 and 2 of article 90-B.

4 - When the law establishes for any crime, alternatively, a sentence of imprisonment or a fine penalty, only the first one is considered for the purposes of this article.

5 - In the crimes against sexual liberty and self-determination of minors, the criminal procedure is not ceased, as a result of the statute of limitation, before the offended party completes 23 years of age.

## Article 120

### **Suspension of the statute of limitation**

1 -The statute of limitation of the criminal procedure is suspended, besides the cases specially foreseen in the law, during the time in which:

- a) The criminal procedure cannot be legally initiated or continued by lack of legal authorisation or of a judgment to be issued by a non criminal court or as a result of the return of a preliminary issue to a non criminal jurisdiction;
- b) The criminal procedure is outstanding from the notice of the prosecution or, in the case where the prosecution was not issued, from the notice of the decision of enquiry which sends the defendant to trial or from the application for the applicability of a penalty in the simplest procedure;
- c) The contumacy judgment is in force;
- d) The court decision cannot be notified to the defendant judged in his absence; or
- e) The delinquent serves a custodial sentence or security measure abroad.

2 - In the case foreseen in paragraph b) of the previous number the suspension may not exceed three years.

3 - The statute of limitation runs again from the day in which the suspension cause ceases.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide information (statistics, types of cases, outcome) on related court or other cases related to instances when you established a longer statute of limitations period or suspended the statute of limitations where an alleged offender had evaded the administration of justice. Please provide per annum figures since the year 2003 (or further back, if available)**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **102. Paragraph 1 of article 30**

1. Each State Party shall make the **commission of an offence** established in accordance with this Convention **liable to sanctions that take into account the gravity of that offence.**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the text regarding applicable sanction(s) or other measure(s)*

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Criminal Code

### **Article 71 Determination of the extent of the sentence**

1 - The determination of the extent of the sentence, within the limits established by law, is made on the basis of the agent's guilt and of the prevention requirements.

2 - In the determination of the concrete sentence, the court takes into consideration all circumstances that, although not taking part of the type of the crime, speak for or against the agent, namely:

- a) The level of unlawfulness of the act, the way of its execution and the seriousness of its consequences as well as the level of breach of the duties imposed to the agent;
- b) The intensity of the wilful conduct or of the negligence;
- c) The feelings evidenced in the committing of the crime and the purposes or motives that have determined it;
- d) The personal conditions of the agent and his economic situation;
- e) The prior and subsequent conduct to the act, especially when it is aimed to repair the consequences of the crime;
- f) The lack of preparation to maintain a lawful conduct, evidenced in the act, when such lack should be censured through the applicability of a sentence.

3 - The grounds of the extent of the sentence are expressly referred to in the sentence.

**Please cite the text(s)**

Regarding the application of sanctions, the Criminal Code takes into account the gravity of the offence (Chapter IV - Choice and extent of the penalty). According to Article 71, the determination of the extent of the sentence, within the limits established by law, is made on the basis of the agent's guilt and of the prevention requirements.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide information on criminal and non-imposed criminal sanctions**

**Where applicable, please provide information on the execution of sentences (e.g. time served, amount of money collection, etc.)**

*Have you ever assessed the effectiveness of the measures adopted to make the commission of an offence established in accordance with the Convention liable to sanctions that take into account the gravity of that offence?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **103. Paragraph 2 of article 30**

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate **balance between any immunities or jurisdictional privileges accorded to its public officials** for the performance of their functions and the **possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.**

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s) or rules*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Criminal Code**

**Article 1**

**Principle of legality**

- 1- An act may only be criminally punished if it was determined punishable by law before the act was committed.
- 2- Security measures may only be applied to cases of perilousness, if its conditions are determined by law previous to its fulfillment.
- 3- An appeal to analogy is not permitted to qualify an act as criminal, to define a case of perilousness, or to determine a penalty or a corresponding security measure.

**Please cite the text(s)**

Generally speaking, public officials in Portugal are subject to the law as other common citizen and no immunities or jurisdictional privileges apply. We should however clarify that the holders of some positions in the State hierarchy or sovereignty bodies - like the President of the Republic, the members of the Government and the members of the Parliament, as well as Judges and Public Prosecutors - and some immunities or jurisdictional privileges are applicable due to the fact they are not considered as public officials.

Therefore, according to the Constitution of the Portuguese Republic, the Criminal Code (where the principle of legality is foreseen in Article 1) and the Code of Criminal Procedure, all the crimes that have been committed or any suspicion of the commission of a crime should be investigated and prosecuted.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**Have there been concrete instances where the issue of immunities and/or jurisdictional or other privileges accorded to public officials has arisen and addressed in official documents?**

There have been no instances where the issue of immunities or jurisdictional



privileges of public officials has arisen and addressed in official documents.

**If there have been any relevant official inquiries or reports, please cite, summarize or attach relevant documents**

There have been no relevant official inquiries or reports.

*Have you ever assessed the effectiveness of the measures adopted to balance immunities or privileges accorded to public officials and the possibility of investigating, prosecuting and adjudicating offences established in accordance with the Convention?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **104. Paragraph 3 of article 30**

3. Each State Party shall endeavour to ensure that any **discretionary legal powers** under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are **exercised to maximize the effectiveness of law enforcement measures** in respect of those offences and with due regard to the need to deter the commission of such offences.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

According to the general principles inspiring the Criminal Code one of the goals of the sanctions applicable to offenders is to deter the commission of offences in general. For that reason, judges take into account the effectiveness of law enforcement measures in the application of penalties for the commission of an offence.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Criminal Code

#### **Article 71**

#### **Determination of the extent of the sentence**

1 - The determination of the extent of the sentence, within the limits established by law, is made on the basis of the agent's guilt and of the prevention requirements.

2 - In the determination of the concrete sentence, the court takes into consideration all circumstances that, although not taking part of the type of the crime, speak for or against the

agent, namely:

- a) The level of unlawfulness of the act, the way of its execution and the seriousness of its consequences as well as the level of breach of the duties imposed to the agent;
- b) The intensity of the wilful conduct or of the negligence;
- c) The feelings evidenced in the committing of the crime and the purposes or motives that have determined it;
- d) The personal conditions of the agent and his economic situation;
- e) The prior and subsequent conduct to the act, especially when it is aimed to repair the consequences of the crime;
- f) The lack of preparation to maintain a lawful conduct, evidenced in the act, when such lack should be censured through the applicability of a sentence.

3 - The grounds of the extent of the sentence are expressly referred to in the sentence.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide information (statistics, types of cases, outcome) on related cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)**

*Have you ever assessed the effectiveness of the measures adopted to ensure that discretionary legal powers are exercised to maximize deterrence and effectiveness of law enforcement action?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **105. Paragraph 4 of article 30**

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that **conditions imposed** in connection with decisions on release pending trial or appeal **take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.**

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

In order to ensure that the conditions imposed in connexion with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings, the Code of Criminal Procedure foresees a set of compulsion measures (Title II - Measures of compulsion) applicable by the court in accordance of the seriousness of the offence alleged committed: term of identity and residence (Article 196), bail (Article 197), obligation to be present periodically (Article

198), obligation to rest at home (Article 201) and preventive imprisonment (202).

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

### **Code of Criminal Procedure**

#### **Article 196**

Term of identity and residence

1 - The judicial authority or the criminal police body submit to term of identity and residence drawn up in the proceeding whoever is constituted as defendant, even if he has already been identified under article 250.

2 - For the purposes of being notified by regular mail, pursuant to paragraph c) of article 113(1), the defendant indicates his residence, place of work or another domicile at his choice.

3 - The term must include that the defendant has been made aware of:

- a) The obligation to appear before the competent authority or to remain available to the same whenever the law so requires or whenever duly notified to do so;
- b) The obligation not to change residence or to be absent from it for more than five days without indicating the new residence or place where he can be found;
- c) That the subsequent notices will be made by regular mail to the address indicated in no. 2, unless the defendant communicates another, by means of an application delivered or sent by registered mail to the registry where the records run at such time;
- d) That breach with the previous paragraphs legitimates his representation by a defence counsel in all procedural acts in which he has the right or duty to attend as well as for the hearing to be held in his absence, under the terms set out in article 333.

4 - The applicability of the measure set out in this article may always be cumulated with any other measure foreseen hereunder.

#### **Article 197**

Surety

1 - If the crime imputed is punishable with sentence of imprisonment, the judge may impose to the defendant the obligation to grant a surety.

2 - If the defendant is not able to grant surety or has serious obstacles or inconveniences to grant it, the judge may, at his own initiative or upon request, replace it by any other measures of constraint, with the exception of the provisional custody or house arrest, which may be legally applicable to the case, which will accrue to others already applicable.

3 - In the determination of the amount of the surety are taken into account the purposes of protective nature to which it is aimed, the seriousness of the crime imputed, the damage caused thereof and the social-economic situation of the defendant.

### **Article 198**

#### Obligation of periodic appearance

1 - If the crime imputed is punishable with sentence of imprisonment with a maximum higher than 6 months, the judge may impose the defendant the obligation to appear before a judicial entity or before a certain criminal police body in days and time previously established, taking into account the professional demands of the defendant and the place where he resides.

2 - The obligation of periodic appearance may be cumulated with any other measure of constraint, with the exception of house arrest and provisional custody.

### **Article 201**

#### House arrest

1 - If the judge deems inadequate or insufficient, in the case, the measures mentioned in the previous articles, he may impose to the defendant the obligation not to be absent or not to be absent without authorisation, from his own house or from another in which he resides at such time or, namely, when justified, in an institution adequate to render him social and healthcare support, upon strong signs of the commission of crime with wilful conduct punishable with sentence of imprisonment with a maximum higher than 3 years.

2 - House arrest is cumulated with the obligation not to contact, by any mean, with certain persons.

3 - For monitoring of the compliance of the obligations mentioned in the previous numbers, technical remote means, pursuant to the terms foreseen in the law, may be used.

### **Article 202**

#### Provisional custody

1 - If the judge deems inadequate or insufficient, in the case, the measures mentioned in the previous articles, he may impose the provisional custody to the defendant when:

- a) There are strong signs of the commission of crime with wilful conduct punishable with sentence of imprisonment with a maximum higher than 5 years;
- b) There are strong signs of the commission of crime with wilful conduct of terrorism, violent criminality or highly organised with sentence of imprisonment with a maximum higher than 3 years; or
- c) Concerns a person who has entered or irregularly remains in national territory, or against whom is in course an extradition or deportation process.

2 - In the event that it is showed that the defendant to be subject to provisional custody suffers from mental disorder, the judge may impose, after hearing the defence counsel and, whenever possible, a relative, in lieu of the imprisonment and while the disorder remains that a preventive internment in a psychiatrist hospital or in another adequate similar institution takes place, adopting the necessary assurances to prevent the danger of escape and of commission of new crimes.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

If available, please provide information (statistics, types of cases, outcome) on related cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)

*Have you ever assessed the effectiveness of the measures adopted to ensure that conditions for release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

### **106. Paragraph 5 of article 30**

5. Each State Party shall take into account the **gravity of the offences** concerned when considering the **eventuality of early release or parole of persons convicted** of such offences.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please attach the text(s)**

**Please cite the text(s)**

The possibility of early release or parole of persons convicted persons by the commission of offences, including the offences set forth in the UN Convention against Corruption are established in Articles 61 to 64 of the Criminal Code.

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Criminal Code**

**Section IV  
Parole**

**Article 61  
Requirements and length**

1 - The applicability of parole is always subject to the convict's consent.

2 - The court releases the convict to imprisonment on parole when half of the sentence has already been served and in a minimum of six months if:

- a) There are grounds to expect, under the circumstances of the case, the previous life of the agent, his personality and its evolution during the execution of the sentence of imprisonment, that the convict, once in liberty, will lead his life in a socially responsible manner, without committing crimes; and
- b) The release reveals to be compatible with the order and social peace defence.

3 - The court releases the convict to imprisonment on parole when two thirds of the sentence are already served and in a minimum of six months, provided that the requirement referred to in paragraph a) of the previous number reveals to have been fulfilled.

4 - Without prejudice to the previous numbers, the convict to a sentence of imprisonment higher than six years is released on parole as soon as he has served five sixths of the sentence.

5 - In any of the said types, the parole has a length equal to the time of imprisonment which remains to be served, until a maximum of five years, after which the surplus of the sentence is deemed to be extinguished.

### **Article 62** **Adaptation to parole**

For the purposes of adaptation to parole, upon verification of the requirements foreseen in the previous article, the court may anticipate the release on parole, for a maximum period of one year, being the convict obliged to, during the anticipation period, besides the compliance of the further conditions imposed, the house arrest regime, monitored by remote technical means.

### **Article 63** **Parole in case of consecutive execution of several sentences**

1 - In the event of execution of several sentences of imprisonment, the execution of the sentence to be served in first place is interrupted upon serving half of the sentence.

2 - In the cases foreseen in the previous number, the court decides about the parole at the time in which the court may simultaneously decide in relation to the total amount of the sentences.

3 - Should the sum of the sentences to be consecutively served exceed six years of imprisonment, the court, as soon as five sixths of the sum of the sentences is served, releases the convict on parole, provided that the convict has not previously benefited from it.

4 - The previous numbers are not applicable to the case where the execution of the sentence results from the revocation of the parole.

### **Article 64** **Parole regime**

1 - Article 52, nos. 1 and 2 of article 53, article 54, paragraphs a) to c) of article 55, no. 1 of article 56 and article 57 are correspondently applicable to parole.

2 - The revocation of the parole determines the execution of the sentence of imprisonment which has not yet been served.

3 - In relation to the sentence of imprisonment to be served the grant of new parole can take place in the terms set out in article 61.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide information (statistics, types of cases, outcome) on related cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)**

***Have you ever assessed the effectiveness of the measures adopted to take into account the gravity of the offences when considering the eventuality of early release or parole of persons convicted of such offences?***

**(N) No**

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **107. Paragraph 6 of article 30**

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing **procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned** by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

***Has your country established the procedures described above? (Check one answer)***

**(Y) Yes**

***Please cite, summarize and attach the applicable procedure(s) or other measure(s)***

**Please cite the text(s)**

According to the general principle of Portuguese criminal law any individual should be considered not guilty unless he or she is convicted by a court. The possibility of a public official be removed, suspended or reassigned due to the suspicion of the commission of an offence is foreseen in the legislation related to the disciplinary regime of public officials.

As accessory penalties, the Criminal Code states that the law may correspond to certain crimes the prohibition of the exercise of certain rights and professions.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Criminal Code**

**Article 65**  
**General principles**

1 - No sentence involves as a necessary effect the lost of civil, professional or political rights.

2 - The law may correspond to certain crimes the prohibition of the exercise of certain rights and professions.

**Article 66**  
**Prohibition of the exercise of a duty**

1 - The holder of a public position, public officer or agent of the administration, who, in the performance of the activity to which he was elected or appointed to, commits a crime punished by sentence of imprisonment higher than three years is also prohibited of the performance of such duties for a period ranging from two to five years when the act:

- a) Is committed with flagrant and serious abuse of the duty or with clear and serious breach of the inherent duties;
- b) Reveals indignity in the exercise of the position; or
- c) Implies the lost of the necessary reliance for the performance of the duty.

2 - The previous number is correspondently applicable to the professions or activities which performance is subject to a public title or to an authorisation or homologation from a public authority.

3 - The time in which the agent is deprived of liberty as a result of a procedural measure of constraint, sentence or security measure is not taken into account for the prohibition term.

4 - When, for the same act, a security measure of interdiction of activity is applicable in accordance with article 100, number 1 and 2 cease to be applicable.

5 - Whenever the holder of a public position, public officer or agent of the administration is convicted for the commission of a crime, the court communicates the conviction to the authority which he depends on.

**Article 67**  
**Suspension of the performance of a duty**

1 - The defendant definitely convicted to a sentence of imprisonment, who is not disciplinarily dismissed from a public duty which he performs, is suspended from the duty while serving the sentence.

2 - The suspension foreseen in the previous number stands with the effects which, pursuant to the respective legislation, follow the disciplinary sanction of suspension of the performance of the duties.

3 - The previous numbers are correspondently applicable to professions or activities which performance is subject to a public title or to authorisation or homologation from a public authority.

**Article 68**  
**Effects of the prohibition and suspension of the performance of a duty**

1 - Except for a provision stating otherwise, the prohibition and suspension of the performance of a public duty imply the lost of the rights and privileges granted to the holder, officer or agent, for the corresponding time.

2 - The prohibition of the exercise of a public duty does not impair the holder, officer or



agent to be appointed to a position or duty which can be performed without the dignity conditions that the position or the duty which performance was forbidden require.

3 - The previous numbers are correspondently applicable to professions or activities which exercise is subject to a public title or to authorisation or homologation from a public authority.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide information (statistics, types of cases, outcome) on related cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)**

*Have you ever assessed the effectiveness of your country's procedures through which a public official accused of an offence established in accordance with the Convention may be removed, suspended or reassigned?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **108. Subparagraph 7 (a) of article 30**

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing **procedures for the disqualification**, by court order or any other appropriate means, for a period of time determined by its domestic law, of **persons convicted of offences established in accordance with this Convention from:**

(a) **Holding public office;**

*Has your country established the procedures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable procedure(s) or other measure(s)*

**Please cite the text(s)**

The possibility for the disqualification by court order or any other appropriate means (the disciplinary regime for public officials) is foreseen in the Criminal Code as accessory penalties.

**Please attach the text(s)**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Criminal Code

**Article 65**

## **General principles**

1 - No sentence involves as a necessary effect the lost of civil, professional or political rights.

2 - The law may correspond to certain crimes the prohibition of the exercise of certain rights and professions.

### **Article 66**

#### **Prohibition of the exercise of a duty**

1 - The holder of a public position, public officer or agent of the administration, who, in the performance of the activity to which he was elected or appointed to, commits a crime punished by sentence of imprisonment higher than three years is also prohibited of the performance of such duties for a period ranging from two to five years when the act:

- a) Is committed with flagrant and serious abuse of the duty or with clear and serious breach of the inherent duties;
- b) Reveals indignity in the exercise of the position; or
- c) Implies the lost of the necessary reliance for the performance of the duty.

2 - The previous number is correspondently applicable to the professions or activities which performance is subject to a public title or to an authorisation or homologation from a public authority.

3 - The time in which the agent is deprived of liberty as a result of a procedural measure of constraint, sentence or security measure is not taken into account for the prohibition term.

4 - When, for the same act, a security measure of interdiction of activity is applicable in accordance with article 100, number 1 and 2 cease to be applicable.

5 - Whenever the holder of a public position, public officer or agent of the administration is convicted for the commission of a crime, the court communicates the conviction to the authority which he depends on.

### **Article 67**

#### **Suspension of the performance of a duty**

1 - The defendant definitely convicted to a sentence of imprisonment, who is not disciplinarily dismissed from a public duty which he performs, is suspended from the duty while serving the sentence.

2 - The suspension foreseen in the previous number stands with the effects which, pursuant to the respective legislation, follow the disciplinary sanction of suspension of the performance of the duties.

3 - The previous numbers are correspondently applicable to professions or activities which performance is subject to a public title or to authorisation or homologation from a public authority.

### **Article 68**

#### **Effects of the prohibition and suspension of the performance of a duty**

1 - Except for a provision stating otherwise, the prohibition and suspension of the performance of a public duty imply the lost of the rights and privileges granted to the holder, officer or agent, for the corresponding time.

2 - The prohibition of the exercise of a public duty does not impair the holder, officer or agent to be appointed to a position or duty which can be performed without the dignity

conditions that the position or the duty which performance was forbidden require.

3 - The previous numbers are correspondently applicable to professions or activities which exercise is subject to a public title or to authorisation or homologation from a public authority.

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide information (statistics, types of cases, outcome) on related cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)**

*Have you ever assessed the effectiveness of your country's procedures for the disqualification from holding public office of persons convicted of offences established in accordance with the Convention?*

**(N) No**

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **109. Subparagraph 7 (b) of article 30**

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing **procedures for the disqualification**, by court order or any other appropriate means, for a period of time determined by its domestic law, of **persons convicted of offences established in accordance with this Convention from:**

...

**(b) Holding office in an enterprise owned in whole or in part by the State.**

*Has your country established the procedures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable procedure(s) or other measure(s)*

**Please cite the text(s)**

The same legal regime described in the previous answer apply regarding the holding office in a enterprise owned in whole or in part by the State.

**Please attach the text(s)**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable**

if the text(s) previously provided are in Arabic, Chinese or Russian.

If available, please provide information (statistics, types of cases, outcome) on related cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

*Have you ever assessed the effectiveness of your country's procedures for the disqualification from holding office in an enterprise owned in whole or in part by the State of persons convicted of offences established in accordance with the Convention?*

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

### **110. Paragraph 8 of article 30**

8. Paragraph 1 of this article shall be **without prejudice to the exercise of disciplinary powers** by the competent authorities against civil servants.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 58/2008 of 9 September**

**Article 7**

(...)

3 - Where the criminal offence is simultaneously a disciplinary offence, the disciplinary action is exercised regardless of the conviction in the criminal proceedings.

**Article 8**

Facts that could be regarded as criminal offences

When the facts are regarded to be a criminal offence, the communication to the Public Prosecutor competent for criminal proceeding in mandatory according to Article 242 of the code of Criminal Procedure.

**Please cite the text(s)**

Law no. 58/2008 of 9 September, establishing the Disciplinary Statute of Public Officials, refers to the sanctions that could be applied to public officials who break the legal duties to which they are specifically subject even when mentioned break of duties is related to the commission of an offence. The disciplinary power is exercised regardless of the

commission of an offence by the public official, as foreseen in paragraph 3 of Article 7 and Article 8 of mentioned Law

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related disciplinary cases**

*Have you ever assessed the effectiveness of the measures adopted to regulate the exercise of disciplinary powers against civil servants by competent authorities?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **111. Paragraph 10 of article 30**

10. States Parties shall endeavour to promote the **reintegration into society of persons convicted of offences established in accordance with this Convention.**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable reintegration programme(s) or measure(s)*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Criminal Code

#### **Article 40**

#### **Purposes of sentences and of security measures**

1 - The applicability of sentences and of security measures aims the protection of legal assets and the agent's reintegration into society.

2 - In no event the sentence may exceed the extent of guilt.

3 - The security measure may only be applicable if it is proportional to the seriousness of the act and to the dangerousness of the agent.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

Please cite the text(s)

According to Article 40 of the Criminal Code (Purposes of sentences and of security measures) the applicability of sentences and of security measures aims the protection of legal assets and the offenders' reintegration into society.

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If you collect statistics on recidivism rates, please provide them

*Have you ever assessed the effectiveness of measures established to promote the reintegration into society of persons convicted of offences established in accordance with the Convention?*

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

## 112. Subparagraph 1 (a) of article 31

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to **enable confiscation** of:

(a) **Proceeds of crime** derived from offences established in accordance with this Convention or **property the value of which corresponds** to that of such proceeds;

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies) or other measure(s)*

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

Please cite the text(s)

The Criminal Code - Articles 109 to 111 - foresees the confiscation of the proceeds of crime derived for the offences established in accordance with the UNCAC or property the value of which corresponds to that of such proceeds.

Law 5/2002 of 11 January provides for a special confiscation regime (Article 7) which applies to some of the offences set forth in the UN Convention against corruption (money laundering, trade in influence and corruption). Chapter IV provides for confiscation for the State of goods derived from the commission of a ML offence. In case of conviction the benefit from a criminal activity is considered the difference between the value of the defendant's actual property and one that is consistent with their lawful income. Without prejudice of the court can take into account of any evidence in the proceeding that the defendant can prove the legal origin of the assets referred to in Article 7 (2).

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

### **Criminal Code**

#### **CHAPTER VIII**

Confiscation of instruments, proceeds and benefits

#### **Article 109**

Confiscation of instruments and proceeds

1 - Objects shall be confiscated by the State that have been used or that were meant to be used in the commission of a typical illicit fact, or those that have been generated by it, where by their nature or circumstances of the case, they may endanger the security of persons, the public morals and order, or where they are likely to be used in the commission of additional typical illicit facts.

2 - The provisions in the previous paragraph shall take place even if no one can be punished by the fact.

3 - Where the law does not determine a particular destination for the objects confiscated under the provisions of the previous paragraphs, the judge can order their total or partial destruction or prevent their selling.

#### **Article 110**

Objects belonging to a third party

1 - Without prejudice to the provisions in the next paragraphs, confiscation shall not take place where the objects do not belong to none of the actors or beneficiaries as of the date of the fact, or do not belong to them as of the moment when confiscation is ordered.

2 - In the event that the objects belong to a third party, confiscation shall take place where the respective holders have contributed, in a reproachable way, to their utilisation or production, or where they have obtained benefits from it; or still where the objects are, by any means, purchased after the commission of the fact, having knowledge of their origin.

3 - If the objects consist of inscriptions, representations or records in paper, in any other means of audiovisual expression, belonging to a bona fide third party, confiscation shall not

occur and restitution shall take place, after erasure of the inscriptions, representations or records integrating the typical illicit fact. Where this is not possible, the court shall order their destruction, with the right to compensation, according to civil law.

### **Article 111**

#### **Confiscation of benefits**

1 - Any reward given or promised to the actors of a typical illicit fact, for themselves or for others, shall be confiscated by the State.

2 - Confiscation by the State shall also apply, without prejudice to the rights of the plaintiff or of bona fide third parties, to things, rights or benefits that, through the typical illicit fact, have been directly purchased by the offender for himself or for others and represent property of any kind.

3 - The provisions in the previous paragraphs apply to the things or rights obtained by means of transaction or exchange with the things or rights directly obtained from the typical illicit fact.

4 - Where the reward, the rights, things or benefits referred to in the previous paragraphs cannot be seized in goods, confiscation shall be replaced by payment to the State of their respective value.

### **Law 5/2002 of 11 January**

#### **Article 7**

##### **Assets confiscation**

1 - In case of conviction for an offence referred to in article 1, and for the purpose of assets confiscation to the State, it is considered as benefit from a criminal activity the difference between the value of the defendant's actual property and one that is consistent with his lawful income.

2 - For the purpose of the application of this Law, as the defendant's property one should consider all the assets:

- a) Owned by the defendant or under his control or to his benefit, as of his being held defendant or subsequently;
- b) Transferred to third parties for free or against a derisory instalment within the 5 previous years to his being held defendant;
- c) Received by the defendant within the 5 previous years to his being held defendant, though their intended use remains indeterminate.

3 - Interest, profits and other benefits derived from assets under the conditions set out in article 111 of the Criminal Code, are always considered as benefits from criminal activity.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide information on the number and types of cases in which proceeds were confiscated. Please provide per annum figures since the year 2003 (or further back, if available)**

**If available, please provide information on the amount of proceeds of offences established in**



accordance with this Convention confiscated. Please provide per annum figures since the year 2003 (or further back, if available)

*Have you ever assessed the effectiveness of the measures adopted to enable confiscation of proceeds of offences established in accordance with this Convention?*

(Y) Yes

The assessment of the effectiveness of domestic measures related to confiscation has been made in the framework of the mutual evaluations conducted by the FATF and GRECO, Council of Europe.

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

### **113. Subparagraph 1 (b) of article 31**

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to **enable confiscation** of:

...

(b) **Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.**

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies) or other measure(s)*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

#### **Criminal Code**

#### **CHAPTER VIII**

Confiscation of instruments, proceeds and benefits

#### **Article 109**

Confiscation of instruments and proceeds

1 - Objects shall be confiscated by the State that have been used or that were meant to be used in the commission of a typical illicit fact, or those that have been generated by it, where by their nature or circumstances of the case, they may endanger the security of persons, the public morals and order, or where they are likely to be used in the commission of additional typical illicit facts.

2 - The provisions in the previous paragraph shall take place even if no one can be punished by the fact.

3 - Where the law does not determine a particular destination for the objects confiscated

under the provisions of the previous paragraphs, the judge can order their total or partial destruction or prevent their selling.

#### **Article 110**

##### Objects belonging to a third party

1 - Without prejudice to the provisions in the next paragraphs, confiscation shall not take place where the objects do not belong to none of the actors or beneficiaries as of the date of the fact, or do not belong to them as of the moment when confiscation is ordered.

2 - In the event that the objects belong to a third party, confiscation shall take place where the respective holders have contributed, in a reproachable way, to their utilisation or production, or where they have obtained benefits from it; or still where the objects are, by any means, purchased after the commission of the fact, having knowledge of their origin.

3 - If the objects consist of inscriptions, representations or records in paper, in any other means of audiovisual expression, belonging to a bona fide third party, confiscation shall not occur and restitution shall take place, after erasure of the inscriptions, representations or records integrating the typical illicit fact. Where this is not possible, the court shall order their destruction, with the right to compensation, according to civil law.

#### **Article 111**

##### Confiscation of benefits

1 - Any reward given or promised to the actors of a typical illicit fact, for themselves or for others, shall be confiscated by the State.

2 - Confiscation by the State shall also apply, without prejudice to the rights of the plaintiff or of bona fide third parties, to things, rights or benefits that, through the typical illicit fact, have been directly purchased by the offender for himself or for others and represent property of any kind.

3 - The provisions in the previous paragraphs apply to the things or rights obtained by means of transaction or exchange with the things or rights directly obtained from the typical illicit fact.

4 - Where the reward, the rights, things or benefits referred to in the previous paragraphs cannot be seized in goods, confiscation shall be replaced by payment to the State of their respective value.

#### **Please cite the text(s)**

The Criminal Code - Articles 109 to 111 - foresees the confiscation of property, equipment or other instrumentalities used or to be used in the commission of the offences established in accordance with the UNCAC or property the value of which corresponds to that of such proceeds.

#### **Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If available, please provide information on the amount/types of property, equipment or other instrumentalities confiscated

If available, please provide information on recent cases in which such confiscations took place

*Have you ever assessed the effectiveness of the measures adopted to enable confiscation of property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention?*

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

## 114. Paragraph 2 of article 31

2. Each State Party shall take such measures as may be necessary to **enable the identification, tracing, freezing or seizure** of any item referred to in paragraph 1 of this article for the **purpose of eventual confiscation**.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies) or other measure(s)*

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

### Code of Criminal Procedure

#### Chapter II

#### On the searches and domiciliary visits

#### Article 174

#### Assumptions

1. The search is ordered whenever there are grounds for believing that a person is hiding any objects relating to the criminal offence or that may be useful as evidence thereof.
2. The search is ordered whenever there are any elements pointing towards the fact that the objects referred to in paragraph hereabove, as well as the defendant or any other person to be arrested, are in a reserved or restricted area.
3. The searches and the domiciliary visits are authorised or ordered through decision rendered by the competent judicial authority, who should preside over the act whenever possible.
4. The decision mentioned in the previous paragraph is valid for a maximum period of 30

days. After that period the decision is declared void.

5. The requirements set out in paragraph 3 do not apply to the searches and domiciliary visits performed by a criminal police department:

- a) in a case of terrorism, violent or highly organised criminality, whenever there are reasonable grounds to believe that a criminal offence is to be committed, liable to jeopardize the life and the physical integrity of any person;
- b) if the persons concerned agree thereto, provided however that the agreement is recorded in writing; or,
- c) at the moment of arrest in the very act due to a criminal offence to which applies an imprisonment penalty.

6. As to the cases referred to in sub-paragraph (a) of the previous paragraph the step in to be immediately communicated to the Examining Judge (*Juíz de Instrução*), or it will be regarded as void and nul. The Examining Magistrate must validate the step.

#### **Article 175**

##### Formalities regarding the search

1. Before the search takes place and except for the cases foreseen in Article 174 paragraph 5, a copy of the decision is rendered to the person concerned stating that that person is allowed to indicate a person of his/her choice to be present during the search as long as the person indicated for the effect is able to be immediately present.
2. The search must respect the personal dignity of the person and, where possible, its bashfulness.

#### **Article 176**

##### Formalities regarding the domiciliary visits

1. Before the domiciliary visit takes place and except for the cases foreseen in Article 174 paragraph 5, a copy of the decision is rendered to the person who has rights over the property where the search is to take place stating that that person is allowed to be present during the search as well as to be accompanied or replaced by a person of his/her choice as long the person indicated for the effect is able to be immediately present.
2. If the persons referred to in the previous paragraph do not appear, the copy will be delivered, whenever possible, to a relative, a neighbour, a doorman or any person replacing him/her.
3. Together with the domiciliary visit or in the course thereof any person present at the place subject to the domiciliary visit can also be searched if the person who orders or performs the search has reasonable grounds for believing that the presuppositions set out in article 174, paragraph 1, have been fulfilled. Provisions set out in Article 173 can also be complied with.

### **Chapter III Seizure**

#### **Article 178**

##### Objects liable to and requirements for seizure

1. Any objects that were used or were destined for being used for the commission of

a crime, as well as any objects that constitutes the proceeds of a crime, or the profit, or the price, or the recompense thereof, as well as any objects left by the perpetrator in the place where the crime was committed, as well as any other objects that could be used as evidence, shall be seized.

2. The objects seized should be attached to the proceedings, where possible; otherwise, they shall be entrusted for guardianship either to a court official linked with the proceeding, or to a custodian; all decisions should be mentioned in the referred proceeding.

3. Seizure shall be authorised, ordered or validated by way of a decision taken by the judicial authority.

4. Under the terms provided in Article 249 (2) (c), any criminal police body may seize objects in the course of body searches or the search of premises, or in circumstances of urgency, or where there is danger in delaying matters.

5. Seizures undertaken by the any criminal police body shall be submitted to validation by the judicial authority within a period of no more than 72 hours.

6. Any person who holds a title over any goods or rights seized may request to the Investigation Judge to modify the terms of, or revoke the seizure. The provisions of Article 68 (5) above, shall apply correspondingly.

7. Where the property rights over the objects seized are liable of being confiscated for the State and where such objects do not belong to the defendant, the judicial authority shall issue an order for the defendant to appear before that authority in order to hear him/her. The judicial authority shall do without the presence of the defendant when that presence is not possible.

#### **Article 179** Seizure of mail

1. Subject to it being declared void, the judge may decide to authorise or to order the seizure of letters, parcels, values, telegrams and any other kind of mail, even in post offices and telecommunications' offices, where she/he has grounded reasons to believe that:

- a) the mail was sent by the suspect, or is addressed to the suspect, even under a different name, or through a different person; and
- b) relates with a crime punishable with a maximum sentence of more than 3 years imprisonment; and
- c) the measure is likely to be of great value for discovering the truth or for purposes of evidence.

2. Subject to the seizure being declared void, it shall be forbidden to seize, or otherwise exercise any other form of control over the mail between the defendant and his/her defender, save where the judge has well grounded reasons to believe that that correspondence is the purpose, or an element of an offence.

3. The judge who authorised or ordered the measure shall be the first person to become acquainted with the contents of the seized mail. If she/he considers it to be relevant for purposes of evidence, she/he shall attach it to the case file; otherwise, she/he shall return it to the rightful owner; in which case the mail may not be used for purposes of evidence; and in which case the judge shall remain under a duty to keep secrecy whatever she/he got acquainted with and is not relevant for purposes of evidence.

### **Article 180**

#### Seizure within the professional premises of lawyers or doctors

1. The provisions set forth in Article 177 (5) and (6), shall apply correspondingly to seizures performed within the professional premises of lawyers or doctors.
2. In the cases mentioned in the previous paragraph and subject to the seizure being declared void, is not permitted to seize documents subject to professional secrecy [legal professional privilege], or subject to medical professional secrecy, except where such documents are the object or an element of the crime.
3. The provisions of paragraph 3 of the previous Article, shall apply correspondingly.

### **Article 181**

#### Seizures performed within banking institutions

1. Within the premises of banks and other credit institutions, the judge seizes documents, titles, values, cash and any other objects, even when located in personal safe-boxes, only where she/he has grounded reasons to believe that such articles are connected with a crime and are likely to be of great value for discovering the truth or for purposes of evidence, even when they do not belong to the defendant and are not deposited under his/her name.
2. In order to identify the objects to be seized in accordance with the provisions of the preceding paragraph, the judge may examine the mail and any banking documents. The examination is made personally by the judge, assisted, where necessary, by criminal police bodies and by qualified experts, who shall remain under a duty of secrecy with respect to all that they will have become acquainted with, and is not relevant for purposes of evidence.

### **Article 182**

#### Professional or functionary secrecy and State secrecy

1. The persons mentioned in Articles 135 to 137, when so ordered by the judicial authority, submit to this authority any documents or objects that they hold and should be seized, except where in writing they raise an objection grounded on reasons pertaining to professional or functionary secrecy, or State secrecy.
2. Where the objection is grounded on reasons pertaining to professional or functionary secrecy, the provisions of Articles 135 (2) and (3), and 136 (2) shall apply correspondingly.
3. Where the objection is grounded on reasons pertaining to State secrecy, the provisions of Article 137 (3), shall apply correspondingly.

### **Article 183**

#### Copies and certificates

1. Copies of documents seized may be attached to the case file, in which case the original document shall be returned. Where it is necessary to keep the original document, a copy or a certificate thereof, may be made and handed over to whoever rightfully held the former. The copy and the certificate must include an express reference to the seizure of the original.

2. If requested, a copy of the seizure order shall be handed over to whoever rightfully held the document or the object seized.

#### **Article 184**

##### Sealing and unsealing objects

Whenever that is possible, the articles seized shall be sealed. The persons who were present at the time of sealing, if possible, shall also be present at the time of unsealing; such persons shall examine whether or not the seals were violated and whether or not any changes were made to the objects seized.

#### **Article 185**

##### Seizure of perishable goods, dangerous goods or goods prone to deterioration

1. Where the objects seized are perishable, dangerous or prone to deterioration, the judicial authority may order, according to the circumstances, either the sale of the objects, or their use for any publically or socially useful purpose, or may order the necessary preservation and maintenance measures or their immediate destruction.
2. Unless otherwise stated in the law, it's up to the judicial authority to decide the modality of sale, among the modalities of sale foreseen in the law of civil procedure.
3. After the deduction of expenses resulting from the keeping, conservation and sale, the profit belongs to the State.

#### **Please cite the text(s)**

Regarding the adoption of measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of Article 31 of the UNCAC for the purpose of eventual conviction, the Portuguese Code of Criminal Procedure foresees some provisions, namely Article 178 and following articles.

The Code of Criminal Procedure, Chapter III (Articles 178 to 186), allows the seizure of “objects that were meant to serve for the commission of an offence or that constitute the proceeds, profit, price or reward of it”. Article 178 (2) states that, where possible, seized objects should be attached to the proceedings. Where this is not possible, in order to avoid its conveyance, transfer or disposition, they are entrusted to a court official linked with the proceeding or to a custodian (see also Article 249 (1) and (2) for protective orders for means of evidence). Where money, securities, gold or precious stones are seized, they are usually deposited in a banking entity (Caixa Geral de Depósitos, a public financial institution) to the order of the Portuguese judicial authorities.

Law 5/2002, Article 4, provides for the possibility of a judge, ex-parte, authorizing or ordering the stay of execution of movements in the bank account (freezing),

where necessary in order to prevent the commission of a money laundering offence. This Law provides for the possibility of staying the execution of movements in the bank account (freezing) and, in case of conviction, the defendant can impugn the confiscation and prove the legal origin of the confiscated assets.

This is a mitigated form of inversion of the burden of proof. The Code of Criminal Procedure, Article 178, provides for the possibility of criminal police bodies in the framework of a criminal investigation seizing objects used or meant to be used for the commission of an offence, as well as those that may constitute the proceeds, profit, price or reward (see also Article 249 (2) c).

The law does not require prior notice to allow the initial application to freeze or seize property subject to confiscation. The Code of Criminal Procedure and special legislation only require rules of active legitimacy as far as the intervention of the competent judicial authority is concerned.

Article 178 (2) of the Code of Criminal Procedure establishes that, where possible, seized objects should be attached to the proceedings and where this is not possible, in order to avoid its conveyance, transfer or disposition, they should be entrusted to a court official linked with the proceeding or to a trustee, with the drawing up of the respective deed. Article 249 (2) c) of the Code of Criminal Procedure provides for interim measures of protection that may be necessary to keep or preserve seized objects, so as to prevent the offender from getting rid of the assets or property derived from the commission of an offence. Article 10 of Law 5/2002 provides the seizure of assets belonging to the agent of the offence, meant to secure the hypothetical payment of the value of those assets that would be confiscated to the State and that the agent would probably have disposed.

According to the Civil Code, Article 294 and following, all the acts and contracts made against an imperative legal provision are considered void, which means that it is in this way possible to prevent or avoid attempts to get rid of assets or rights



derived from criminal activities and that would possibly be confiscated in case of conviction.

In general, the Portuguese system offers a comprehensive regime for the confiscation, freezing and seizing of the proceeds of crime. The proceeds can be confiscated where an illicit act has been committed but the law does not require a previous criminal conviction of an individual as set forth in Article 109 (2) of the Criminal Code. All property originating from a criminal activity or that has been acquired with its proceeds of crime can also be subject to confiscation in case of a conviction within the framework of a criminal proceeding (as long as it does not belong to bona fide third party). Nonetheless, Chapter IV of Law 5/2002 provides for the possibility of the defendant, in case of a conviction, proving the legal origin of the confiscated assets.

**Please attach the text(s)**

**If available, please provide information on the cases and amount of money/value of property frozen or seized. Please provide per annum figures since the year 2003 (or further back, if available)**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

*Have you ever assessed the effectiveness of the measures adopted to enable identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

### **115. Paragraph 3 of article 31**

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to **regulate the administration** by the competent authorities **of frozen, seized or confiscated property** covered in paragraphs 1 and 2 of this article.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

According to Article 178 (2) of the Code of Criminal Procedure the objects seized should be attached to the proceedings, where possible; otherwise, they shall be entrusted for guardianship either to a court official linked with the proceeding, or to a custodian; Where money, securities, gold or precious stones are seized they are usually deposited in a banking entity (Caixa Geral de Depósitos) to the order of the Portuguese judicial authorities.

In 2007 the Decree-Law no. 11/2007 of 19 January was approved, establishing the legal regime for the evaluation, utilization, selling and reparation of objects seized by the police bodies in the framework of criminal proceedings that are susceptible to be confiscated for the State. The goal of mentioned legal instrument is to preserve the objects or property seized and, at the same time, allow to all police bodies the possibility of an operational use of such objects, as cars for instance, which is considered a use of relevant social interest.

Law no. 45/2011, of 24 June creates the National Assets Recovery Office, adapting thus the Portuguese legal system to the Council Decision 2007/845/JHA, of 6 December 2007, concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime. The Portuguese ARO is able for the management and administration of frozen, seized and confiscated property.

The Office referred to shall be under the remit of the Criminal Police, shall have investigation powers similar to those of the criminal police bodies and shall, by determination of the Public Prosecution Service, carry out financial or patrimonial inquiries whenever at stake are instruments, property or products related to crimes punishable with a prison sentence equal or higher than three years and when their universal estimated value is higher than 1.000 units of account (€ 102 000).

Mentioned legal instrument also foresees besides the creation of an Office for Property Management (GAB) which shall have its seat at the Institute for Financial Management and Justice Infra-structure, I.P., a body under the remit of the Ministry of Justice, the establishment of rules related to the administration of the recovered, seized or confiscated assets, bearing in mind their good management and their patrimonial increase.

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Code of Criminal Procedure**

**Chapter III  
Seizure**

**Article 178**

Objects liable to and requirements for seizure

1. (...)

2. The objects seized should be attached to the proceedings, where possible; otherwise, they shall be entrusted for guardianship either to a court official linked with the proceeding, or to a custodian; all decisions should be mentioned in the referred proceeding.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**Please provide any reports or assessments of the administration of frozen, seized or confiscated property**

*Have you ever assessed the effectiveness of the measures adopted to regulate the administration of frozen, seized or confiscated property?*

**(Y) Yes**

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

**116. Paragraph 4 of article 31**

4. If such **proceeds of crime have been transformed or converted**, in part or in full, into other **property**, such **property shall be liable** to the measures referred to in this article instead of the proceeds.

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

Converting proceeds of crime into other property, in order to hide its illegitimate origin, is a criminal offence established by article 368/2 of the Criminal Code.

*Please cite, summarize and attach the applicable policy(ies) or other measure(s)*

**Please cite the text(s)**

As previously stated, Article 111 of the Criminal Code allows the confiscation of property, equipment or other instrumentalities used or to be used in the commission of the offences established in accordance with the UNCAC or property the value of which corresponds to that of such proceeds, as well the seizure (Article 178 of the Code of Criminal Procedure) and confiscation of transformed or converted proceeds of crime.

**Please attach the text(s)**

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

### **Criminal Code**

#### **Article 111**

##### Confiscation of benefits

1 - Any reward given or promised to the actors of a typical illicit fact, for themselves or for others, shall be confiscated by the State.

2 - Confiscation by the State shall also apply, without prejudice to the rights of the plaintiff or of bona fide third parties, to things, rights or benefits that, through the typical illicit fact, have been directly purchased by the offender for himself or for others and represent property of any kind.

3 - The provisions in the previous paragraphs apply to the things or rights obtained by means of transaction or exchange with the things or rights directly obtained from the typical illicit fact.

4 - Where the reward, the rights, things or benefits referred to in the previous paragraphs cannot be seized in goods, confiscation shall be replaced by payment to the State of their respective value.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide information (statistics, types of cases, outcome) on related cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

### **117. Paragraph 5 of article 31**

**5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies) or other measure(s)*

**Please cite the text(s)**

According to article 111 of the Criminal Code, the proceeds of crime are liable to confiscation, even if intermingled with property legitimately acquired.

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If available, please provide information (statistics, types of cases, outcome) on related cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(Y) Yes**

The assessment of the effectiveness of domestic measures related to the freezing, seizure and confiscation has been made in the framework of the mutual evaluations conducted by the FATF and GRECO, Council of Europe.

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

### **118. Paragraph 6 of article 31**

**6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.**

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable policy(ies) or other measure(s)*

**Please cite the text(s)**

As previously stated, Article 111 of the Criminal Code allows the confiscation of property, equipment or other instrumentalities used or to be used in the commission of the offences established in accordance with the UNCAC or property the value of which corresponds to

that of such proceeds, as well the seizure (Article 178 of the Code of Criminal Procedure) and confiscation of the income or other benefits derived from the proceeds of crime or property into which such proceeds of crime have been transformed or converted or property with which such proceeds of crime have been intermingled.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

### **Criminal Code**

#### **Article 111**

##### Confiscation of benefits

1 - Any reward given or promised to the actors of a typical illicit fact, for themselves or for others, shall be confiscated by the State.

2 - Confiscation by the State shall also apply, without prejudice to the rights of the plaintiff or of bona fide third parties, to things, rights or benefits that, through the typical illicit fact, have been directly purchased by the offender for himself or for others and represent property of any kind.

3 - The provisions in the previous paragraphs apply to the things or rights obtained by means of transaction or exchange with the things or rights directly obtained from the typical illicit fact.

4 - Where the reward, the rights, things or benefits referred to in the previous paragraphs cannot be seized in goods, confiscation shall be replaced by payment to the State of their respective value.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide information (statistics, types of cases, outcome) on related cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

### **119. Paragraph 7 of article 31**

7. For the purpose of this article and article 55 of this Convention, each State Party shall **empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized**. A State Party shall **not decline to act** under the provisions of this paragraph on the **ground of bank secrecy**.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**Please cite the text(s)**

Courts are empowered by law to have access to banking, financial or commercial records and, where necessary to break bank secrecy, according to Article 79 of Decree-Law n° 282/92 (the Banking Law). Tax administration is also entitled to have access to bank and financial institutions records in order to tackle tax evasion. According to Article 181 of the Code of Criminal Procedure, the judge can order the seizure of documents, titles, values, cash and any other objects, even when located in personal safe-boxes within the premises of banks and other financial institutions.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

#### **Code of Criminal Procedure**

##### **Article 181**

Seizures performed within banking institutions

1. Within the premises of banks and other credit institutions, the judge seize documents, titles, values, cash and any other objects, even when located in personal safe-boxes, only where she/he has grounded reasons to believe that such articles are connected with a crime and are likely to be of great value for discovering the truth or for purposes of evidence, even when they do not belong to the defendant and are not deposited under his/her name.

2. In order to identify the objects to be seized in accordance with the provisions of the preceding paragraph, the judge may examine the mail and any banking documents. The examination is made personally by the judge, assisted, where necessary, by criminal police bodies and by qualified experts, who shall remain under a duty of secrecy with respect to all that they will have become acquainted with, and is not relevant for purposes of evidence.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

If available, please provide information (statistics, types of cases, outcome) on related cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)

*Have you ever assessed the effectiveness of the measures adopted to order that bank, financial or commercial records be made available to or seized by courts or other competent authorities?*

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

## 120. Paragraph 8 of article 31

8. States Parties may consider the possibility of **requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime** or other **property** liable to **confiscation**, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies) or other measure(s)*

**Please cite the text(s)**

According to the general principles of criminal law, it's up to the Public Prosecution to gather the evidence that allows for the accusation on an offender (natural or legal person) for the commission of an offence.

However, Law n° 5/2002 of 11 January, which establishes measures for the combat against organised crime and economic and financial crime foresees in Articles 7 to 9 the partial reversal of the burden of evidence: without prejudice of consideration by the court, in general terms, of all evidence in the proceedings, the defendant is entitled to prove the lawful origin of the assets referred to in article 7, paragraph 2.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Law no 5/2002 of 11 January

**Article 7**

Assets confiscation



1 - In case of conviction for an offence referred to in article 1, and for the purpose of assets confiscation to the State, it is considered as benefit from a criminal activity the difference between the value of the defendant's actual property and one that is consistent with his lawful income.

2 - For the purpose of the application of this Act, as the defendant's property one should consider all the assets:

owned by the defendant or under his control or to his benefit, as of his being held defendant or subsequently;

transferred to third parties for free or against a derisory instalment within the 5 previous years to his being held defendant;

received by the defendant within the 5 previous years to his being held defendant, though their intended use remains indeterminate.

3 - Interest, profits and other benefits derived from assets under the conditions set out in article 111 of the Penal Code, are always considered as benefits from criminal activity.

### **Article 8**

#### Procedure for assets confiscation

1 - At the moment of the indictment, the Public Prosecutor shall settle the amount to be confiscated to the State.

2 - If the settlement is not possible at the moment of the indictment, it may take place until the 30<sup>th</sup> day prior to the date of the first discussion and trial audience, and it shall be included in the proceedings themselves.

3 - Once settled, the amount may be changed within the time period provided for in the preceding paragraph, if it proves to be inaccurate later on.

4 - Once the settlement is received by the court, or the respective amendment, it shall immediately be reported to the defendant and to his defender.

### **Article 9**

#### Evidence

1 - Without prejudice of consideration by the court, in general terms, of all evidence in the proceedings, the defendant is entitled to prove the lawful origin of the assets referred to in article 7, paragraph 2.

2 - For the purpose of the above-mentioned paragraph, any instrument of evidence valid under the Criminal Procedure is admissible.

3 - The assumption established in article 7, paragraph 1, shall rebut if the assets prove to:

a) Be derived from benefits of illicit origin;

b) Have been in the ownership of the defendant for at least 5 years prior to the moment he was held defendant;

c) Have been purchased by the defendant with income that was obtained in the time period referred to in the above-mentioned sub-paragraph.

4 - If the settlement of the confiscated amount is included in the indictment, the defence shall be presented in the pleadings. If it is subsequent to the indictment, the time limit for the defence is 20 days as of notification of the settlement.

5 - The evidence referred to in paragraphs 1 to 3 shall be presented along with the defence.

If available, please provide information on recent cases where an offender has been required to demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

*Have you ever assessed the effectiveness of the measures adopted to provide for an offender to demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation?*

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

## 121. Paragraph 9 of article 31

9. The provisions of this article shall **not be so construed as to prejudice the rights of bona fide third parties.**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies) or other measure(s)*

**Please cite the text(s)**

The protection of the rights of bona fide third parties is established by law in Article 178 (6) and (7) of the Code of Criminal Procedure and Article 110 (3) and Article 111(2) of the Criminal Code.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

### **Criminal Code**

#### **Article 110**

Objects belonging to a third party

(...)

3 - If the objects consist of inscriptions, representations or records in paper, in any other means of audiovisual expression, belonging to a bona fide third party, confiscation shall not occur and restitution shall take place, after erasure of the inscriptions, representations or records integrating the typical illicit fact. Where this is not possible, the court shall order their destruction, with the right to compensation, according to civil law.

#### **Article 111**

## Confiscation of benefits

(...)

2 - Confiscation by the State shall also apply, without prejudice to the rights of the plaintiff or of bona fide third parties, to things, rights or benefits that, through the typical illicit fact, have been directly purchased by the offender for himself or for others and represent property of any kind.

## Code of Criminal Procedure

### Article 178

Objects liable to and requirements for seizure

(...)

6. Any person who holds a title over any goods or rights seized may request to the Investigation Judge to modify the terms of, or revoke the seizure. The provisions of Article 68 (5) above, shall apply correspondingly.

7. Where the property rights over the objects seized are liable of being confiscated for the State and where such objects do not belong to the defendant, the judicial authority shall issue an order for the defendant to appear before that authority in order to hear him/her. The judicial authority shall do without the presence of the defendant when that presence is not possible.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and, if available, information on recent cases where bona fide third parties were involved and their rights were protected**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

## 122. Paragraph 1 of article 32

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide **effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and**, as appropriate, for **their relatives and other persons close to them.**

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies) or other measure(s)*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

### **Article 1**

#### **Object**

1. This Act governs the enforcement of measures on the protection of witnesses in criminal proceedings where their lives, physical or mental integrity, freedom or property of a considerably high value are in danger due to their contribution to the collection of evidence of the facts which are subject to investigation.
2. The measures stated in the previous paragraph may cover the witnesses' relatives and other persons in close contact with them.
3. This Act also provides for measures intended to collect, under the most satisfactory conditions, any testimonies or statements of specially vulnerable persons, namely by reason of age, even if the danger mentioned in paragraph 1 hereabove does not apply.
4. The measures laid down in this Act are extraordinary in nature, and they do not apply unless deemed necessary and adequate *in casu* to the protection of the persons involved and to the fulfillment of the purposes of the proceedings.
5. The cross-examination allowing a fair balance between the needs for combating crime and the right to a defense is hereby guaranteed.

### **CHAPTER IV**

#### **Security and special measures and programs**

#### **Section 20**

##### **Sporadic measures of security**

1. Where significant grounds for security so justify and where the criminal offence requires the intervention of a three judge court or of a jury court, notwithstanding the enforcement of other protective measures laid down in this Act, the witness may benefit from sporadic measures of security, namely:

- a) (...)
- b) (...)
- c) (...)

d) Benefiting from police protection extended to his relatives, to the person living in civil union with the witness or other persons in close contact with him/her;

- e) (...)

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

Portugal approved Law no. 93/99, of 14 July governing the enforcement of measures on the protection of witnesses in criminal proceedings, amended by Law no. 42/2010 of 3 September thereby extending the situations in which the identity of the witness in criminal procedures is not disclosed.

As said before, Law no. 93/99 governs the enforcement of measures on the protection of

witnesses in criminal proceedings where their lives, physical or mental integrity, freedom or property of a considerably high value are in danger due to their contribution to the collection of evidence of the facts which are subject to investigation. The protection could as well be extended to their relatives and other persons closed to the witnesses.

**Please attach the text(s)**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide information on the number of witnesses or experts and their relatives or other persons close to them who have required protection and how long they needed it. Please provide per annum figures since the year 2003 (or further back, if available)**

In the period from 2003 to 2010, from the 18 files opened by the CPES (Special Security Programmes Commission), 2 individuals have been placed in the witnesses programme (1 in 2004 and another one in 2008). None of the mentioned individuals was an expert.

**If you have a witness protection programme, how many witnesses or experts and their relatives or persons close to them have entered it? Please provide per annum figures since the year 2003 (or further back, if available)**

**Do you have an estimated cost per protected person ?**

About estimated costs, the amount per protected person is 69.074 € and per programme is 10.330 €

***Have you ever assessed the effectiveness of the measures adopted to protect witnesses, experts, their relatives and other persons close to them?***

**(N) No**

Please see the answer provided to paragraph 1 of Article 26 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **123. Subparagraph 2 (a) of article 32**

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the **physical protection of such persons**, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

***Has your country adopted and implemented the measures described above? (Check one answer)***

**(Y) Yes**

***Please cite, summarize and attach the applicable policy(ies) or other measure(s)***

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Law no. 93/99

### Article 1

#### Object

1. This Act governs the enforcement of measures on the protection of witnesses in criminal proceedings where their lives, physical or mental integrity, freedom or property of a considerably high value are in danger due to their contribution to the collection of evidence of the facts which are subject to investigation.
2. The measures stated in the previous paragraph may cover the witnesses' relatives and other persons in close contact with them.
3. This Act also provides for measures intended to collect, under the most satisfactory conditions, any testimonies or statements of specially vulnerable persons, namely by reason of age, even if the danger mentioned in paragraph 1 hereabove does not apply.
4. The measures laid down in this Act are extraordinary in nature, and they do not apply unless deemed necessary and adequate *in casu* to the protection of the persons involved and to the fulfillment of the purposes of the proceedings.
5. The cross-examination allowing a fair balance between the needs for combating crime and the right to a defense is hereby guaranteed.

### Article 20

#### Sporadic measures of security

1. Where significant grounds for security so justify and where the criminal offence requires the intervention of a three judge court or of a jury court, notwithstanding the enforcement of other protective measures laid down in this Act, the witness may benefit from sporadic measures of security, namely the following:
  - a) Mention in the proceedings of an address different from the one he uses or which does not coincide with the domicile locations provided by the civil law;
  - b) Being granted transportation in a State vehicle for purposes of intervention in the procedural act;
  - c) Being granted a room, eventually put under surveillance and security, located in the Court or the Police premises, to which he must displace himself and where he may stay without the presence of other intervenient in the proceedings;
  - d) Benefiting from police protection extended to his relatives, to the person that lives with him in a situation similar to a spouse or to other persons in close contact with him;
  - e) Benefiting from an inmate regimen which allows him to remain isolated from the others and to be transported in a separate vehicle;
  - f) Alteration of the usual place of residence.
2. The measures laid down in the previous paragraph are ordered by the Public Prosecutor during the enquiry, either unofficially, upon the demand of the witness or his legal

representative or upon proposal of the criminal police authorities. Subsequent to the enquiry, the said measures are ordered by the Judge presiding to the current phase of the proceeding, upon the request of the Public Prosecutor.

3. The judicial authority undertakes the necessary procedures to assess *in casu* from the need and the adequacy of the measure.

4. Every three months the judicial authority re-appreciates the decision, either maintaining or modifying it, or revoking the applied measures.

5. The police protection stated in paragraph 1, sub-paragraph d) here above shall generally be at the charge of a police entity which did not have a relevant intervention during the investigation.

6. Whenever police protection shall predictably be extended for over three months, the responsible police force may propose to the judicial authority the application of new safety measures in order to reduce the danger to the witness.

7. The measures foreseen in paragraph 1 may include rules of behaviour to be complied by the beneficiary, the intentional non compliance implicating the suspension of the applied measures.

8. The decision of altering, revoking and suspending the measures shall, safe in case of clear impossibility, be preceded by the hearing of the witness.

#### **Article 21**

##### Special program of security

Any witness, the respective spouse, ancestors, descendants, brothers and sisters, the person that lives with him in a situation similar to a spouse or any other persons in close contact with him, may benefit from a special program of security during the running of the proceeding or even after its closure, provided the following concurrent conditions occur:

- a) The testimony or statements concern the criminal offences laid down in article 16, sub-paragraph a);
- b) There is a serious danger to their lives, physical or psychological integrity or freedom;
- c) The testimony or the statement constitutes a contribution which is deemed, or has proved to be, essential to the ascertainment of the truth.

#### **Please cite the text(s)**

Portugal approved Law no. 93/99, of 14 July governing the enforcement of measures on the protection of witnesses in criminal proceedings, amended by Law no. 42/2010 of 3 September thereby extending the situations in which the identity of the witness in criminal procedures is not disclosed.

As said before, Law no. 93/99 governs the enforcement of measures on the protection of witnesses in criminal proceedings where their lives, physical or mental integrity, freedom or property of a considerably high value are in danger due to their contribution to the collection of evidence of the facts which are subject to investigation. The protection could as well be extended to their relatives and other persons closed to the witnesses.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If applicable and available, please provide information on the number of witnesses or experts who have received physical protection, type of protection received and cost**

*Have you ever assessed the effectiveness of the procedures adopted to provide witnesses and experts with physical protection?*

**(N) No**

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

#### **124. Subparagraph 2 (b) of article 32**

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

...

**(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons**, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable rule(s), policy(ies) or other measure(s)*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Law no. 93/99

#### **Article 13**

Non-disclosure of identity

Where the witness's identity is to remain unrevealed, it is particularly incumbent of the judge presiding to the act to avoid asking any question likely to induce the witness to the indirect disclosure of his identity.

#### **Article 14**

Access to sound and image

1 - In case of the concealment of the witness's image and voice, the access to the undistorted sound and image is to be allowed in exclusive to the judge presiding to the act or the court,



should the technical means available enable it.

2 - The autonomous and direct communication between both the judge presiding to the act and the escorting magistrate, as well as between the defendant and his counsel, shall be guaranteed in any circumstance.

### **Article 18**

#### Supplementary proceedings of non-disclosure of identity

1. For purposes of decision on a request for non-disclosure of identity a supplementary proceeding of a confidential and urgent nature shall be separately prepared, to which only the Examining Magistrate and whoever he appoints for that purpose shall have access.

2. The Examining Magistrate shall be entrusted with the safekeeping and confidentiality of the supplementary proceeding.

3. The Examining Magistrate asks the Bar to appoint a lawyer with the proper profile to represent the defence's interests. The appointed lawyer shall only intervene in the supplementary proceeding. Unofficially or upon request the Examining Magistrate makes the investigation he deems indispensable to meet the requirements needed for the granting of such a measure.

4. Before rendering his decision the Examining Magistrate calls the Public Prosecutor and the representative for the defence for an oral debate under cross-examination on the grounds of the request.

5. The decision allowing the requested measure confers the witness a codified reference, by which he shall be referred afterwards in the proceeding. The reference is transmitted to the judicial authority with jurisdiction over the proceedings.

6. The defendant has the right to demand the hearing set out in paragraph 4 here above in his benefit, in case he assumes such a status by virtue of article 57 of the Criminal Procedure Code after the measure of non-disclosure of a witness's identity has been granted. Provisions of paragraphs 3 and 4 here above apply correspondently.

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

Portugal approved Law no. 93/99, of 14 July governing the enforcement of measures on the protection of witnesses in criminal proceedings, amended by Law no. 42/2010 of 3 September thereby extending the situations in which the identity of the witness in criminal procedures is not disclosed.

**Please attach the text(s)**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If applicable and available, please provide information on recent cases in which witnesses or experts have given testimony using video or other communications technology**

*Have you ever assessed the effectiveness of the measures adopted to permit witnesses and experts to give testimony using video or other communications technology?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **125. Paragraph 3 of article 32**

3. States Parties shall consider entering into **agreements or arrangements with other States for the relocation of persons** referred to in paragraph 1 of this article.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(N) No

*Which challenges and issues are you facing in (fully) adopting/implementing the provision under review? (Check all the answers that apply and provide an explanation in the "Comments" field)*

(INAD) Inadequacy of existing implementing normative measures (laws, regulations, etc. )

**Please provide an account of your country's efforts to date to implement the provision under review:**

The adoption of measures such as the measures set forth in paragraph 3 of Article 32 is ongoing.

**Please outline the steps or action (and related timeframe) that domestic or other authorities would need to take to ensure full compliance with the provision under review**

The negotiations for a bilateral agreement for witness's protection with other country have been initiated. The provisions of the draft agreement include the possibility for the relocation of persons.

*Which of the following forms of technical assistance, if available, would assist your country in adopting or better implementing the provision under review? (Check all the answers that apply)*

(NO) No assistance would be required

*Are any of the forms of technical assistance previously mentioned already provided? (Check one answer)*

(N) No

### **126. Paragraph 4 of article 32**

4. The provisions of this article shall **also apply to victims insofar as they are witnesses.**

*In your domestic legal system, do the provisions of this article also apply to victims insofar as they are witnesses? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), arrangement(s), agreement(s) or other measure(s)*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Article 2**  
Definitions

For the purposes of this Law:

a) Witness means any person who, notwithstanding his status towards the procedural law, is in possession of any information or knowledge necessary to the disclosure, apprehension or evaluation of facts subject to investigation and which are likely to represent a danger to that person or to others by virtue of paragraphs 1 and 2 of the previous article.

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

Law no. 93/99 of 14 July also apply to victims insofar they are witnesses, in accordance with the definition of witness set forth in paragraph a) of Article 2, which not excludes this possibility.

**Please attach the text(s)**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If you have a protection programme, how many victims have been protected by it and in how many different cases? Please provide per annum figures since the year 2003 (or further back, if available)**

One victim has entered in a witness protection programme in 2004.

**If applicable and available, please provide information on the number of victims who have received physical protection. Please provide per annum figures since the year 2003 (or further back, if available)**

One victim has received physical protection in a witness protection programme.

**If applicable and available, please provide information on the number of victims that have been relocated to other States through arrangements or agreements. Please provide per annum figures since the year 2003 (or further back, if available)**

Please see the previous answers.

**If applicable and available, please provide information on the number of victims who have been permitted to give testimony in a manner that ensures their safety, such as video or other communications technology. Please provide per annum figures since the year 2003 (or further back, if available)**

Please see the previous answers

***Have you ever assessed the effectiveness of the measures adopted to protect victims, insofar as they are witnesses?***

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **127. Paragraph 5 of article 32**

5. Each State Party shall, subject to its domestic law, **enable the views and concerns of victims to be presented and considered** at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

Law no. 93/99 of 14 July also takes into consideration the views and concerns of victims that could be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of defence. That's for instance the case of measures foreseen in Articles 4, 5, 11, 13 or 14.

**Please attach the text(s)**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

#### **Article 4**

##### Witnesses' concealment

1. The court may decide, either unofficially, upon the request of the Public Prosecutor, or upon the demand of the defendant or of the civil party claiming damages, that the testimony or the statement must be taken by means of either concealing the witness's image or distorting his voice, or both, instead of taking the form of a public procedural act or of a cross-examination, in order to avoid the witness's recognition.

2. The decision must be based upon facts or circumstances which reveal intimidation, or a high risk of intimidation of the witness, and it shall also refer to the degree of concealment of image or distortion of voice.

#### **Article 5**

##### Teleconference

1. In case of offer of evidence relating to a crime to be judged by a three-judge court or by a jury court, whenever there are serious grounds to believe that the protection is necessary, the use of teleconference is admissible during the procedural acts mentioned in paragraph 1 of the previous article.

2. Teleconference can include the resort to distortion either of image or voice, or of both, with a view to avoid the witness's recognition.

### **Article 11**

#### Questions

The questions to which the witness is required to answer during the collection of evidence are made at distance, and they shall observe the terms of the procedural law.

### **Article 13**

#### Non-disclosure of identity

Where the witness's identity is to remain unrevealed, it is particularly incumbent of the judge presiding to the act to avoid asking any question likely to induce the witness to the indirect disclosure of his identity.

### **Article 14**

#### Access to sound and image

1. In case of the concealment of the witness's image and voice, the access to the undistorted sound and image is to be allowed in exclusive to the judge presiding to the act or the court, should the technical means available enable it.

2. The autonomous and direct communication between both the judge presiding to the act and the escorting magistrate, as well as between the defendant and his counsel, shall be guaranteed in any circumstance.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide information on the number of victims who have presented their views and concerns at any stage of criminal justice proceedings against offenders. Please provide per annum figures since the year 2003 (or further back, if available)**

No information is available about the number of victims who have present their views and concerns at any stage of the criminal proceedings against offenders

***Have you ever assessed the effectiveness of the measures adopted to enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders?***

**(N) No**

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **128. Article 33**

Each State Party shall consider incorporating into its domestic legal system appropriate measures to **provide protection against any unjustified treatment for any person who reports in good faith** and on reasonable grounds to the competent authorities any **facts concerning offences established in accordance with this Convention.**

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

The protection against unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences establish in accordance with UN Convention against corruption is foreseen in different legal instruments, namely the Code of Labor and the Code of Criminal Procedure.

In addition to existing methods used to protect witnesses in criminal proceedings<sup>11</sup>, such as teleconferences coupled with measures to disguise their appearance and/or voice, fictional addresses and police protection for themselves and their families of Act 19/2008 of 21 April on new measures to combat corruption introduced the following protection for whistleblowers: 1. those concerned must not suffer negative consequences, including unwanted transfer to another department, for reporting offences of which they have become aware in the course of or because of their official duties; 2. in the absence of evidence to the contrary, applying disciplinary sanctions to those concerned during the year following the corruption report shall be deemed unjustified; 3. those concerned shall be entitled to (a) anonymity, until the person suspected of corruption has been formally charged, and (b) if they so wish, transfer to another department without the right of refusal by the hierarchy, once the person suspected of corruption has been formally charged.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Law 25/2008 of 5 June provides as well for the protection of persons who reports in good faith (Article 20):

#### **Article 20**

##### Disclosure of information protection

1- The disclosure in good faith by the entities covered by this Law, in compliance with the obligations laid down in Articles 16, 17 and 18, shall not constitute a breach of any restriction on disclosure of information, imposed by any legislative, regulatory or contractual provision, and shall not involve the persons providing it in liability of any kind.

2- Any person, who even due to mere negligence, reveals or favours the discovery of the identity of the person that provided the information, in accordance with the Articles referred to in the foregoing paragraph, shall be punishable by deprivation of liberty for a maximum of three years or by a fine.

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

*Have you ever assessed the effectiveness of the measures adopted to provide protection to reporting persons as prescribed by the provision under review?*

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

## 129. Article 34

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to **address consequences of corruption**. In this context, States Parties may consider **corruption a relevant factor in legal proceedings** to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

Corruption as well other economic and financial crimes are relevant factors in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

For instance, according to Article 294 and following of the Civil Code all the acts or contracts made against an imperative legal provision are considered void, which means that is in this way possible to prevent or avoid attempts to get rid of assets or rights derived from criminal activities - namely corruption - and that would possible to be confiscated in case of conviction.

It should be mentioned as well that the new Code for Public Procurement, approved by Decree-Law no. 18/2008 of 29<sup>th</sup> January which includes a «*Declaration Model*» where the natural or legal person (including the directors or other representatives) should state that he/she have not been convicted by money laundering or corruption, among other offences. It means that persons or entities that have been convicted by those offences are not allowed to celebrate contracts with the Portuguese State and the contracts or concessions with that

persons could be withdrawn.

**Please attach the text(s)**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

Please see the answer provided to paragraph 1 of Article 26 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **130. Article 35**

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure **that entities or persons who have suffered damage as a result of an act of corruption** have the **right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.**

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

According to the Constitution of the Portuguese Republic and to the Criminal Code (Articles 113, 114 and 117 as well Article 130), all the persons who have suffered a damage as result of an ac of corruption or due to any other offence have the right to initiate legal proceedings against the offenders in order to obtain compensation.

Law no.104/2009 of 14 September established the legal regime for the compensation to the victims of violent crimes and domestic violence, in accordance with paragraph 1 of article of the Criminal Code.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable**



if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

## **Criminal Code**

### **TITLE IV COMPLAINT AND PRIVATE ACCUSATION**

#### **Article 113**

Persons entitled to right to complaint

1. When the criminal process depends on complaint, the offended has legitimacy to make it, except when it is contrary to the law, and he is as such entitled to the interests that the law endeavors to protect through incrimination.
2. If the offended dies without having made complaint, or without having renounced to do so, the right to complaint belongs successively to the persons indicated as follows, except if any of them has participated in the crime:
  - a) the surviving consort who is not judicially separated in relation to community of assets, the descendants, the adopted persons and adoptive parents.
  - b) brothers and their descendants and the person who was living with the offended in the same conditions as consorts.
3. If the offended is under 16 and has no discernment to understand the significance of the exertion of the right of complaint, this belongs to the legal representative, and, if non-existent, to the persons indicated in the previous number, in the same order therein referred, except if any of them has participated in the crime.
4. Any person belonging to one of the classes referred to in the numbers 2 and 3 can make complaint independently of the remainders.
5. When the right of complaint cannot be exerted because the only person entitled to make it would be the agent of the crime, the Public Prosecutor may begin legal proceedings if special reasons of public interest demand it.
6. When the criminal proceedings depend on the complaint, in cases prescribed by law, the Public Prosecutor may initiate legal proceedings when the interest of the victim demands it.

#### **Article 114**

The extension of the effects of complaint

The presentment of complaint against one of the participants in the crime turns the criminal proceedings extensive to the remaining participants.

#### **Article 117**

Private accusation

The prescriptions in the articles under this title is correspondingly applicable in cases when the criminal proceedings depend on private accusation.

#### **Article 130**

Compensation for the injured complainant

1. Special legislation fixes the conditions in which the State can ensure compensation in consequence of criminally typified facts, whenever they cannot be done by the agent.
2. In cases not covered by the legislation referred to in the previous number, the court may grant the complainant, on his request and to the limit of the damage he has suffered, the objects declared to have been lost, the product or the price of their sale, or the value corresponding to the advantages resulting from the crime, paid to the State, or transferred in its favour by force of the articles 109 and 110.
3. Leaving out the cases prescribed in the legislation referred to in number one, if the damage caused by the crime is so serious as to have left the complainant without a means of living, and it is to believe that the agent will not make amends to compensate him, the court will grant the complainant, on his request, the amount of the fine, wholly or partially, to the limit of the damage.
4. The State becomes subrogate regarding the rights of the injured for the compensation to the amount it has fulfilled.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and, if available, information on recent cases, including amount and type of compensation emanating from legal proceedings initiated by a victim against those responsible for a damage resulting from an act of corruption**

*Have you ever assessed the effectiveness of the measures adopted to ensure that entities or persons who have suffered damage as a result of an offence established in accordance with this Convention have the right to initiate legal proceedings in order to obtain compensation?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### 131. Article 36

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a **body or bodies or persons specialized in combating corruption through law enforcement**. Such body or bodies or persons shall be granted the **necessary independence**, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the **appropriate training and resources** to carry out their tasks.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), institutional arrangements, law(s) or other measure(s):*

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

SECTION VI  
**The Central Department of Investigation and Prosecution**

**Article 46**  
Definition and Composition

1. The Central Department of Investigation and Prosecution is a body which coordinates and directs the investigation and prevention of the violent, highly organized or particularly complex crime.
2. The Central Department of Investigation and Prosecution is composed of a Deputy Attorney General, who leads the department, and Attorney for the Republic, the number of whom appears in a schedule approved decision of the Minister of Justice, after consultation with the Superior Council of the Public Prosecution Service.

**Article 47**  
*Powers*

1. The Central Department of Investigation and Prosecution is responsible for the coordination and the direction of the investigation of the following crimes:
  - a) Crimes against peace and humanity;
  - b) Terrorist organizations and terrorism;
  - c) Crimes against national security, except for electoral crimes; d) Trafficking in narcotics, psychotropic substances and precursors, except in situations of direct distribution to the consumer, and criminal association in view of trafficking in drugs;
  - e) Money laundering;
  - f) Corruption, embezzlement and economic subterfuge in business;
  - g) Fraudulent insolvency;
  - h) Prejudicial management in economic units of the public sector;
  - i) Fraudulent receipt or embezzlement of subsidies, grants or credit;
  - j) Economic or financial breaches committed as part of an organised crime, namely using information technology.
  - l) Economic or financial breaches on an international or transnational level.
2. The functions of coordination of the Central Department of Investigation and Prosecution include:
  - a) The study and implementation of ways to work together with other departments and services, namely of criminal police, with a view to reinforcing the simplification, rationality and efficiency of the proceedings;
  - b) The carrying out of studies, together with the Departments of Investigation and Prosecution seated at the judicial districts, on the nature, the volume and the tendencies of the evolution of the criminal activity, as well as on the results achieved as regards the prevention, the detection and the control.
3. The Central Department of Investigation and Prosecution shall be responsible for the direction of inquiries and the carrying out of the prosecution:

a) In what concerns the crimes falling within paragraph 1 hereabove, when the criminal activity occurs in areas belonging to different judicial districts;

b) Following an order of the Attorney General, whenever - considering the specially serious crimes - the particular complexity or the extent of the criminal activity throughout the territory justify a concentrated direction of the investigations.

4. The Central Department of Investigation and Prosecution is responsible for the implementation of actions of prevention provided for in law, concerning the following crimes:

a) Money laundering;

b) Corruption, embezzlement and economic subterfuge in business;

c) Prejudicial management in economic units of the public sector;

d) Fraudulent receipt or embezzlement of subsidies, grants or credit;

e) Economic or financial breaches committed as part of an organized crime, namely using information technology.

f) Economic or financial breaches on an international or transnational level.

- Regarding the independence of the Public prosecutors, according to Article 203 of the Constitution of the Portuguese Republic the courts - which include judges and public prosecutors - are independent and only subject to the law.

The Public Prosecutors are the only responsible for the criminal action, as stated in the Code of Criminal Procedure, meaning that they are the responsible for the criminal investigation and prosecution of all crimes. However, the criminal investigation could be delegated in the Criminal Police and other police forces (for minor offences) which perform its tasks under the direction and supervision of the Public prosecutor in charge with the criminal file. The independence of the police forces is granted due to the fact that no interference is allowed within its investigative activities, depending, on the operational point of view of the Public Prosecution Service. In other words, the criminal police cannot be subject to influences or undue pressures from the legislative or executive power, according to the principle of separation of the responsibilities.

## **Constitution of the Portuguese Republic**

### **Article 203**

#### **Independence**

The courts are independent and subject only to the law.

#### **Please cite the text(s)**

On the preventive and repressive side of corruption the Criminal Police has, within its structure, a special body devoted to this type of crime and other economic and financial

crimes - the National Unit Against Corruption (UNCC) - which is the law enforcement body competent for the investigation of the offences of corruption in Portugal.

The corruption offence in all different types, which includes corruption in international transactions, is considered among others an offence of priority investigation, according to the general guidance sent by the Attorney General of the Portuguese Republic.

At the same time and according to the legislation in force - Statute of the Public Prosecution Service - it is incumbent to the **DCIAP** - Central Department for Criminal Investigation and Prosecution to direct the inquiry and to carry out the prosecution of offences of corruption whenever the criminal activity occurs in counties (*comarcas*) appertaining to different judicial districts or following an order of the Attorney General whenever, considering the especially serious crimes, the particular complexity or the extend of the criminal activity throughout the national territory or extraterritorially justify a centralized direction of the investigations. That means that in mentioned situations the other departments of the Public Prosecution Service should promptly send to DCIAP the files about suspicions of corruption offences.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**Please provide information on the measures adopted to ensure the independence of the specialized body**

**Law no. 60/98, of 28 August,**

approving the Statute of the Public prosecution Service

SECTION VI

**The Central Department of Investigation and Prosecution**

**Article 46**

Definition and Composition

1. The Central Department of Investigation and Prosecution is a body which coordinates and directs the investigation and prevention of the violent, highly organized or particularly complex crime.
2. The Central Department of Investigation and Prosecution is composed of a Deputy Attorney General, who leads the department, and Attorney for the Republic, the number of whom appears in a schedule approved decision of the Minister of Justice, after consultation with the Superior Council of the Public Prosecution Service.

**Article 47**

***Powers***

1. The Central Department of Investigation and Prosecution is responsible for the

coordination and the direction of the investigation of the following crimes:

- a) Crimes against peace and humanity;
- b) Terrorist organizations and terrorism;
- c) Crimes against national security, except for electoral crimes; d) Trafficking in narcotics, psychotropic substances and precursors, except in situations of direct distribution to the consumer, and criminal association in view of trafficking in drugs;
- e) Money laundering;
- f) Corruption, embezzlement and economic subterfuge in business;
- g) Fraudulent insolvency;
- h) Prejudicial management in economic units of the public sector;
- i) Fraudulent receipt or embezzlement of subsidies, grants or credit;
- j) Economic or financial breaches committed as part of an organised crime, namely using information technology.
- l) Economic or financial breaches on an international or transnational level.

2. The functions of coordination of the Central Department of Investigation and Prosecution include:

- a) The study and implementation of ways to work together with other departments and services, namely of criminal police, with a view to reinforcing the simplification, rationality and efficiency of the proceedings;
- b) The carrying out of studies, together with the Departments of Investigation and Prosecution seated at the judicial districts, on the nature, the volume and the tendencies of the evolution of the criminal activity, as well as on the results achieved as regards the prevention, the detection and the control.

3. The Central Department of Investigation and Prosecution shall be responsible for the direction of inquiries and the carrying out of the prosecution:

- a) In what concerns the crimes falling within paragraph 1 hereabove, when the criminal activity occurs in areas belonging to different judicial districts;
- b) Following an order of the Attorney General, whenever - considering the specially serious crimes - the particular complexity or the extent of the criminal activity throughout the territory justify a concentrated direction of the investigations.

4. The Central Department of Investigation and Prosecution is responsible for the implementation of actions of prevention provided for in law, concerning the following crimes:

- a) Money laundering;
- b) Corruption, embezzlement and economic subterfuge in business;
- c) Prejudicial management in economic units of the public sector;
- d) Fraudulent receipt or embezzlement of subsidies, grants or credit;
- e) Economic or financial breaches committed as part of an organized crime, namely using information technology.
- f) Economic or financial breaches on an international or transnational level.

Regarding the independence of the Public prosecutors, according to Article 203 of the Constitution of the Portuguese Republic the courts - which include judges and public prosecutors - are independent and only subject to the law.

The Public Prosecutors are the only responsible for the criminal action, as stated in the

Code of Criminal Procedure, meaning that they are the responsible for the criminal investigation and prosecution of all crimes. However, the criminal investigation could be delegated in the Criminal Police and other police forces (for minor offences) which perform its tasks under the direction and supervision of the Public prosecutor in charge with the criminal file. The independence of the police forces is granted due to the fact that no interference is allowed within its investigative activities, depending, on the operational point of view of the Public Prosecution Service. In other words, the criminal police cannot be subject to influences or undue pressures from the legislative or executive power, according to the principle of separation of the responsibilities.

### **Constitution of the Portuguese Republic**

#### **Article 203** Independence

The courts are independent and subject only to the law.

**If available, please provide information on how staff is selected and trained**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **132. Paragraph 1 of article 37**

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention **to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.**

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

The Criminal Code foresees establishes in Chapter IV the criteria for the choice and determination of penalties applicable to offenders and according to Article 72 and 73 the penalties applicable could be mitigated under the verification of specific conditions. The new Article 374-B (related to active and passive corruption and the undue receiving of advantage offences), as added by Law no. 32/2010, of 2 September to the Criminal Code establishes as well the exception or mitigation of penalty.

**Please attach the text(s)**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Criminal Code**

**Article 72**

Special mitigation of penalty

1- The court specially mitigates the penalty, apart from the cases expressly prescribed in the law, whenever there are circumstances previous or posterior to the crime, or contemporary to it, that diminishes the unlawfulness of the act, the guilt of the agent or the necessity of the penalty, in an accentuated manner.

2- For the purpose of the prescribed in the above number, the following circumstances will be considered, among others:

- a) that the agent had acted under the influence of a serious threat, under the influence of someone he depends on, or to whom he owes obedience;
- b) that the agent's conduct had been determined by honourable motive, by strong solicitation or temptation from the victim himself, or unjust provocation or undeserved offence;
- c) that there had been demonstrative acts of the agent's sincere repentance, namely reparation of the damages up to where it had been possible for him;
- d) that a long time had elapsed over the perpetration of the crime, the agent maintaining good conduct.

3- It may be taken into account only once the circumstance that, on its own or jointly with other circumstances, gives room simultaneously to a mitigation especially prescribed in the law and to the one prescribed under this article.

**Article 73**

Special mitigation terms

1- Whenever the special mitigation of the penalty takes place, the following occurs relatively to the limits of the applicable penalty:

- a) The maximum limit of the imprisonment penalty is reduced by one third;
- b) The minimum limit of the imprisonment penalty is reduced to one fifth if it is equal or superior to 3 years, and to the legal minimum if it is inferior;



c) The maximum limit of the fine penalty is reduced by one third and the minimum limit to the legal minimum;

d) If the maximum limit of the imprisonment penalty is not superior to 3 years, it may be replaced by a fine, inside the general limits.

2- The specially mitigated penalty that has been concretely fixed is susceptible of replacement in general terms, including suspension.

#### **Article 374-B**

##### Exemption or mitigation of penalty

1 - The penalty is not applied if the offender:

a) Has denounced the crime, within 30 days, at the maximum, after the commission of the act and always before the criminal proceeding commences;

b) Prior to the commission of the act, voluntarily refuses the offer or promise that he had accepted, or if he returns the advantage, or in the case of tangible property, its value; or

c) Before the commission of the act, he withdraws the promise or refuses the offer of the advantage or requests that it be returned.

2 - The penalty is specially mitigated whenever the offender:

a) Gives concrete assistance in the collection of decisive evidence leading to the identification or arrest of other persons responsible, up until the trial hearing, at first instance; or

b) Has, directly or through a third person, committed the act at the request of a public official.”

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide information on the number and nature of such cases that have contributed to depriving offenders of the proceeds of crime and to recovering such proceeds. Please provide per annum figures since the year 2003 (or further back, if available)**

***Have you ever assessed the effectiveness of the measures adopted to encourage the persons mentioned above to supply information useful to competent authorities?***

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **133. Paragraph 2 of article 37**

2. Each State Party shall consider providing for the possibility, in appropriate cases, of **mitigating**

**punishment of an accused person who provides substantial cooperation** in the investigation or prosecution of an offence established in accordance with this Convention.

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

The Criminal Code foresees establishes in Chapter IV the criteria for the choice and determination of penalties applicable to offenders and according to Article 72 and 73 the penalties applicable could be mitigated under the verification of specific conditions. The new Article 374-B (related to active and passive corruption and the undue receiving of advantage offences), as added by Law no. 32/2010, of 2 September to the Criminal Code establishes as well the exception or mitigation of penalty.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Criminal Code

#### **Article 72**

##### Special mitigation of penalty

1- The court specially mitigates the penalty, apart from the cases expressly prescribed in the law, whenever there are circumstances previous or posterior to the crime, or contemporary to it, that diminishes the unlawfulness of the act, the guilt of the agent or the necessity of the penalty, in an accentuated manner.

2- For the purpose of the prescribed in the above number, the following circumstances will be considered, among others:

- a) that the agent had acted under the influence of a serious threat, under the influence of someone he depends on, or to whom he owes obedience;
- b) that the agent's conduct had been determined by honourable motive, by strong solicitation or temptation from the victim himself, or unjust provocation or undeserved offence;
- c) that there had been demonstrative acts of the agent's sincere repentance, namely reparation of the damages up to where it had been possible for him;
- d) that a long time had elapsed over the perpetration of the crime, the agent maintaining good conduct.

3- It may be taken into account only once the circumstance that, on its own or jointly with other

circumstances, gives room simultaneously to a mitigation especially prescribed in the law and to the one prescribed under this article.

### **Article 73**

#### Special mitigation terms

1- Whenever the special mitigation of the penalty takes place, the following occurs relatively to the limits of the applicable penalty:

- a) The maximum limit of the imprisonment penalty is reduced by one third;
- b) The minimum limit of the imprisonment penalty is reduced to one fifth if it is equal or superior to 3 years, and to the legal minimum if it is inferior;
- c) The maximum limit of the fine penalty is reduced by one third and the minimum limit to the legal minimum;
- d) If the maximum limit of the imprisonment penalty is not superior to 3 years, it may be replaced by a fine, inside the general limits.

2- The specially mitigated penalty that has been concretely fixed is susceptible of replacement in general terms, including suspension.

### **Article 374-B**

#### Exemption or mitigation of penalty

1 - The penalty is not applied if the offender:

- a) Has denounced the crime, within 30 days, at the maximum, after the commission of the act and always before the criminal proceeding commences;
- b) Prior to the commission of the act, voluntarily refuses the offer or promise that he had accepted, or if he returns the advantage, or in the case of tangible property, its value; or
- c) Before the commission of the act, he withdraws the promise or refuses the offer of the advantage or requests that it be returned.

2 - The penalty is specially mitigated whenever the offender:

- a) Gives concrete assistance in the collection of decisive evidence leading to the identification or arrest of other persons responsible, up until the trial hearing, at first instance; or
- b) Has, directly or through a third person, committed the act at the request of a public official.”

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide information (statistics, types of cases, outcome) on related legal (civil, administrative or criminal) cases or other processes related to instances where punishment of an accused person who provided substantial cooperation was mitigated. Please provide per annum figures since the year 2003 (or further back, if available)**

*Have you ever assessed the effectiveness of the measures adopted to mitigate punishment of an accused person who provides substantial cooperation?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **134. Paragraph 3 of article 37**

3. Each State Party shall consider providing for the possibility, in accordance with the fundamental principles of its domestic law, of **granting immunity from prosecution to a person who provides substantial cooperation** in the investigation or prosecution of an offence established in accordance with this Convention.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(N) No

*Which challenges and issues are you facing in (fully) adopting/implementing the provision under review? (Check all the answers that apply and provide an explanation in the "Comments" field)*

(MYSYS) Specificities in our legal system

**Please provide an account of your country's efforts to date to implement the provision under review:**

The provision of paragraph 3 of Article 37 is understood as applicable to any person who participates in the commission of an offence. Then, the granting of immunity from prosecution to a person (which participates as well in the commission of such offence) who provides substantial cooperation in the investigation or prosecution of an offence is not foreseen in the Portuguese criminal law.

**Please outline the steps or action (and related timeframe) that domestic or other authorities would need to take to ensure full compliance with the provision under review**

For the moment there are not actions ongoing on this field.

*Which of the following forms of technical assistance, if available, would assist your country in adopting or better implementing the provision under review? (Check all the answers that apply)*

(NO) No assistance would be required

*Are any of the forms of technical assistance previously mentioned already provided? (Check one answer)*

(N) No

### **135. Paragraph 4 of article 37**

4. **Protection of such persons** shall be, mutatis mutandis, as provided for in article 32 of this Convention.

*Is your country in compliance with this provision? (Check one answer)*

(N) No

*Which challenges and issues are you facing in (fully) adopting/implementing the provision under review? (Check all the answers that apply and provide an explanation in the "Comments" field)*

(MYSYS) Specificities in our legal system

**Please provide an account of your country's efforts to date to implement the provision under review:**

The concept of immunity is not foreseen in the Portuguese Criminal Law and, in addition, paragraph 3 of Article 37 is not binding.

**Please outline the steps or action (and related timeframe) that domestic or other authorities would need to take to ensure full compliance with the provision under review**

The cooperation of defendants/offenders could be rewarded in accordance to the previous provisions related to the determination of penalties applicable to offenders. As said before, in corruption cases, the exemption or mitigation of the penalties could be applicable by the courts.

*Which of the following forms of technical assistance, if available, would assist your country in adopting or better implementing the provision under review? (Check all the answers that apply)*

(NO) No assistance would be required

*Are any of the forms of technical assistance previously mentioned already provided? (Check one answer)*

(N) No

### **136. Paragraph 5 of article 37**

5. Where a **person** referred to in paragraph 1 of this article located in one State Party **can provide substantial cooperation** to the competent authorities of another State Party, the States Parties concerned may **consider entering into agreements or arrangements**, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

*Is your country in compliance with this provision? (Check one answer)*

(N) No

*Which challenges and issues are you facing in (fully) adopting/implementing the provision under review? (Check all the answers that apply and provide an explanation in the "Comments" field)*

(MYSYS) Specificities in our legal system

**Please provide an account of your country's efforts to date to implement the provision under review:**

The possibility to entering into agreements or arrangements concerning the potential provision by other Member State, of the treatment set forth in paragraphs 2 and 3 of Article 37 was not considered by the time being by Portugal.

**Please outline the steps or action (and related timeframe) that domestic or other authorities would need to take to ensure full compliance with the provision under review**

Usually, the application of Criminal Law, namely the mitigation of the punishment is under the competence of the States and could not be decided by agreement.

This provision is not binding and the principle of legality is applicable as well.

*Which of the following forms of technical assistance, if available, would assist your country in adopting or better implementing the provision under review? (Check all the answers that apply)*

**(NO) No assistance would be required**

*Are any of the forms of technical assistance previously mentioned already provided? (Check one answer)*

**(N) No**

### **137. Subparagraph (a) of article 38**

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its **public officials**, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

**(a) Informing the latter authorities**, on their own initiative, where there are reasonable grounds to believe that any of the **offences established in accordance with articles 15, 21 and 23 of this Convention has been committed**; or

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Code of Criminal Procedure

### **Article 242**

Mandatory denunciation

1 - The denunciation is mandatory, including whether the offenders are unknown:

a) (...)

b) For public officials, as defined by Article 386 of the Criminal Code, regarding crimes that they acknowledge in the performing of its duties or due to its duties.

**Please cite the text(s)**

The cooperation between public authorities and public officials, as well as the cooperation between investigative authorities and prosecuting authorities exist. In the context of a criminal investigation, the investigative authorities should perform its duties under the direction and coordination of the Public Prosecution Service. At the same time, should inform the Public Prosecution Service about any investigation they are carrying or about some fact of evidence that they gather in the course of its activities.

Regarding public authorities and its public officials, according Article 242 of the Code of Criminal Procedure, the denunciation of a crime its mandatory.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide information on the number of times and cases in which such information has been shared. Please provide per annum figures since the year 2003 (or further back, if available)**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

**138. Subparagraph (b) of article 38**

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its **public officials**, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

...

(b) **Providing**, upon request, to the latter authorities **all necessary information**.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

In the framework of the duty of mandatory denunciation and other related provisions of the Code of Criminal Procedure and according to the general duty to cooperate with law enforcement authorities and with the judiciary, public authorities and public officials should provide all information available related to the commission of an offence.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

#### Article 242

#### Mandatory denunciation

1 - The denunciation is mandatory, including whether the offenders are unknown:

a) (...)

b) For public officials, as defined by Article 386 of the Criminal Code, regarding crimes that they acknowledge in the performing of its duties or due to its duties.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### 139. Article 38

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, **cooperation between**, on the one hand, **its public authorities, as well as its public officials**, and, on the other hand, **its authorities responsible for investigating and prosecuting criminal offences**. *(Please include here only what was not mentioned in paragraphs (a) and (b) .)*



*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

The collaboration and cooperation between the judiciary and the law enforcement authorities is a principle foreseen in the Code of Criminal Procedure. As said before, the Criminal Police and other police forces (for minor offences) perform its tasks under the direction and supervision of the Public prosecutor in charge with the criminal file which means that the collaboration and cooperation should be full. In addition Article 10 of the Law on the Organization of the criminal Investigation establishes the duty of cooperation between the Public prosecutors and the police forces charged of the criminal investigations.

In what regards the cooperation between the public authorities and the public officials, Article 242 establishes the mandatory denunciation by mentioned public officials in relation to the crimes that come to their knowledge in the performance their duties and because of such duties. The investigative and the prosecution authorities are empowered to request all the information needed in the framework of a criminal investigation and the public official and public authorities should comply (upon request by its initiative) or with the rules set forth in the Code of Criminal Procedure related to the acquisition of criminal evidence.

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

### **Criminal Code**

#### **Article 242**

#### **Mandatory denunciation**

1. Denunciation is mandatory, even where the offenders are unknown:
  - a) for police authorities, in respect of all crimes they become aware of;
  - b) for public officials, as defined in Article 386 of the Criminal Code, in respect of crimes that come to their knowledge in the performance their duties and because of such duties.
2. Where different persons are all under a duty to denounce the same crime, the circumstance that one of them reports the crime, discharges the others from that duty.
3. When the denunciation is related to crimes which prosecution depend on complaint or private denunciation, this denunciation only leads to a criminal inquiry if the complaint is made within the time limit foreseen in the law.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**Do you have a database or other ways through which information can be shared in order to promote the cooperation referred to in the provision under review?**

A data base exists in the Criminal Police where the criminal information could be accessed by the DCIAP - Central Department for Criminal Investigation and Prosecution as well by Public Prosecutors, the so-called SIIC - Integrated System of Criminal Data.

**If available, please provide examples of recent cases in which public authorities and authorities responsible for investigating and prosecuting criminal offences (or seeking the recovery of assets) have collaborated**

*Have you ever assessed the effectiveness of the measures adopted to encourage cooperation between public authorities and authorities responsible for investigating and prosecuting criminal offences?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

#### **140. Paragraph 1 of article 39**

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, **cooperation between national investigating and prosecuting authorities and entities of the private sector**, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

Besides the awareness raising provided to the public sector in relation to some crimes, where corruption and money laundering are included, the Portuguese authorities responsible for the criminal investigation (Criminal Police) and prosecution (DCIAP) promote regularly working meetings and provide training to the financial entities namely in the field of money laundering and predicates offences, particularly corruption.

Regarding joint conferences, seminars and other forms of collaboration, we can provide some examples. For instance, the Criminal Police School has provided in 2010 specific training on confiscation of proceeds from crime and recovery of assets for criminal investigation officers. The training was devoted to substantial issues (Articles 109 and 111 of the Criminal Code), procedural questions (Article 178 etc of the Code of Criminal

Procedure) and executorial matters (Law 88/2008 on the Execution of Confiscation Orders) as well as a comparative study of European systems, including the “CARIN network”.

Furthermore, the Financial Intelligence Unit (FIU) has disseminated information on typologies, methods of action, and practical cases relating to economic crime, including corruption, and has thus increased its training as well as training provided to several banks related to the prevention of money laundering and terrorism financing and related offences and the way to report suspicious transaction. The bi-annual workshop between the FIU, the Public Prosecution and the financial sector has been held in Lisbon in November 2010.

The Criminal Police School carried out a “theme-week” on corruption and related issues in April 2010 for the law enforcement and judiciary authorities.

Several members of the Criminal Police have participated in international meetings and conferences (in particular the Council of Europe and the EU between 2008 and 2010).

The Judicial Training Centre (CEJ), which is responsible for the training of judges and prosecutors, open to public officials and representatives of the private sector, has carried out a number of training activities since 2008, for example on organized crime and assets from such crime (Rome, October 2008) and on judicial cooperation (Lisbon, February 2010). The CEJ was also involved in a training module on asset recovery and confiscation of proceeds from corruption in March 2010. Corruption is included in the CEJ annual training programmes.

An international workshop about corruption in international transactions has been organized in Lisbon last December 2010 attended by representatives of public and private entities and especially representatives of Portuguese exporting companies and small and medium companies, in order to raise awareness.

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please attach the text(s)**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide information on recent cases in which entities of the private sector have**

collaborated with national investigating or prosecuting authorities

If applicable, please list any joint conferences or seminars, secondment policies, task forces, partnerships, other joint activities or forms of collaboration

*Have you ever assessed the effectiveness of the measures adopted to encourage cooperation between national investigating and prosecuting authorities and entities of the private sector?*

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

## 141. Paragraph 2 of article 39

2. Each State Party shall consider encouraging its **nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.**

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

In the last years Portugal promoted several actions in order to raise awareness about crime prevention and to encourage its citizens and other persons with a habitual residence in the national territory to report the commission of crimes, including the crimes established in accordance with UNCAC.

As an example, an itinerant exhibition about prevention of corruption was organized, visiting all the major cities of the country, from north to south and the islands of Madeira and Azores.

The Ministry of Justice published in 2007 a «Guide for the prevention of corruption» where the examples of the different types of corruption and related crimes are included, as well the duty to report crimes, the way how such crimes could be communicated and the useful information (address, contacts) about law enforcement and public prosecution services, in order to facilitate the reporting.

The Attorneys General Office provides in the website the link ([<https://simp.pgr.pt/.../denuncias/>](https://simp.pgr.pt/.../denuncias/)) where the reporting of crimes, mainly corruption could be made, granting the anonymity of the individual who reports.

**Please attach the text(s)**

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If you have hotlines or other mechanisms for offences to be reported, how many reports have you received? Please provide per annum figures since the year 2003 (or further back, if available)

If financial incentives are offered to encourage such reports, please provide details, available reports and relevant statistics

If anonymous reports are given due consideration by appropriate authorities, how many of the reports received have contributed to the investigation or prosecution of an offence established in accordance with the Convention? Please provide per annum figures since the year 2003 (or further back, if available)

*Have you ever assessed the effectiveness of the measures adopted to encourage reporting the commission of an offence established in accordance with the Convention?*

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

## 142. Article 40

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are **appropriate mechanisms available** within its domestic legal system to **overcome obstacles that may arise out of the application of bank secrecy laws**.

*Has your country adopted the mechanisms described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable mechanism(s):*

**Please cite the text(s)**

Bank secrecy it not an obstacle to the criminal investigations.

According to Article 79 Legal Framework of Credit Institutions and Financial Companies (Banking Law) approved by Decree-Law no. 298/92 of 31 December, exceptions to the obligation of professional secrecy are admissible.

In addition, Article 178 of the Code of Criminal procedure allow for the seizure in banking facilities.

It should be referred Law no. 36/2010 of 2nd September amending Decree-Law no. 298/92, creating in the Bank of Portugal (Central Bank) a detailed banking account central database,

that could be accessed by judges and public prosecutors.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Decree-Law no. 298/92, of 31 December**

**Article 79**

Exceptions to the obligation of professional secrecy

1. Facts or data regarding relations between a client and an institution may be disclosed upon the client's authorisation, transmitted to the institution.
2. With the exception of the case envisaged in the foregoing paragraph, the facts and data subject to secrecy may only be disclosed:
  - a) To Banco de Portugal, within the scope of its duties;
  - b) To the Securities Market Commission, within the scope of its duties;
  - c) To the Deposit Guarantee Fund and to the Investor Compensation Scheme, within the scope of their duties;
  - d) Under the terms laid down in the criminal law and in the law of penal procedure;
  - e) When any other legal provision expressly limits the obligation of professional secrecy.

**Code of Criminal Procedure**

**Article 181**

Seizures performed within banking institutions

1. Within the premises of banks and other credit institutions, the judge seize documents, titles, values, cash and any other objects, even when located in personal safe-boxes, only where she/he has grounded reasons to believe that such articles are connected with a crime and are likely to be of great value for discovering the truth or for purposes of evidence, even when they do not belong to the defendant and are not deposited under his/her name.
2. In order to identify the objects to be seized in accordance with the provisions of the preceding paragraph, the judge may examine the mail and any banking documents. The examination is made personally by the judge, assisted, where necessary, by criminal police bodies and by qualified experts, who shall remain under a duty of secrecy with respect to all that they will have become acquainted with, and is not relevant for purposes of evidence.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If available, please provide information (statistics, types of cases, outcome) on related legal (civil, administrative or criminal) cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)**

*Have you ever assessed the effectiveness of the mechanisms established to overcome obstacles arising out of the application of bank secrecy laws in the case mentioned above?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **143. Article 41**

Each State Party may adopt such legislative or other measures as may be necessary to **take into consideration**, under such terms as and for the purpose that it deems appropriate, any **previous conviction in another State of an alleged offender** for the purpose of using such information **in criminal proceedings** relating to an offence established in accordance with this Convention.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(N) No

*Which challenges and issues are you facing in (fully) adopting/implementing the provision under review? (Check all the answers that apply and provide an explanation in the "Comments" field)*

(ISSUE) Other issues (please specify)

This provision is not mandatory. The consideration about the use of any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with UNCAC was not made by Portugal.

**Please provide an account of your country's efforts to date to implement the provision under review:**

According to the Code of Criminal Procedure the information about any previous conviction, which exists in the Portuguese criminal record - for natural and legal persons - can be used in the situations where the offence has been committed in national territory as well in the situations where such persons have previously committed other offences, registered in criminal record.

**Please outline the steps or action (and related timeframe) that domestic or other authorities would need to take to ensure full compliance with the provision under review**

Please, see previous answer.

*Which of the following forms of technical assistance, if available, would assist your country in adopting or better implementing the provision under review? (Check all the answers that apply)*

(NO) No assistance would be required

*Are any of the forms of technical assistance previously mentioned already provided? (Check one answer)*

(N) No

#### **144. Subparagraph 1 (a) of article 42**

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed **in the territory of that State Party**; or

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

The establishment of jurisdiction regarding the territory criteria is set forth in paragraph a) of Article 4 of the Criminal Code.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

#### **Criminal Code**

#### **Article 4**

Territorial applicability. General Principle

Except when it is contrary to international treaties or conventions, Portuguese criminal law is applicable to acts committed:

a) In Portuguese territory, regardless of the nationality of the agent; or

b) (...).

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which**



assistance would be needed.

### 145. Subparagraph 1 (b) of article 42

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

...

(b) The offence is committed **on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

The establishment of jurisdiction regarding the territorial criteria is set forth in paragraph a) of Article 4 of the Criminal Code.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

#### **Criminal Code**

#### **Article 4**

Territorial applicability. General Principle

Except when it is contrary to international treaties or conventions, Portuguese criminal law is applicable to acts committed:

a) (...)

b) On board of Portuguese ships or aircrafts.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

#### 146. Subparagraph 2 (a) of article 42

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed **against a national of that State Party**; or

*Has your country established its jurisdiction over offences established in accordance with the Convention when such offences are committed against a national of yours? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

The establishment of jurisdiction regarding the territorial criteria is set forth in Article 4 and Article 5 (1) (e) of the Criminal Code.

**Please attach the text(s)**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Criminal Code

#### **Article 4**

Territorial applicability - General principle

Unless provided otherwise in an international treaty or convention, the Portuguese criminal law is applicable to acts committed:

- a) In Portuguese territory, regardless of the nationality of the agent; or
- b) On board of Portuguese ships or aircrafts.

#### **Article 5**

Acts committed outside the Portuguese territory

1 - Unless provided otherwise in an international treaty or convention, the Portuguese criminal law is also applicable to acts committed outside the national territory:

- a) When constituting the crimes foreseen in articles 221, 262 to 271, 308 to 321 and 325 to 345;
- b) Against portuguese, by portuguese customarily residents in Portugal at the time of their commission and found therein;
- c) When constituting the crimes foreseen in articles 159 to 161, 171, 172, 175, 176 and 278 to 280, provided that the agent is found in Portugal and cannot be extradited or

handed over as a result of the execution of an European arrest warrant or other instrument of international cooperation which bounds the Portuguese State;

d) When constituting the crimes foreseen in articles 144, 163 and 164, when the victim is a minor, provided that the agent is found in Portugal and cannot be extradited or handed over as a result of the execution of an European arrest warrant or other instrument of international cooperation which bounds the Portuguese State;

e) By portuguese, or by foreigners against portuguese, whenever:

i) The agents are found in Portugal;

ii) Such acts are also punishable by the law of the place where they have been committed, unless the place of the act is not subject to any punitive power; and

iii) Such acts constitute a crime permitting extradition and such extradition cannot be granted or it is decided not to hand over the agent in execution of an European arrest warrant or other instrument of international cooperation which bounds the Portuguese State;

f) By foreigners found in Portugal and whose extradition has been requested, when constituting crimes permitting extradition and such extradition cannot be granted or it is decided not to hand over the agent in execution of an European arrest warrant or other instrument of international cooperation which bounds the Portuguese State;

g) By a legal person or against a legal person having its registered office in the Portuguese territory.

2 - The Portuguese criminal law is also applicable to acts committed outside the national territory to which the Portuguese State has, by international treaty or convention, bound itself to decide.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **147. Subparagraph 2 (b) of article 42**

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

...

**(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or**

*Has your country established its jurisdiction over offences established in accordance with this Convention when such offences are committed by a national of yours or a stateless person who has his or her habitual residence in your territory? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please cite the text(s)**

Same provisions apply - Article 4 and Article 5 (1) (e) of the Criminal Code

**Please attach the text(s)**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

#### **148. Subparagraph 2 (c) of article 42**

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

...

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed **outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph (a) (i) or (ii) or (b) (i), of this Convention within its territory;** or

*Has your country established its jurisdiction over offences committed outside your territory as prescribed by the provision under review? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

Same provisions apply - Article 4 and Article 5 (1) (e) of the Criminal Code - together with Article 368-A of the same legal instrument (see paragraph 4 - The punishment for the crimes foreseen in nos. 2 and 3 occurs even if the acts which integrate the underlying infringement have been committed outside the national territory, or even if the place of the commission of the act is not known or the identification of their perpetrators).

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable**

if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

#### **149. Subparagraph 2 (d) of article 42**

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

...

(d) The offence is committed **against the State Party**.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

Same provisions apply - Article 4 of the Criminal Code.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

### 150. Paragraph 3 of article 42

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to **establish its jurisdiction** over the offences established in accordance with this Convention **when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.**

*Has your country adopted measures to establish its jurisdiction as described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

The establishment of jurisdiction over the offences established in accordance with UNCAC when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its national is set forth in paragraph e) and f) of Article 5 of the Criminal Code.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

#### **Criminal Code**

#### **Article 5**

#### **Acts occurred abroad**

1- Except when it is contrary to international treaties or conventions, Portuguese criminal law is still applicable to acts committed outside the Portuguese territory:

e) By Portuguese, or by foreigners against Portuguese, whenever:

(i) The agents are found in Portugal;

(ii) When they are also punishable by the law of the place in which they have been perpetrated, except when in that territory punitive power is not exerted; and

(iii) When they are considered a crime admitting extradition and this cannot be conceded or it will be decided the not warrant of the offender in execution of an European warrant detention mandate or from other international cooperation legal instrument binding for the Portuguese State;

f) By foreigners, when found in Portugal, whose extradition has been requested, when considered as crimes admitting extradition and this cannot be conceded or it will be decided the not warrant of the offender in execution of an European warrant detention mandate or from other international cooperation legal instrument binding for the Portuguese State

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases**

*Have you ever assessed the effectiveness of the measures adopted to establish jurisdiction over offences established in accordance with the Convention in the case mentioned by the provision under review?*

**(N) No**

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **151. Paragraph 4 of article 42**

4. Each State Party may also take such measures as may be necessary to **establish its jurisdiction** over the offences established in accordance with this Convention **when the alleged offender is present in its territory and it does not extradite him or her.**

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

According to Article 5 (1) (e) of the Criminal Code.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Criminal Code

### **Article 5**

Acts committed outside the Portuguese territory

e) By portuguese, or by foreigners against portuguese, whenever:

- i) The agents are found in Portugal;
- ii) Such acts are also punishable by the law of the place where they have been committed, unless the place of the act is not subject to any punitive power; and
- iii) Such acts constitute a crime permitting extradition and such extradition cannot be granted or it is decided not to hand over the agent in execution of an European arrest warrant or other instrument of international cooperation which bounds the Portuguese State;

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases

*Have you ever assessed the effectiveness of the measures adopted to establish jurisdiction over the offences established in accordance with the Convention in the case mentioned by the provision under review?*

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

## 152. Paragraph 5 of article 42

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the **competent authorities of those States Parties shall, as appropriate, consult one another** with a view to coordinating their actions.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Law 144/99

Article 79  
Principle

At the request of a foreign State, under the conditions and with the effects set out in the following Articles, proceedings may be taken or continued in Portugal for an offence committed outside the Portuguese territory.

Please cite the text(s)

Article 79 of Law 144/99 of 31 August, on international judicial co-operation in criminal matters allows for the consultation between the competent authorities of the States where a State Party exercising its jurisdiction under paragraph 1 and 2 of Article 42 of the UNCAC has been notified that any other State Party are conducting an investigation, prosecution or judicial proceeding in respect to the same offender and same conduct, in order to coordinate their actions.



**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and details on factors facilitating such collaboration and coordination**

*Have you ever assessed the effectiveness of the measures adopted to facilitate coordination with other States Parties conducting an investigation, prosecution or judicial proceeding in respect of the same conduct?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **153. Paragraph 6 of article 42**

**6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

The exercise of criminal jurisdiction is a decision to be decided by national legislator and according to article 5 (2) of the Criminal Code which states that the Portuguese criminal law is also applicable to acts committed outside the national territory to which the Portuguese State has, by international treaty or convention, bound itself to decide

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**



## IV. International cooperation

### 44. Extradition

#### 154. Paragraph 1 of article 44

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s), including your policy on dual criminality*

**Please cite the text(s)**

Extradition is foreseen in Title II (Extradition) Articles 31 to 78 of Law 144/99 of 31 August, on international judicial co-operation in criminal matters, which include provision of passive extradition (Article 31), active extradition (Article 69), and a simplified procedure for extradition (Article 74).

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law 144/99**

**Article 31**

Purpose of and grounds for extradition

1. Extradition may be granted only for the purpose either of instituting criminal proceedings or of executing a sanction or measure involving deprivation of liberty, for an offence that the courts of the requesting State have jurisdiction to try.
2. For any such purpose, surrender of a person shall be possible only in respect of offences, including attempted offences that are punishable under both the Portuguese law and the law of the requesting State by a sanction or measure involving deprivation of liberty for a maximum period of at least one year.
3. If the request for extradition includes several separate offences each of which is punishable under the Portuguese law and the law of the requesting State by deprivation of liberty, but of which one or some do not fulfill the condition mentioned in the preceding paragraph, extradition for the latter offences shall also be possible.
4. Extradition requested for the purpose of executing a sanction or measure involving deprivation of liberty may be granted only if the duration of the sentence that remains to be served is not less than four months.
5. The provisions of the preceding paragraphs, adapted as appropriate, shall apply to co-operation that carries with it the extradition or the surrender of any person to international judicial entities as mentioned in Article 1 (2) of the present Law.

6. The provisions of this Article establishing limits shall not preclude extradition where conventions, treaties or agreements to which Portugal is a Party establish lower limits.

### **Extradition to Portugal**

#### **Article 69**

##### **Powers and procedure**

1. The Minister of Justice shall be empowered to request the extradition to Portugal of any person against whom there are criminal proceedings pending in Portugal, from the foreign State on whose territory that person is.
2. The request and the accompanying documents shall be transmitted through the channels provided for in this law.
3. The Attorney-General's Office shall be empowered to organize the file on the basis of a request from the public prosecutor attached to the court in which the proceedings are pending.
4. The Minister of Justice may request to the foreign State to which extradition was requested that the Portuguese State, through a representative appointed to that effect, be allowed to participate in the extradition procedure.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review, including recent cases where dual criminality issues were raised and resolved**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **155. Paragraph 2 of article 44**

2. Notwithstanding the provisions of paragraph 1 of this article, a **State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.**

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please attach the text(s)**

The issue related to international judicial cooperation in criminal matters have been assessed within FATF evaluations but exclusively about the crimes of money laundering and terrorism financing. This sentence should apply to all the answers provided to in international cooperation chapter (Chapter IV). Please see the answer provided to Article 17 regarding the assessment of effectiveness of other domestic measures.

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Law no. 144/99, of 31 August

### **Article 31**

#### Purpose of and grounds for extradition

1. Extradition may be granted only for the purpose either of instituting criminal proceedings or of executing a sanction or measure involving deprivation of liberty, for an offence that the courts of the requesting State have jurisdiction to try.
2. For any such purpose, surrender of a person shall be possible only in respect of offences, including attempted offences that are punishable under both the Portuguese law and the law of the requesting State by a sanction or measure involving deprivation of liberty for a maximum period of at least one year.
3. If the request for extradition includes several separate offences each of which is punishable under the Portuguese law and the law of the requesting State by deprivation of liberty, but of which one or some do not fulfill the condition mentioned in the preceding paragraph, extradition for the latter offences shall also be possible.

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

According to Law no. 144/99, of 31 August, if the request for extradition includes several separate offences each of which is punishable under the Portuguese law and the law of the requesting State by deprivation of liberty, but of which one or some do not fulfill the condition stating that surrender of a person shall be possible only in respect of offences, including attempted offences that are punishable under both the Portuguese law and the law of the requesting State by a sanction or measure involving deprivation of liberty for a maximum period of at least one year, extradition for the latter offences shall also be possible.

The extradition could as well be granted according to the principle of reciprocity set forth in Article 4 of the same legal instrument.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases**

**If available, please provide information on extraditions granted for offences not punishable under your domestic law**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

### 156. Paragraph 3 of article 44

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable rule(s) or measure(s)*

**Please cite the text(s)**

According to Law no. 144/99, of 31 August, if the request for extradition includes several separate offences each of which is punishable under the Portuguese law and the law of the requesting State by deprivation of liberty, but of which one or some do not fulfill the condition stating that surrender of a person shall be possible only in respect of offences, including attempted offences that are punishable under both the Portuguese law and the law of the requesting State by a sanction or measure involving deprivation of liberty for a maximum period of at least one year, extradition for the latter offences shall also be possible.

The extradition could as well be granted according to the principle of reciprocity set forth in Article 4 of the same legal instrument.

**Please attach the text(s)**

The issue related to international judicial cooperation in criminal matters have been assessed within FATF evaluations but exclusively about the crimes of money laundering and terrorism financing. This sentence should apply to all the answers provided to in international cooperation chapter (Chapter IV). Please see the answer provided to Article 17 regarding the assessment of effectiveness of other domestic measures.

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Law no. 144/99, of 31 August

### Article 31

Purpose of and grounds for extradition

1. Extradition may be granted only for the purpose either of instituting criminal proceedings or of executing a sanction or measure involving deprivation of liberty, for an offence that the courts of the requesting State have jurisdiction to try.

2. For any such purpose, surrender of a person shall be possible only in respect of offences,

including attempted offences that are punishable under both the Portuguese law and the law of the requesting State by a sanction or measure involving deprivation of liberty for a maximum period of at least one year.

3. If the request for extradition includes several separate offences each of which is punishable under the Portuguese law and the law of the requesting State by deprivation of liberty, but of which one or some do not fulfill the condition mentioned in the preceding paragraph, extradition for the latter offences shall also be possible.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review, including recent court and other cases and any other information on extradition granted in accordance with the provision under review**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

#### **157. Paragraph 4 of article 44**

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

According to paragraph 2 of Article 31 of Law no. 144/99, extradition of a person shall be possible only in respect of offences, including attempted offences that are punishable under both the Portuguese law and the law of the requesting State by a sanction or measure involving deprivation of liberty for a maximum period of at least one year.

According to the Portuguese criminal law the offences established in accordance with the United Nations Convention against Corruption are punishable with sanctions or measures involving deprivation of liberty for a maximum period of at least one year, meaning that all

these offences are extraditable offences. Therefore and according to paragraph 2 of Article 31 mentioned offences are usually included in the extradition treaties concluded by the Portuguese State.

Regarding the question of grounds for refusal, any of the offences established in accordance with the UN Convention against Corruption are regarded as a political offence. Besides Article 6 (mandatory grounds for refusal of international cooperation) and Article 32 (cases in which extradition is excluded), paragraph 2 d) of Article 7 clearly states that shall not be regarded as political offences any offences that ought not to be regarded as political under the terms of an international treaty, convention or agreement to which Portugal is a Party which is the case of the UNCAC.

**Please attach the text(s)**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

**Article 7**

**Refusal on grounds relating to the nature of the offence**

1. (...)
2. The following shall not be regarded as political offences:
  - a) genocide, crimes against humanity, war crimes and serious offences under the 1949 Geneva Conventions;
  - b) the offences mentioned in Article 1 of the European Convention on the Suppression of Terrorism, opened to signature on 27 January 1977;
  - c) the acts mentioned in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 17 December 1984;
  - d) any other offences that ought not to be regarded as political under the terms of an international treaty, convention or agreement to which Portugal is a Party.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**Please provide a sample of relevant extradition treaties**

Copies of bilateral extradition agreements celebrated by Portugal are attached to the present self-assessment questionnaire.

**Please provide information on recent extradition cases where offences established in accordance with this Convention were not deemed to be a political offence**

As stated before, the offences established in accordance with the UN Convention against Corruption are not deemed to be considered political offences and, therefore, no cases of extradition as requested could be reported.



*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

As stated before, the offences established in accordance with the UN Convention against Corruption are not deemed to be considered political offences and, therefore, no cases of extradition as requested could be reported.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **158. Paragraph 5 of article 44**

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, **it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.**

*Does your country consider this Convention as the legal basis for extradition in respect to any offence to which the article under review applies?*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Law no. 144/99, of 31 August

#### **Article 3**

Primacy of international treaties, conventions and agreements

1. The forms of co-operation mentioned in Article 1 above shall be carried out in accordance with the provisions of the international treaties, conventions and agreements that bind the Portuguese State and, where such provisions are non-existent or do not suffice the provisions of this law.
2. The provisions of the Code of Criminal Procedure shall apply as subsidiary provisions.

#### **Article 4**

Principle of reciprocity

1. International co-operation in criminal matters, as provided for in this law, falls within the province of the principle of reciprocity.

**Please cite the text(s)**

According to Article 3 of Law no. 144/99 of 31 August the forms of co-operation mentioned in Article 1 of the same law shall be carried out in accordance with the

provisions of the international treaties, conventions and agreements that bind the Portuguese State and, where such provisions are non-existent or do not suffice the provisions of this law. The principle of reciprocity could be applied as well in a extradition case where no extradition treaty exist. Therefore, the United Nations Convention against Corruption may be considered as the legal basis for extradition in respect of any of the offences foreseen in the convention.

**Please attach the text(s)**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases**

**If applicable and available, please provide information on extraditions granted without a treaty, using this Convention as the legal basis**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(Y) Yes**

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

### **159. Subparagraph 6 (a) of article 44**

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, **inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition** with other States Parties to this Convention; and

*Does your country make extradition conditional on the existence of a treaty?*

**(N) No**

### **160. Subparagraph 6 (b) of article 44**

A State Party that makes extradition conditional on the existence of a treaty shall:

...

(b) If it does not take this Convention as the legal basis for cooperation on extradition, **seek**, where appropriate, **to conclude treaties on extradition with other States Parties** to this Convention in order to implement this article.

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(N) No**

*Which challenges and issues are you facing in (fully) adopting/implementing the provision under review? (Check all the answers that apply and provide an explanation in the "Comments" field)*

**(ISSUE) Other issues (please specify)**

Despite the fact that Portugal celebrated bilateral and multilateral agreements on extradition, Law no. 144/99, as explained before, allows for passive, active and even for a simplified procedure of extradition. We should also mention the legislation related with the European Arrested Warrant, applicable within the European Union Member States, replacing the traditional mechanism of extradition by the surrender of persons.

Therefore, there is no need for celebration of bilateral agreements on extradition to comply with the subparagraph 6 (b) of Article 44 of UNCAC.

**Please provide an account of your country's efforts to date to implement the provision under review:**

Same answer

**Please outline the steps or action (and related timeframe) that domestic or other authorities would need to take to ensure full compliance with the provision under review**

Same answer.

*Which of the following forms of technical assistance, if available, would assist your country in adopting or better implementing the provision under review? (Check all the answers that apply)*

(NO) No assistance would be required

No assistance is needed or would be required by Portugal.

*Are any of the forms of technical assistance previously mentioned already provided? (Check one answer)*

(N) No

## **161. Paragraph 7 of article 44**

7. States Parties that do not make extradition conditional on the existence of a treaty shall **recognize offences to which this article applies as extraditable offences between themselves.**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

According to paragraph 2 of Article 31 of Law no. 144/99 the offences set forth in the UN Convention against Corruption are recognized as extraditable offences.

**Please attach the text(s)**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

**Article Article 31**

**Purpose of and grounds for extradition**

1. (...)

2. For any such purpose, surrender of a person shall be possible only in respect of offences, including attempted offences that are punishable under both the Portuguese law and the law of the requesting State by a sanction or measure involving deprivation of liberty for a maximum period of at least one year.

**Please provide examples of the successful implementation of this provision (i.e. information on recent extradition cases between your country and other States parties for offences established in accordance with this Convention)**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

**162. Paragraph 8 of article 44**

**8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties**, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s), including relevant domestic law(s) and conditions*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

Regarding the admissibility of extradition, paragraph 2 of Article 31 of Law no. 144/99 state that the offences, including attempted offences, should be punishable under both the Portuguese law and the law of the requesting State by a sanction or measure involving deprivation of liberty for a maximum period of at least one year.

The grounds for refusal are established in Article 6 to 10 and Article 32 of Law no. 144/99.

**Please attach the text(s)**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**Please provide information on conditions and grounds upon which extradition requests were refused**

Law no. 144/99

Article 6

Mandatory grounds for refusal

1. Requests for co-operation shall be refused:

a) where the proceedings do not comply with the requirements laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, or other relevant international instruments ratified by Portugal;

b) where there are well-founded reasons for believing that co-operation is sought for the purpose of persecuting or punishing a person on account of that person's race, religion, sex, nationality, language, political or ideological beliefs, or his belonging to a given social group;

c) where the risk exists that the procedural situation of the person might be impaired on account of any of the factors indicated in the preceding sub-paragraph;

d) where the co-operation sought might lead to a trial by a court of exceptional jurisdiction or where it concerns the enforcement of a sentence passed by such a court;

e) where any of the facts in question is punishable with the death sentence or with a sentence resulting in any irreversible injury of the person's integrity;

f) where any of the offences in question carries a life-long or indefinite sentence or measure.

2. The provisions in sub-paragraphs e) and f) of the preceding paragraph shall not preclude co-operation:

a) should the requesting State, by way of an irreversible decision that binds its courts or any other authority with powers to execute the sentence, have either commuted the death sentence or the sentence resulting in any irreversible injury of the person's integrity, or withdrawn the life-long nature of the sentence or measure;

b) where the co-operation sought is in the form of extradition for offences that, under the law of the requesting State, carry a life-long or indefinite sentence or measure involving deprivation of or restrictions to liberty, should the requesting State offer assurances that such a sentence or measure shall not be imposed or shall not be executed;

c) should the requesting State accept the conversion of the sentence or the detention order, by a Portuguese court and under the Portuguese law applicable to the offence or offences for which the person was sentenced; or

d) where co-operation is sought on the basis of the provisions of Article 1.1.f), on grounds that it will presumably be relevant for the purpose of preventing such sentences or orders to be rendered.

3. In assessing the sufficiency of the assurances mentioned in sub-paragraph b) of paragraph 2 above, account shall be taken, in the light of the law and practice of the requesting State,

inter alia, of the possibility that the sentence is not executed, of a reconsideration of the situation of the person sought and his conditional release, as well as of the possibilities that pardon, amnesty, commutation of the sentence or similar measure be granted, as provided in the law of the requesting State.

4. A request for co-operation shall also be refused where reciprocity is not ensured, without prejudice to the provisions of Article 4. 3.

5. Where co-operation is refused on the grounds offered by the provisions of sub-paragraphs d), e) or f) of paragraph 1 above, the method of co-operation provided for in Article 32.5 shall apply.

#### Article 7

##### Refusal on grounds relating to the nature of the offence

1. A request for co-operation shall also be refused where the proceedings concern:

a) Any facts that, according to the concepts of Portuguese law, constitute a political offence or an offence connected with a political offence;

b) any facts that constitute a military offence and do not constitute an offence under ordinary criminal law.

2. The following shall not be regarded as political offences:

a) genocide, crimes against humanity, war crimes and serious offences under the 1949 Geneva Conventions;

b) the offences mentioned in Article 1 of the European Convention on the Suppression of Terrorism, opened to signature on 27 January 1977;

c) the acts mentioned in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 17 December 1984;

d) any other offences that ought not to be regarded as political under the terms of an international treaty, convention or agreement to which Portugal is a Party.

#### Article 8

##### Discontinuation of criminal proceedings

1. Co-operation shall not be admissible where, either in Portugal or in another State in which criminal proceedings concerning the same facts have been initiated:

a) Either the proceedings ended with a final sentence of acquittal, or were otherwise definitively discontinued;

b) either the sentence was carried out, or it cannot be carried out according to the law of the State in which it was passed;

c) the criminal proceedings were discontinued on any other grounds, unless an international convention provides that discontinuation of proceedings under such grounds does not prevent the requested State from engaging in co-operation.

2. The provisions of sub-paragraphs a) and b) of the preceding paragraph shall have no effect where the request by the foreign authority is made for purposes of the judicial review of a sentence and the grounds for such a review are identical to those that are provided for under Portuguese law.

3. The provisions of sub-paragraph a) of paragraph 1 above shall not preclude co-operation where the latter is sought for the purpose of re-opening proceedings, in accordance with the law.

## Article 9

### Concurrent admissibility and inadmissibility of co-operation

1. If the conduct attributed to the person against whom criminal proceedings are taken falls under several provisions of the Portuguese criminal law, the request for co-operation may be complied with only with respect to such offence or offences in respect of which the request is admissible, provided that the requesting State undertakes to abide by the conditions imposed.

2. However, co-operation shall not be granted if the conduct falls under several provisions of the Portuguese or the foreign criminal law, one of which concerns the conduct in its entirety and the nature of which excludes the possibility of co-operation.

## Article 10

### Minor offences

Co-operation may be refused where the minor importance of the offence does not justify it.

## Article 32

### Cases in which extradition is excluded

1. Extradition shall be excluded in the cases mentioned in Articles 6 to 8 above, as well as in the following cases:

- a) where the offence was committed on the Portuguese territory;
- b) where the person claimed is a Portuguese national, without prejudice to the provisions of the following paragraph.

2. The extradition of Portuguese nationals shall however not be excluded where:

- a) extradition of nationals is provided for in a treaty, convention or agreement to which Portugal is a Party;
- b) extradition is sought for offences of terrorism or international organized crime; and
- c) the legal system of the requesting State embodies guarantees of a fair trial.

3. In the circumstances covered by the preceding paragraph, extradition may only take place for purposes of criminal proceedings and provided that the requesting State gives assurances that it will return the extradited person to Portugal for that person to serve in Portugal the sanction or measure eventually imposed on him, once the sentenced is reviewed and confirmed in accordance with the Portuguese law, unless the extradited person expressly refuses to be returned.

4. For the purpose of assessing the guarantees mentioned in sub-paragraph c) of paragraph 2 above, account shall be taken of the European Convention of Human Rights and other relevant international instruments ratified by Portugal, as well as the conditions under which protection is ensured against the situations mentioned in sub-paragraphs b) and c) of paragraph 1 of Article 6.

5. Where extradition is not granted on any of the grounds stated in paragraph 1 above or in sub-paragraphs d), e) or f) of paragraph 1 of Article 6, criminal proceedings shall be instituted for the offence on the grounds of which the request was made; the requesting State shall be asked to provide such information as is necessary. The judge may impose such provisional measures as he deems adequate.

6. The question of whether the person claimed is or is not a Portuguese national shall be examined at the time of the decision on the extradition request.

7. Special arrangements, within the framework of military or other alliances, may provide

that offences under military law which are not offences under ordinary criminal law shall be extraditable offences.

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **163. Paragraph 9 of article 44**

9. States Parties shall, subject to their domestic law, endeavour to **expedite extradition procedures** and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

According to Article 46 of Law no. 144/99, the extradition procedure is considered of an urgent nature and for that reason should be expedite, taking also into account the simplification of the evidentiary requirements.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Law no. 144/99

#### **Article 46**

#### **Nature of the extradition procedure**

1. The extradition procedure shall be of an urgent nature and shall consist of two stages, namely the administrative and the judicial stages.
2. The administrative stage of the procedure aims at an assessment of the extradition request by the Minister of Justice for the purpose of deciding on the basis of political reasons, or on discretionary grounds, taking into account the safeguards applicable, whether the request is admissible or not admissible.
3. The judicial stage rests under the exclusive competence of the "Tribunal da Relação" which, after having heard the person concerned, shall undertake a legal assessment of the form and substance of the facts in relation to the legal requirements, for the purpose of deciding whether extradition shall be granted or not; no evidence on the alleged conduct of the person claimed shall be taken into consideration.



Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

#### **164. Paragraph 10 of article 44**

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, **take a person whose extradition is sought and who is present in its territory into custody** or take other appropriate measures to ensure his or her presence at extradition proceedings.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

Please cite the text(s)

Law 144/99 of 31 of August allows for the provisional arrest of persons in cases of urgency.

Please attach the text(s)

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Law 144/99 of 31 of August

#### **Article 38 Provisional arrest**

1. In case of urgency the provisional arrest of the person sought may be requested as a preliminary to a formal extradition request.
2. Any decision on such a provisional arrest, or on the continuation of such an arrest, shall be taken in accordance with the Portuguese law.
3. Requests for provisional arrest shall: indicate the existence of either a detention order or a sentence against the person claimed; describe briefly the facts that amount to an offence; state when and where such offence was committed, the legal provisions that are applicable, as well as the available data concerning the identity, the nationality and the whereabouts of that person.
4. The provisions of Article 29 shall apply to the transmission of the request.

5. Provisional arrest shall be terminated if the request for extradition is not received within 18 days of the arrest; it may however be prolonged for up to 40 days of the arrest if the reasons given by the requesting State so justify.
6. Provisional arrest may be replaced by any other coercive measure in accordance with the provisions of the Code of Criminal Procedure.
7. The provisions of paragraph 5 above shall not prejudice re-arrest and extradition if a request is received subsequently.
8. The request for provisional arrest shall be examined only where no doubts arise as to the powers of the requesting authority and if the request contains such elements as are indicated in paragraph 3 above.

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If applicable and available, please provide information on recent court or other cases in which a person whose extradition was sought and who was present in your territory has been taken into custody and cases in which other appropriate measures were taken to ensure his or her presence at extradition proceedings (please describe those measures)**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

## **165. Paragraph 11 of article 44**

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies **solely on the ground that he or she is one of its nationals**, shall, at the request of the State Party seeking extradition, **be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution**. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable practice(s) or measure(s)*

**Please cite the text(s)**

The principle *aut dedere aut judicare* in foresee in paragraph 5 of Article 32 of Law no. 144/99 which refer that where extradition is not granted on any of the grounds stated in

paragraph 1 above or in sub-paragraphs d), e) or f) of paragraph 1 of Article 6, criminal proceedings shall be instituted for the offence on the grounds of which the request was made; the requesting State shall be asked to provide such information as is necessary. A reference is made as well in paragraph 5 of Article 6.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

**Article 32**

Cases in which extradition is excluded

1. Extradition shall be excluded in the cases mentioned in Articles 6 to 8 above, as well as in the following cases:

a) where the offence was committed on the Portuguese territory;

b) where the person claimed is a Portuguese national, without prejudice to the provisions of the following paragraph.

(...)

5. Where extradition is not granted on any of the grounds stated in paragraph 1 above or in sub-paragraphs d), e) or f) of paragraph 1 of Article 6, criminal proceedings shall be instituted for the offence on the grounds of which the request was made; the requesting State shall be asked to provide such information as is necessary. The judge may impose such provisional measures as he deems adequate.

**Article 6**

**Mandatory grounds for refusal**

1. to 5. (...)

5. Where co-operation is refused on the grounds offered by the provisions of sub-paragraphs d), e) or f) of paragraph 1 above, the method of co-operation provided for in Article 32 (5) shall apply.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If available, please provide information on recent court or other cases submitted for prosecution by your authorities (statistics, types of cases, outcomes). Please provide per annum figures since the year 2003 (or further back, if available)**

No statistics are available.

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## 166. Paragraph 12 of article 44

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the **condition that the person will be returned to that State Party to serve the sentence imposed** as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such **conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

Law no. 144/99 of 31 August complies with paragraph 12 and 11 of Article 44 of the UN Convention against corruption. Effectively, paragraphs 2 and 3 of Article 32 state that the extradition of Portuguese nationals could be conceded in some circumstances - a) to c) of paragraph 1 - and, in such cases, extradition may only take place for purposes of criminal proceedings and provided that the requesting State gives assurances that it will return the extradited person to Portugal for that person to serve in Portugal the sanction or measure eventually imposed on him, once the sentenced is reviewed and confirmed in accordance with the Portuguese law, unless the extradited person expressly refuses to be returned.

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

### **Article 32**

Cases in which extradition is excluded

1. (...)
2. The extradition of Portuguese nationals shall however not be excluded where:
  - a) extradition of nationals is provided for in a treaty, convention or agreement to which Portugal is a Party;
  - b) extradition is sought for offences of terrorism or international organized crime; and
  - c) the legal system of the requesting State embodies guarantees of a fair trial.

3. In the circumstances covered by the preceding paragraph, extradition may only take place for purposes of criminal proceedings and provided that the requesting State gives assurances that it will return the extradited person to Portugal for that person to serve in Portugal the sanction or measure eventually imposed on him, once the sentenced is reviewed and confirmed in accordance with the Portuguese law, unless the extradited person expressly refuses to be returned.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If available, please provide information on court or other recent cases of conditional extradition or surrender (including number of cases, outcomes, etc.). If possible, please provide per annum figures since the year 2003 (or further back, if available)**

No statistics are available regarding recent cases of conditional extradition or surrender.

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **167. Paragraph 13 of article 44**

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, **consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Law no. 144/99 of 31 August

#### **Article 95 Principle**

1. Final and enforceable foreign criminal judgements may be enforced in Portugal under the conditions laid down in this law.
2. The request for delegation must be made by the sentencing State.

#### **Article 96 Specific requirements**

1. Any request for the enforcement in Portugal of a foreign criminal judgement shall be

admissible only subject to the general requirements provided for in this law, as well as the following requirements:

- a) a sentence imposing a criminal reaction must have been rendered for an offence in respect of which the foreign State has jurisdiction;
- b) if the sentence was pronounced during a trial in the absence of the sentenced person, the later must have been given the legal possibility of requesting a new trial or introducing an appeal;
- c) the enforcement of the sentence must not run counter to the fundamental principles of the Portuguese legal system;
- d) the facts involved must not be the subject of criminal proceedings in Portugal;
- e) the facts involved must amount to a criminal offence under Portuguese law;
- f) the sentenced person must be a Portuguese national, or otherwise must have his habitual residence in Portugal;
- g) the enforcement of the sentence in Portugal must be justified in terms of a better chance of, either the rehabilitation of the sentenced person, or compensation for damages caused by the offence;
- h) the sentencing State must have provided guarantees that, once the sentence has been enforced in Portugal, it shall consider the criminal liability of the person concerned to be extinguished;
- i) the term to be served under the sentence must not be less than one year or, in case of a pecuniary sanction, it should correspond at least to the equivalent of 30 units of account in criminal procedure;
- j) where the sentence involves deprivation of liberty, the sentenced person must give his consent.

**Please attach the text(s)**

**Please cite the text(s)**

Law no. 144/99 of 31 August foresees the possibility of enforcement of foreign criminal judgments.

The possibility of enforcement of the sentence imposed under the domestic law of the requesting State when the request of extradition has been refused because the person sought is a national of the requested State can be done through the application of Article 96 1 (f).

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If applicable and available, please provide information on court or other recent cases in which such a sentence has been enforced**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

#### **168. Paragraph 14 of article 44**

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be **guaranteed fair treatment at all stages of the proceedings**, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies) or measure(s):*

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

#### **Constitution of the Portuguese Republic**

##### **Article 32**

##### **Guarantees in criminal proceedings**

1. Criminal proceedings shall provide all necessary safeguards for the defence, including appeal.
2. Everyone charged with an offence is presumed innocent until convicted, shall be tried within the shortest period of time that is compatible with the defence guarantees.
3. An accused person has the right to select, and be represented by, counsel at all stages of the proceedings. The matters and stages of proceedings for which representation by a lawyer shall be compulsory and shall be prescribed by law.
4. A judge shall have jurisdiction throughout the preliminary investigation, who, in accordance with the law, may delegate to other persons those aspects of the investigation that are not directly connected with fundamental rights.
5. Criminal proceedings shall be accusatory in structure, and the trial and such parts of the preliminary investigation as are determined by law shall be subject to the principle that both parties should be heard.
6. The law shall define the circumstances in which the presence of the defendant or accused at stages of the proceedings, including hearing of the case, can be dispensed with, while at all time ensuring the rights of defence.
7. The victim is entitled to take part in the proceedings, under the terms of the law.

8. Evidence is of no effect if it is obtained by torture, force, infringement of the physical or moral integrity of the individual or wrongful interference with private life, the home, correspondence or telecommunications.

9. No case shall be withheld from the court which has jurisdiction under existing law.

10. In proceedings concerning regulatory offences, as well as in other proceedings where a sanction is likely to be ordered the accused shall be guaranteed the right to be heard in addition to the right to make a defence.

### **Article 33**

#### **Deportation, extradition and right to asylum**

1. to 5. (...)

6. Extradition shall be determined by a judicial authority only.

#### **Please cite the text(s)**

According to the Constitution of the Portuguese Republic and the general provisions of the Code of Criminal Procedure, a fair treatment at all stages of the criminal proceedings, including enjoyment of all the rights and guarantees are guaranteed to any person regardless of its nationality.

#### **Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **169. Paragraph 15 of article 44**

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of **prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions** or that compliance with the request would cause **prejudice to that person's position for any one of these reasons.**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes



*Please cite, summarize and attach the applicable policy(ies), practice(s), or measure(s)*

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Law no. 144/99, of 31 August

#### **Article 6**

##### Mandatory grounds for refusal

1. Requests for co-operation shall be refused:

a) where the proceedings do not comply with the requirements laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, or other relevant international instruments ratified by Portugal;

b) where there are well-founded reasons for believing that co-operation is sought for the purpose of persecuting or punishing a person on account of that person's race, religion, sex, nationality, language, political or ideological beliefs, or his belonging to a given social group;

c) where the risk exists that the procedural situation of the person might be impaired on account of any of the factors indicated in the preceding sub-paragraph;

d) where the co-operation sought might lead to a trial by a court of exceptional jurisdiction or where it concerns the enforcement of a sentence passed by such a court;

e) (...)

f) (...)

**Please cite the text(s)**

The extradition of persons for the purpose of prosecuting or punishing on account of that's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that's person position for any of these reasons is forbidden under Portuguese law (Article 6 (b), (c) and (d) of Law no. 144/99, of 31 August).

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If applicable and available, please provide information on recent court or other cases where extradition was refused on such grounds**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

#### 170. Paragraph 16 of article 44

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies) or measure(s):*

**Please cite the text(s)**

Fiscal matters are not included in the grounds for refusal international judicial cooperation, including extradition, in Articles 6 to 10 and Article 32 of Law no. 144/99. Mentioned provisions are attached to previous answers.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**Please provide information on recent cases in which extradition involving fiscal matters was not refused**

No cases of extradition evolving fiscal matters have been received.

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

#### 171. Paragraph 17 of article 44

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the

**requesting State Party** to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

**Article 23**

**Requests**

1. and 2. (...)

3. The competent authority may require that a formally irregular or an incomplete request be modified or completed, without that precluding the possibility of taking provisional measures whenever such measures should not await the revised request.

**Please cite the text(s)**

According to the general provisions of the international judicial cooperation, foreseen in paragraph 3 of Article 23 of in Law no. 144/99, the competent authority may require that a formally irregular or an incomplete request be modified or completed, without that precluding the possibility of taking provisional measures whenever such measures should not await the revised request, meaning that consultations between the requested State and the requesting State, even informally and directly (paragraph 4 of Article 21 of the same Law), could be promoted in order to opinions be presented and relevant information to the allegation of the requesting State be provided.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**Please provide information on recent court or other cases and illustrations of relevant exchanges between your country and other States**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which**

assistance would be needed.

## 172. Paragraph 18 of article 44

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach any other bilateral or multilateral agreement(s) or arrangement(s) related to extradition that have not already been attached in previous answers related to this article*

**Please cite the text(s)**

Portugal celebrated a number of bilateral agreements on extradition. One multilateral agreement on extradition has been celebrated within the Portuguese Speaking Countries Community. A multilateral agreement on simplified extradition has been celebrated with Spain, Argentina and Brazil.

The negotiations of bilateral agreements on extradition with other States are ongoing.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

## 173. Article 45

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach applicable bilateral or multilateral agreement(s) or arrangement(s) related to extradition that have not already been attached in previous answers*

**Please cite the text(s)**

The transfer of sentenced person is foreseen in Articles 114 to 125 of Law no. 144/99 of 31 of August.

Regarding this matter, Portugal celebrated a number of bilateral agreements on the transfer of sentenced persons. The negotiations of bilateral agreements on the same subject with other States are ongoing.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

#### **174. Paragraph 1 of article 46**

1. States Parties shall afford one another the **widest measure of mutual legal assistance** in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach applicable bilateral or multilateral agreement(s) or arrangement(s) or other measure(s)*

**Please cite the text(s)**

Law no.144/99 on international judicial co-operation in criminal matters applies to different modalities of international cooperation: extradition; transfer of proceedings in criminal matters; enforcement of criminal judgments; transfer of persons sentenced to any punishment, or measure, involving deprivation of liberty; supervision of conditionally

sentenced or conditionally released persons; and mutual legal assistance in criminal matters.

Mutual legal assistance provisions, which are broad in terms of application, are set forth in Title VI of mentioned Law, Articles 145 to 164. Therefore, Portugal is able to afford the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to offences covered by UNCAC, under this Law as well as in the framework of bilateral and multilateral agreements concluded by Portugal with other States.

Copies of examples of bilateral agreements celebrated with other States are attached to the answers provided to the self-assessment questionnaire.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

**Article 1**

**Subject-matter**

1. This law shall apply to the following forms of international judicial co-operation in criminal matters:

a) to e) (...)

f) mutual legal assistance in criminal matters.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

**175. Paragraph 2 of article 46**

2. Mutual legal assistance shall be afforded to the **fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party** with respect to investigations, prosecutions and judicial proceedings in relation to the **offences for which a legal person may be held liable** in accordance with article 26 of this Convention in the requesting State Party.

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

Legal persons are criminally liable for the commission of offences as stated in Article 11 of the Criminal Code, Article 4 of Law no. 20/ 2008 and other pieces of legislation as Law no. 52/2003 of 21 august (Terrorism Law). Therefore Law no. 144/99, namely Articles 145 to 164 on mutual legal assistance, applies without any distinction to legal and natural persons, with the necessary adaptations.

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please attach the text(s)**

**If available, please provide information on recent cases in which mutual legal assistance was provided to a requesting State Party with respect to investigations, prosecutions and judicial proceedings in relation to offences for which a legal person was or could be held liable under this Convention**

**If applicable, please provide information on recent cases in which you denied mutual legal assistance to a requesting State Party with respect to investigations, prosecutions and judicial proceedings in relation to offences for which a legal person was or could be held liable under this Convention**

**If available, please provide information on recent cases in which mutual legal assistance was received from a requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to offences for which a legal person was or could be held liable under this Convention**

**If applicable, please provide information on recent cases in which your country was denied mutual legal assistance by a requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to offences for which a legal person was or could be held liable under this Convention**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases**

No information is available on cases related to mutual legal assistance in investigations, prosecutions and judicial proceedings granted or denied.

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

### **176. Subparagraph 3 (a) of article 46**

3. **Mutual legal assistance** to be afforded in accordance with this article may be requested for any of the following purposes:

(a) **Taking evidence or statements from persons;**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

Law no. 144/99, of 31 August

#### **Article 145**

Principle and scope

1. Assistance shall include: the communication of information; the service of writs; communication of procedural steps or other public law acts admitted by Portuguese law if they are necessary for the purposes of criminal proceedings; as well as steps that are necessary to seize or recover proceeds from, objects of or instrumentalities of an offence.

2. Assistance shall include in particular the following:

a) the notification of deeds and the service of documents;

d) the service of writs to and hearing of suspects, accused persons, witnesses or experts;

• The issue related to international judicial cooperation in criminal matters have been assessed within FATF evaluations but exclusively about the crimes of money laundering and terrorism financing. This sentence should apply to all the answers provided to in international cooperation chapter (Chapter IV). Please see the answer provided to Article 17 regarding the assessment of effectiveness of other domestic measures.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If available, please provide information on recent court or other cases in which you have made a request for evidence or statement from persons to be taken**

**If available, please provide information on some recent cases in which you have received a request for evidence or statement from persons to be taken**



*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **177. Subparagraph 3 (b) of article 46**

3. **Mutual legal assistance** to be afforded in accordance with this article may be requested for any of the following purposes:

...

(b) **Effecting service of judicial documents;**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

Law no. 144/99, of 31 August

#### **Article 145**

Principle and scope

1. Assistance shall include: the communication of information; the service of writs; communication of procedural steps or other public law acts admitted by Portuguese law if they are necessary for the purposes of criminal proceedings; as well as steps that are necessary to seize or recover proceeds from, objects of or instrumentalities of an offence.

2. Assistance shall include in particular the following:

a) the notification of deeds and the service of documents;

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If available, please provide information on recent court or other cases in which you have made a request for service of judicial documents**

**If available, please provide information on some recent cases in which you have received a request for service of judicial documents**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **178. Subparagraph 3 (c) of article 46**

**3. Mutual legal assistance** to be afforded in accordance with this article may be requested for any of the following purposes:

...

(c) Executing searches and seizures, and freezing;

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

Law no. 144/99, of 31 August

#### **Article 145 Principle and scope**

1. Assistance shall include: the communication of information; the service of writs; communication of procedural steps or other public law acts admitted by Portuguese law if they are necessary for the purposes of criminal proceedings; as well as steps that are necessary to seize or recover proceeds from, objects of or instrumentalities of an offence.

2. Assistance shall include in particular the following:

c) searches, seizure of property, experts examination and analysis;

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If available, please provide information on recent court or other cases in which you have made a request to execute searches, seizures, and freezing**

**If available, please provide information on some recent cases in which you have received a request to execute searches, seizures, and freezing**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **179. Subparagraph 3 (d) of article 46**

**3. Mutual legal assistance** to be afforded in accordance with this article may be requested for any of the following purposes:

...

(d) Examining objects and sites;

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please cite the text(s)**

Law no. 144/99, of 31 August

#### **Article 145 Principle and scope**

1. Assistance shall include: the communication of information; the service of writs; communication of procedural steps or other public law acts admitted by Portuguese law if they are necessary for the purposes of criminal proceedings; as well as steps that are necessary to seize or recover proceeds from, objects of or instrumentalities of an offence.

2. Assistance shall include in particular the following:

c) searches, seizure of property, experts examination and analysis;

**Please attach the text(s)**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If available, please provide information on recent court or other cases in which you have made a request to examine objects and sites**

**If available, please provide information on some recent cases in which you have received a request to examine objects and sites**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **180. Subparagraph 3 (e) of article 46**

3. **Mutual legal assistance** to be afforded in accordance with this article may be requested for any of the following purposes:

...

**(e) Providing information, evidentiary items and expert evaluations;**

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

Law no. 144/99, of 31 August

#### **Article 145 Principle and scope**

1. Assistance shall include: the communication of information; the service of writs; communication of procedural steps or other public law acts admitted by Portuguese law if they are necessary for the purposes of criminal proceedings; as well as steps that are necessary to seize or recover proceeds from, objects of or instrumentalities of an offence.

2. Assistance shall include in particular the following:

- a) the notification of deeds and the service of documents;
- b) the procuring of evidence;
- c) searches, seizure of property, experts examination and analysis;
- d) the service of writs to and hearing of suspects, accused persons, witnesses or experts;
- e) the transit of persons;
- f) the communication of information on Portuguese law or the law of a foreign State, as well as the communication of information relating to the judicial record of suspect, accused

or sentenced persons.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If available, please provide information on recent court or other cases in which you have made a request to receive information, evidentiary items and expert evaluations**

**If available, please provide information on some recent cases in which you have received a request to provide information, evidentiary items and expert evaluations**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **181. Subparagraph 3 (f) of article 46**

**3. Mutual legal assistance** to be afforded in accordance with this article may be requested for any of the following purposes:

...

**(f) Providing originals or certified copies of relevant documents and records**, including government, bank, financial, corporate or business records;

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

Law no. 144/99, of 31 August

**Article 145**  
**Principle and scope**

1. Assistance shall include: the communication of information; the service of writs; communication of procedural steps or other public law acts admitted by Portuguese law if they are necessary for the purposes of criminal proceedings; as well as steps that are necessary to seize or recover proceeds from, objects of or instrumentalities of an offence.

2. Assistance shall include in particular the following:

- a) the notification of deeds and the service of documents;
- b) the procuring of evidence;
- c) searches, seizure of property, experts examination and analysis;
- d) the service of writs to and hearing of suspects, accused persons, witnesses or experts;
- e) the transit of persons;
- f) the communication of information on Portuguese law or the law of a foreign State, as well as the communication of information relating to the judicial record of suspect, accused or sentenced persons.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If available, please provide information on recent court or other cases in which you have made a request to receive originals or certified copies of relevant documents and records**

**If available, please provide information on some recent cases in which you have received a request to provide originals or certified copies of relevant documents and records**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

**182. Subparagraph 3 (g) of article 46**

3. **Mutual legal assistance** to be afforded in accordance with this article may be requested for any of the following purposes:

...

(g) **Identifying or tracing proceeds of crime, property, instrumentalities or other things** for evidentiary purposes;

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

Law no. 144/99, of 31 August

#### **Article 145 Principle and scope**

1. Assistance shall include: the communication of information; the service of writs; communication of procedural steps or other public law acts admitted by Portuguese law if they are necessary for the purposes of criminal proceedings; as well as steps that are necessary to seize or recover proceeds from, objects of or instrumentalities of an offence.

2. Assistance shall include in particular the following:

- a) the notification of deeds and the service of documents;
- b) the procuring of evidence;
- c) searches, seizure of property, experts examination and analysis;
- d) the service of writs to and hearing of suspects, accused persons, witnesses or experts;

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If available, please provide information on recent court or other cases in which you have made a request for identification or tracing of proceeds of crime, property, instrumentalities or other things for evidentiary purposes**

**If available, please provide information on some recent cases in which you have received a request to identify or trace proceeds of crime, property, instrumentalities or other things for evidentiary purposes**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **183. Subparagraph 3 (h) of article 46**

**3. Mutual legal assistance** to be afforded in accordance with this article may be requested for any of the following purposes:

...

(h) **Facilitating the voluntary appearance of persons** in the requesting State Party;

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

Paragraph 2 of Article 46 provide some examples of situations where mutual legal assistance could be provided. Therefore, the assistance could be provided for the facilitating the voluntary appearance of persons.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

persons, witnesses or experts;

Law no. 144/99, of 31 August

#### **Article 145 Principle and scope**

1. Assistance shall include: the communication of information; the service of writs; communication of procedural steps or other public law acts admitted by Portuguese law if they are necessary for the purposes of criminal proceedings; as well as steps that are necessary to seize or recover proceeds from, objects of or instrumentalities of an offence.

2. Assistance shall include in particular the following:

a) the notification of deeds and the service of documents;

b) the procuring of evidence;

c) searches, seizure of property, experts examination and analysis;

d) the service of writs to and hearing of suspects, accused

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If available, please provide information on recent court or other cases in which you have made a request for facilitation of the voluntary appearance of persons**

**If available, please provide information on some recent cases in which you have received a request to facilitate the voluntary appearance of persons**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No



Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

### 184. Subparagraph 3 (i) of article 46

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

...

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please cite the text(s)

- Law no. 144/99, of 31 August

#### Article 145

#### Principle and scope

1. Assistance shall include: the communication of information; the service of writs; communication of procedural steps or other public law acts admitted by Portuguese law if they are necessary for the purposes of criminal proceedings; as well as steps that are necessary to seize or recover proceeds from, objects of or instrumentalities of an offence.

2. Assistance shall include in particular the following:

- a) the notification of deeds and the service of documents;
- b) the procuring of evidence;
- c) searches, seizure of property, experts examination and analysis;
- d) the service of writs to and hearing of suspects, accused persons, witnesses or experts;

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If available, please provide information on recent court or other cases in which you have made a request to receive other types of assistance**

**If available, please provide information on some recent cases in which you have received a request**

to provide other types of assistance

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **185. Subparagraph 3 (j) of article 46**

3. **Mutual legal assistance** to be afforded in accordance with this article may be requested for any of the following purposes:

...

(j) **Identifying, freezing and tracing proceeds of crime** in accordance with the provisions of chapter V of this Convention;

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please cite the text(s)**

Law no. 144/99, of 31 August

#### **Article 145 Principle and scope**

1. Assistance shall include: the communication of information; the service of writs; communication of procedural steps or other public law acts admitted by Portuguese law if they are necessary for the purposes of criminal proceedings; as well as steps that are necessary to seize or recover proceeds from, objects of or instrumentalities of an offence.

2. Assistance shall include in particular the following:

- a) the notification of deeds and the service of documents;
- b) the procuring of evidence;
- c) searches, seizure of property, experts examination and analysis;
- d) the service of writs to and hearing of suspects, accused persons, witnesses or experts;

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If available, please provide information on recent court or other cases in which you have made a request for identification, freezing and tracing the proceeds of crime in accordance with this Convention

If available, please provide information on some recent cases in which you have received a request to identify, freeze and trace the proceeds of crime in accordance with this Convention

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

### **186. Subparagraph 3 (k) of article 46**

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

...

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

Please cite the text(s)

Law no. 144/99, of 31 August

### **Article 145 Principle and scope**

1. Assistance shall include: the communication of information; the service of writs; communication of procedural steps or other public law acts admitted by Portuguese law if they are necessary for the purposes of criminal proceedings; as well as steps that are necessary to seize or recover proceeds from, objects of or instrumentalities of an offence.

2. Assistance shall include in particular the following:

a) the notification of deeds and the service of documents;

b) the procuring of evidence;

- c) searches, seizure of property, experts examination and analysis;
- d) the service of writs to and hearing of suspects, accused persons, witnesses or experts;

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If available, please provide information on recent court or other cases in which you have made a request for the recovery of assets in accordance with this Convention**

**If available, please provide information on some recent cases in which you have received a request to recover assets in accordance with this Convention**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

#### **187. Paragraph 4 of article 46**

4. Without prejudice to domestic law, the **competent authorities** of a State Party may, **without prior request, transmit information relating to criminal matters to a competent authority in another State Party** where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party to this Convention.

*Is it possible for your country to transmit information as described above?*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies) or measure(s):*

**Please cite the text(s)**

According to Law no. 144/99, of 31 August the assistance shall include the communication of information, the service of writs and the communication of procedural steps or other public law acts admitted by Portuguese law if they are necessary for the purposes of criminal proceedings, meaning that is not forbidden the communication or transmission, without prior request, of information related to criminal matters to a competent authority in another State Party.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If available, please provide information on recent court or other cases in which you have received information relating to criminal matters, without prior request, that could assist authorities in undertaking or successfully concluding inquiries and criminal proceedings**

**If available, please provide information on some recent cases in which you have transmitted information relating to criminal matters, without prior request, that could assist authorities in undertaking or successfully concluding inquiries and criminal proceedings**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **188. Paragraph 5 of article 46**

5. The **transmission of information pursuant to paragraph 4** of this article shall be **without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information**. The competent authorities receiving the information shall **comply with a request** that said **information remain confidential**, even temporarily, or with **restriction on its use**. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable policy(ies) or measure(s):*

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

The transmission of information could be made by Portugal without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing such information. The competent authorities receiving the information shall comply with the requests in order to keep the information confidential, even temporarily, or with restriction on its use. According to Articles 11 and 148 of Law no. 144/99, confidentiality should be protected and the use of information prohibited.

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no.144/99**

**Article 11**

### **Protection of confidentiality**

1. In implementing a request for international co-operation submitted to Portugal, the provisions of the Code of Criminal Procedure and supplementary legislation concerning grounds of refusal to testify, seizure of property, telephone tapping, professional or State secrets, or any other cases in which confidentiality is protected, shall apply.
2. The provisions of the preceding paragraph shall apply to any information that according to the request, ought to be given by persons not involved in the foreign criminal proceedings.

### **Article 148**

#### **Prohibition to use information obtained**

1. Any information obtained in order to be used within the criminal proceedings mentioned in the foreign State's request shall not be otherwise used.
2. At the request of a foreign State or an international judicial entity, the Minister of Justice, after having sought the opinion of the Attorney-General, may exceptionally authorize that information to be used in the framework of other criminal proceedings.
3. Any authorization given to a foreign State to consult a Portuguese criminal proceedings file within the framework of which that State is an injured party, shall be made subject to the conditions mentioned in the preceding paragraphs.

#### **Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

No information is available on cases related to court cases.

#### **Please provide information on the handling of recent court or other cases in which exculpatory evidence was disclosed by your authorities**

#### **Please provide information on the handling of some recent cases in which exculpatory evidence was disclosed by the authorities of a requested State Party**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **189. Paragraph 6 of article 46**

6. The provisions of this article **shall not affect the obligations under any other treaty**, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

According to paragraph 1 of Article 3 the forms of co-operation mentioned in Article 1 of Law no. 144/99 shall be carried out in accordance with the provisions of the international treaties, conventions and agreements that bind the Portuguese State and, where such provisions are non-existent or do not suffice the provisions of this law. Therefore Law no. 144/99 only applies where no treaty, convention or agreement exists or where Portugal is a Party.

**Please attach the text(s)**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

### **Law no. 144/99**

#### **Article 3**

Primacy of international treaties, conventions and agreements

1. The forms of co-operation mentioned in Article 1 above shall be carried out in accordance with the provisions of the international treaties, conventions and agreements that bind the Portuguese State and, where such provisions are non-existent or do not suffice the provisions of this law.
2. The provisions of the Code of Criminal Procedure shall apply as subsidiary provisions.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **190. Paragraph 7 of article 46**

**7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States**

**Parties** in question are **not bound by a treaty of mutual legal assistance**. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.

*Is your country bound by such treaty(ies) of mutual legal assistance?*

(Y) Yes

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable treaty(ies), provision(s) or other measure(s)*

**Please cite the text(s)**

As stated in the previous answer Law no. 144/99 applies in a subsidiary way where no treaty, convention or agreement exists or due to the fact that Portugal is not a Party in these international treaties or a bilateral agreement on mutual legal assistance was not celebrated with other States.

Bilateral agreements on mutual legal assistance have been celebrated with the following countries: Algeria, Australia, Brazil, Canada, China, Mexico, Morocco, Tunisia and São Tomé and Príncipe. Negotiations for the celebration of similar agreements with Ecuador, Paraguay and Uruguay are ongoing.

A multilateral agreement on mutual legal assistance on the framework of the Portuguese Speaking Countries Community (Angola, Brazil, Cape Verde, Guinea-Bissau, Mozambique, Portugal, São Tomé e Príncipe and Timor-Leste) has been celebrated in 2005.

Regarding extradition, bilateral agreements have been celebrated with the following countries: Algeria, Australia, Bolivia, Botswana, Brazil, Chile, China, India, Mexico, Netherlands, Russian Federation, Switzerland and the United States. The negotiation for the celebration of similar agreements with Uruguay is ongoing.

Argentina, Brazil, Portugal and Spain celebrated a joint international agreement on Simplified Extradition.

In the framework of CPLP - Portuguese Speaking Countries Community (Angola, Cape Verde, Brazil, Guinea-Bissau, Portugal, São Tomé and Príncipe, Mozambique and Timor-Leste), two agreements have been celebrated: Mutual Legal Assistance and Extradition (as well as an on the transference of sentenced persons)

**Please attach the text(s)**



Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Copies of some of the mentioned agreements are attached to the answers provided to the self-assessment questionnaire.

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Please provide relevant treaty provisions or agreements with other States

Copies of some of the mentioned agreements are attached to the answers provided to the self-assessment questionnaire.

Please provide information on recent cases in which mutual legal assistance was based on such treaty provisions or agreements

If available, please provide examples of recent cases in which your country and another State Party agreed to apply the provisions set forth in paragraphs 9 to 29 in order to facilitate cooperation

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

## 191. Paragraph 8 of article 46

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

Please cite the text(s)

Bank secrecy is not included in the grounds for refusal foreseen in Articles 6, 7, 8, 10, 18 and 32 of Law no. 144/99.

Please attach the text(s)

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Mentioned provisions could be found in the previous answers.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review, including recent cases in which bank secrecy rules or issues did not impede effective mutual legal assistance**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **192. Subparagraph 9 (a) of article 46**

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the **absence of dual criminality, shall take into account the purposes of this Convention**, as set forth in article 1;

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), practice(s), or other measure(s)*

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

### **Article 4**

Principle of reciprocity

1. International co-operation in criminal matters, as provided for in this law, falls within the province of the principle of reciprocity.

2. Where circumstances so require, the Ministry of Justice shall demand an undertaking to the effect that reciprocity shall apply; within the limits set out in the provisions of this law, it may provide other States with such an undertaking.

3. The absence of reciprocity shall not prevent compliance with a request for co-operation where such co-operation:

a) Is seen to be advisable in view of the nature of the facts, or in view of the need to combat certain serious forms of criminality;

b) may contribute to the betterment of the situation of the person concerned or to his social rehabilitation;

c) may serve to shed light on facts endorsed to a Portuguese national.

**Please cite the text(s)**

Usually dual criminality is a condition to render international cooperation in criminal matters. That's for instance the case of extradition, set forth in paragraph 2 of Article 1 of Law no. 144/99 stating that the surrender of a person shall be possible only in respect of offences, including attempted *offences that are punishable under both the Portuguese law and the law of the requesting State* by a sanction or measure involving deprivation of liberty for a maximum period of at least one year.

However, mentioned Law includes a provision - Article 4 - related to the principle of reciprocity, allowing for the rendering of international cooperation in criminal matters regardless of the verification of the dual criminality clause, also stating that absence of reciprocity shall not prevent compliance with a request for co-operation where such co-operation is particularly needed.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related mutual legal assistance and other recent cases**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

**193. Subparagraph 9 (b) of article 46**

(b) States Parties may **decline to render assistance pursuant to this article on the ground of absence of dual criminality**. However, a requested State Party shall, where consistent with the basic concepts of its legal

system, **render assistance that does not involve coercive action.** Such assistance may be refused when requests involve matters of a *de minimis* nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable policy(ies), practice(s) or other measure(s)*

**Please cite the text(s)**

According to Law n° 144/99 - Article 4 - the rendering of international cooperation in criminal matters regardless of the verification of the dual criminality clause is allowed. The absence of reciprocity shall not prevent compliance with a request for co-operation where such co-operation is particularly needed.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please explain what measures you consider to be coercive; please attach any available definitions or relevant legal texts**

**Please explain what matters you consider to be of a *de minimis* nature; please attach any available definitions or relevant legal texts**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**Please provide information on the types of non-coercive actions taken when rendering assistance in the absence of dual criminality**

There is no information on this field.

**If applicable and available, please provide information on recent cases in which your country provided assistance to another State Party in the absence of dual criminality**

**If applicable and available, please provide information on recent cases in which you received assistance from another State Party in the absence of dual criminality**

**Please provide information on recent cases in which your country refused mutual legal assistance on the ground of absence of dual criminality**

**Please provide information on recent cases in which your request for mutual legal assistance was refused on the ground of absence of dual criminality**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

#### **194. Subparagraph 9 (c) of article 46**

(c) Each State Party may consider adopting such measures as may be necessary to enable it to **provide a wider scope of assistance** pursuant to this article **in the absence of dual criminality**.

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable policy(ies), practice(s), or other measure(s)*

**Please cite the text(s)**

According to Law n° 144/99 - Article 4 - the rendering of international cooperation in criminal matters regardless of the verification of the dual criminality clause is allowed. The absence of reciprocity shall not prevent compliance with a request for co-operation where such co-operation is particularly needed.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases in which assistance was provided despite the lack of dual criminality**

*Have you ever assessed the effectiveness of the measures adopted to facilitate the provision of assistance in the absence of dual criminality?*

**(N) No**

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

#### **195. Subparagraph 10 (a) of article 46**

10. A **person who is being detained or is serving a sentence** in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention **may be transferred** if the following conditions are met:

(a) **The person freely gives his or her informed consent;**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

Law n° 144/99, of 31 of August

### **Article 27**

#### Transfer of persons

1. Any transfer of persons arrested or sentenced to a sanction involving deprivation of liberty, where that transfer should be executed as a result of a decision taken pursuant to the provisions of this law, shall be carried out by the Ministry of Justice, in agreement, as to the means of transport, the date, the hour and the place of surrender, with the authorities of the foreign State on whose territory the person concerned is, or to whose territory the person concerned should be transferred.
2. Transfer shall be carried out within the shortest possible delay as from the date of the decision ordering it.
3. The provisions of this Article, adapted as appropriate, shall apply to any transfer requested by any international judicial entity.

### **Article 114**

#### Scope

This Chapter applies to the enforcement of criminal judgements where such enforcement carries with it the transfer of a person sentenced to a sanction or measure involving deprivation of liberty and where the transfer results from the person's request or depends on the person's consent.

### **Article 115**

#### Principles

1. If the general requirements provided for in this law and in the following articles are met, any person sentenced by a foreign court to a sanction or a measure involving deprivation of liberty may be transferred to Portugal in order to serve the sentence imposed on him.
2. In the same way and for the same purposes, any person sentenced in Portugal to a sanction or measure involving deprivation of liberty may be transferred to the territory of a foreign State.
3. The transfer may be requested either by a foreign State or by Portugal, in both cases provided that it is either at the request or with the express consent of the sentenced person.
4. The transfer is also subject to the existence of an agreement between the State in which the person was sentenced and the State to which the transfer should be requested.

### **Article 116**

#### Information to sentenced persons

The prison administration shall inform all foreign persons sentenced in Portugal of their right to request their transfer in conformity with this law.

## **Article 117**

### Information and supporting documents

1. Where the person concerned expresses his interest in being transferred to a foreign State, the Central Authority shall so inform that State with a view to obtaining its agreement; that information shall include:

- a) name, date and place of birth, and nationality of the person concerned;
- b) his address in that State, where applicable;
- c) a statement of the facts upon which the sentence was based;
- d) the nature and duration of and date in which the person started serving the sanction or measure.

2. The following information shall also be forwarded to the foreign State:

- a) a certificate or an authenticated copy of the sentence and of the text of the legal provisions that apply to the case;
- b) a statement indicating the duration of the sanction or measure that was already served, duration of provisional arrest, reduction of the sentence and any other facts pertaining to the enforcement of the sentence;
- c) a statement on the consent of the person concerned to be transferred;
- d) if applicable, any medical or social report relating to the person concerned and in particular to any medical treatment undergone by that person in Portugal and any recommendations as to the continuation of such treatment.

## **Article 118**

### Powers

1. The public prosecutor attached to the court that rendered the sentence shall be empowered, at his initiative or at the request of the sentenced person, to implement any request for transfer.

2. Requests for transfer must be forwarded as soon as the sentence becomes enforceable.

3. Requests shall be forwarded by the Attorney-General's Office to the Minister of Justice for examination.

4. Where the circumstances of the case so justify, the Minister of Justice may request an opinion from the Attorney-General's Office, the prison administration and the Institute for Social Rehabilitation; the opinions requested shall be produced within 10 days.

5. The person concerned shall be informed in writing of all the decisions taken subsequent to the request.

## **Article 119**

### Request and supporting documents

1. Where a person expressed to a foreign State the wish to be transferred, that State should

forward, with the request, the following documents:

- a) a statement indicating that the sentenced person either is a national of that State or has his habitual residence on its territory;
- b) a copy of the legal provisions from which it can be assumed that the facts upon which the Portuguese sentence was based also amount to a punishable offence in that State;
- c) any other pertinent documents.

2. The information listed in paragraph 2 of Article 117 shall be forwarded to the foreign State, save if the request is summarily rejected.

#### **Article 120**

##### Decision

1. Where the Minister of Justice deems the request to be admissible, it shall be forwarded by the Attorney-General's Office to the public prosecutor attached to the ""Tribunal da Relação" that has jurisdiction in the area of the prison where the person concerned is.

2. The public prosecutor shall take steps to ensure that the person concerned is heard by the judge; the provisions of the Code of Criminal Procedure relating to the hearing of arrested persons shall apply.

3. The ""Tribunal da Relação" shall take a decision on the request, after having determined that the person concerned, fully knowledgeable of the legal consequences thereof, voluntarily consented to his transfer.

4. A consular agent or any official appointed with the agreement of the foreign state shall be granted the possibility of verifying whether or not the consent was given in conformity with the provisions of the preceding paragraph.

#### **Article 121**

##### Effects of transfer

1. The transfer of the person to a foreign State shall have the effect of suspending the enforcement of the sentence in Portugal.

2. Portugal may no longer enforce the sentence after the person has been transferred if the foreign State communicates that a judicial decision has deemed the sentence as having been fully enforced.

3. Where any court applies a measure of amnesty, pardon or commutation, the foreign State shall be informed accordingly through the Central Authority.

#### **Article 122**

##### Request

1. Where a person sentenced in a foreign State expresses his wish to be transferred to Portugal, the Attorney-General shall forward to the Minister of Justice the information mentioned in Article 117 that he will have received from that State for the purpose of the Minister examining the admissibility of the request.

2. The provisions of the preceding paragraph shall also apply in the cases in which the request comes from the foreign State.

3. The Minister of Justice may request an opinion from the Attorney-General's Office, the



prison administration and the Institute for Social Rehabilitation; the opinions requested shall be produced within 10 days.

4. The provisions of paragraph 5 of Article 118 shall apply mutatis mutandis.

### **Article 123**

#### Specific requirements

1. Once a request for transfer to Portugal is accepted, the file shall be forwarded through the Attorney-General's Office to the public prosecutor at the "Tribunal da Relação" which has jurisdiction in the place of residence indicated by the person concerned, in order to engage a procedure of revision and confirmation of foreign sentence.

2. When the judicial decision on the review and confirmation of the foreign sentence becomes enforceable, that decision shall be transmitted by the Central Authority to the requesting State for the purpose of the transfer being carried out.

### **Article 124**

#### Information on the enforcement

1. All information concerning the enforcement of the sentence shall be transmitted to the requesting State; that information shall include:

- a) the date on which enforcement of the sentenced has been completed, as decided upon by way of a judicial decision;
- b) if applicable, notice of the escape of the person concerned prior to the sentence having been fully enforced.

2. At the request of the State that requested the transfer, a special report on the way in which enforcement took place and the results thereof, shall be forwarded to it.

### **Article 125**

#### Transit

Authorisation for the transit through the Portuguese territory of a person being transferred from one State to another may be granted, at the request of any such State; the provisions of Article 43 shall apply mutatis mutandis.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases**

***Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?***

**(N) No**

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## 196. Subparagraph 10 (b) of article 46

10. A **person who is being detained or is serving a sentence** in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention **may be transferred** if the following conditions are met:

...

(b) The **competent authorities of both States Parties agree**, subject to such conditions as those States Parties may deem appropriate.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s), agreement(s) and condition(s)*

Please cite the text(s)

Please see previous answer.

Please attach the text(s)

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## 197. Subparagraph 11 (a) of article 46

11. For the purposes of paragraph 10 of this article:

(a) The **State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody**, unless otherwise requested or authorized by the State Party from which the person was transferred;

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

According to Articles 4 and 154 to 156 of Law no. 144/99, Portugal has the authority and obligation to keep the person transferred in custody, meaning that the same rules apply where Portugal is requested to surrender persons in custody temporarily or receive a person in custody temporarily transferred for purposes of investigation.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

**Article 154**

Summons to appear

1. Suspect or accused persons, witnesses or experts who are summoned to appear for the purposes of foreign criminal proceedings, service of which has been requested, may fail to appear.
2. When the summons are served, the person concerned shall be informed of his right not to appear.
3. The Portuguese authority shall refuse to service any summons where the person concerned is threatened with sanctions or where the safety of the person concerned is not safeguarded.
4. Consent to appear, if it is given, shall be freely given by way of a written statement.
5. Requests shall indicate the allowances and remunerations, as well as the travelling and subsistence expenses, to be paid out; they ought to be transmitted reasonably in advance so that they can be received 50 days at least before the date at which the person should appear.
6. In urgent cases, the time-limits indicated in the preceding paragraph may be shortened.
7. The allowances, remunerations and expenses mentioned in paragraph 5 above shall be calculated as from the place of residence of the person concerned and shall be at the rates provided for in the law of the State where the hearing is intended to take place.

**Article 155**

Temporary surrender of persons in custody

1. A person arrested or imprisoned in Portugal may be temporarily surrendered to an authority of a foreign State for the purposes mentioned in the preceding Article, provided that that person consents, that his remaining in custody is guaranteed and that he shall be returned within the period stipulated by the Portuguese authorities or when his presence in that State is no longer necessary.
2. Without prejudice to the provisions of the preceding paragraph, surrender shall be

refused if:

a) the presence of the person concerned is necessary at criminal proceedings pending in Portugal;

b) it is liable to prolong the provisional arrest of the person concerned;

c) regarding the circumstances of the case, the Portuguese judicial authority does not deem surrender to be convenient.

3. The provisions of sub-paragraphs 1 and 2 of Article 21 shall apply to the requests mentioned in this Article.

4. The time during which the person remains out of Portugal shall be taken into consideration for the purposes of provisional arrest or sentence imposed in Portugal.

5. If the sentence imposed on the person surrendered expires while that person is on the territory of a foreign State, that person shall be set free and shall as from that moment enjoy such rights as enjoy the persons who are not under custody.

6. The Minister of Justice may grant the assistance requested subject to specified requirements.

#### **Article 156**

Temporary transfer of persons in custody for purposes of investigation

1. The provisions of Article 155 shall apply to cases in which, upon agreement, a person arrested or imprisoned in Portugal may be temporarily transferred to the territory of another State for purposes of investigation in the framework of Portuguese criminal proceedings.

2. The agreement mentioned in paragraph 1 above shall not be required where the transfer is made under an international agreement, treaty or convention that does not impose it.

3. The provisions of the preceding paragraph shall apply mutatis mutandis to requests of assistance submitted to Portugal.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related cases**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

#### **198. Subparagraph 11 (b) of article 46**

11. For the purposes of paragraph 10 of this article:

...

(b) The State Party to which the person is transferred shall **without delay implement its obligation to return the person** to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

**Article 155**

Temporary surrender of persons in custody

1. A person arrested or imprisoned in Portugal may be temporarily surrendered to an authority of a foreign State for the purposes mentioned in the preceding Article, provided that that person consents, that his remaining in custody is guaranteed and that he shall be returned within the period stipulated by the Portuguese authorities or when his presence in that State is no longer necessary.

**Please cite the text(s)**

According to Article 4 and paragraph 1 of Article 155 of Law no. 144/99, Portugal implemented the obligation to return the person in custody to the State from which that person has been transferred.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related transfer cases**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## 199. Subparagraph 11 (c) of article 46

11. For the purposes of paragraph 10 of this article:

...

(c) The State Party to which the person is transferred **shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

According to Article 4 and Article 157 of Law no. 144/99 Portugal will not require in any situation the State Party which the person was transferred to initiate extradition proceedings for the return of that person.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

**Article 157**

**Safe conduct**

1. Any person appearing on the territory of a foreign State under the terms and for the purposes of the provisions of Articles 154, 155 or 156 above:

a) shall not be arrested, prosecuted, punished or subjected to any other restriction of his personal liberty in respect of any act anterior to his departure from the Portuguese territory other than those mentioned in the request for co-operation;

b) shall not be under an obligation to accept to be heard or make a statement at proceedings other than those mentioned in the request.

2. The immunity provided for in paragraph 1 above shall cease when the person voluntarily remains in the territory of the foreign State for more than 45 days from the date when his presence is no longer required or, having left that territory, voluntarily returned to it.

3. The provisions of the preceding paragraphs shall apply mutatis mutandis to any person habitually resident in a foreign State who comes to Portugal as a result of a summons to appear for purposes of criminal proceedings.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **200. Subparagraph 11 (d) of article 46**

11. For the purposes of paragraph 10 of this article:

...

*(d)* The **person transferred shall receive credit for service of the sentence being served** in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

According to Article 4 and paragraph 4 of Article 155, also applicable to Article 156, the person transferred shall receive credit for service of the sentence being served in the State from which he or she has been transferred for time spent in the custody of the State Party to which he or she has been transferred.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

**Article 155**

Temporary surrender of persons in custody

1. to 4. (...)

4. The time during which the person remains out of Portugal shall be taken into consideration for the purposes of provisional arrest or sentence imposed in Portugal.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related transfer cases**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **201. Paragraph 12 of article 46**

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, **shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty** in the territory of the State to which that person is transferred **in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies) or measure(s):*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

According to Article 4 and Article 157 of Law no. 144/99, a person is not prosecuted nor punished for offences prior to departure from the territory of the State from which he or she was transferred.

**Please attach the text(s)**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

**Article 157**

**Safe conduct**

1. Any person appearing on the territory of a foreign State under the terms and for the purposes of the provisions of Articles 154, 155 or 156 above:

a) shall not be arrested, prosecuted, punished or subjected to any other restriction of his personal liberty in respect of any act anterior to his departure from the Portuguese territory other than those mentioned in the request for co-operation;

b) shall not be under an obligation to accept to be heard or make a statement at proceedings other than those mentioned in the request.

2. The immunity provided for in paragraph 1 above shall cease when the person voluntarily



remains in the territory of the foreign State for more than 45 days from the date when his presence is no longer required or, having left that territory, voluntarily returned to it.

3. The provisions of the preceding paragraphs shall apply *mutatis mutandis* to any person habitually resident in a foreign State who comes to Portugal as a result of a summons to appear for purposes of criminal proceedings.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related cases**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **202. Paragraph 13 of article 46**

13. Each State Party shall **designate a central authority** that shall have the responsibility and power to **receive requests for mutual legal assistance** and either to **execute them or to transmit them** to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. **The Secretary-General of the United Nations shall be notified of the central authority** designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

*Has your country established a central authority(ies) as described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable arrangement(s) or measure(s)*

**Please cite the text(s)**

The Attorney-General's Office (*Procuradoria-Geral da República*) is the Portuguese central authority for receiving and transmitting any requests for international judicial co-operation, according to Article 21 of Law no. 144/99.

The identification of the Portuguese central authority for receiving and transmitting any

requests for international judicial co-operation has been made in the framework of the procedure of ratification of the UNCAC. However, at the time of the deposit of the instrument of ratification, this notification was not made. Therefore, the notification to the Secretary-General of the United Nations is ongoing, through the Mission of Portugal in New York.

According to paragraph 4 of Article 21 and Article 152 of Law no. 144/99 the request for mutual legal assistance and any related communications can be directly transmitted to the Portuguese central authority.

The requests for mutual legal assistance and any related communications can be directly transmitted to the Portuguese central authority and the transmission through diplomatic channels is no need. However, it's up to the requesting State to decide whether the transmission of such requests is made directly or through diplomatic channels.

According to Article 29 of Law n° 144/99, in case of urgency, the foreign judicial authorities may communicate with the Portuguese judicial authorities, either directly or through the International Criminal Police Organization - INTERPOL or through central agencies designated to that effect, for the purpose of requesting provisional measures or measures that cannot be delayed

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

### **Law no. 144/99**

#### **Article 21 Procedure**

1. The "Procuradoria-Geral da República" (Attorney-General's Office) is hereby designated to be the Central Authority for the purpose of receiving and transmitting any requests for co-operation covered by this law, as well as for all communications relating thereto.
2. Any request for co-operation made to Portugal shall be forwarded to the Minister of Justice by the Attorney-General with a view to its admissibility being decided upon.
3. Any request for co-operation made by Portuguese authorities shall be forwarded to the Minister of Justice by the Attorney-General.

4. The provisions of paragraph 1 shall not prejudice direct contacts relating to requests for co-operation, as mentioned in Article 1 paragraph 1 (f).

#### Article 29

#### Urgent provisional measures

1. In case of urgency, the foreign judicial authorities may communicate with the Portuguese judicial authorities, either directly or through the International Criminal Police Organization - INTERPOL or through central agencies designated to that effect, for the purpose of requesting provisional measures or measures that cannot be delayed; the request shall state the reasons for the urgency and shall be in accordance with the provisions of Article 23 above.

2. Requests shall be transmitted by post, by electronic means, by telegraph or by any other means allowing for a written record provided that it is admitted by the Portuguese law.

3. Where the Portuguese judicial authorities deem the request to be admissible, they shall execute it; however, where prescribed by this law, they must seek to obtain from the Minister of Justice, through the Central Authority, previous clearance- should that be possible - or ratification otherwise.

4. Where under this Article co-operation involves Portuguese and foreign authorities of a different nature, the request shall be channeled through the Central Authority.

#### Article 152

#### Procedure

1. Requests for assistance that take the form of letters rogatory may be transmitted directly between competent judicial authorities, without prejudice to the possibility of using the channels mentioned in Article 29.

2. In accordance with the criminal procedure law, the judge or the public prosecutor shall be empowered to take decisions to the effect of executing letters rogatory.

3. Where a letter rogatory is received that should not be executed by the public prosecutor, the public prosecutor shall be given the possibility to state his opinion.

4. The execution of letters rogatory shall be refused in the following cases:

a) where the requested authority is not empowered to execute the measures sought, without prejudice of the transmission of the letter rogatory to the competent judicial authority if such authority is a Portuguese authority;

b) where the measures sought are forbidden by law or contrary to the Portuguese "ordre public";

c) where the execution of the letter rogatory offends the sovereignty or the security of the State;

d) where the measures imply the execution of a decision of a foreign court, and that decision must have previously been reviewed and confirmed and that decision has not been reviewed and confirmed.

5. Other requests, in particular requests relating to criminal records, to the verification of the identity of a person and mere requests for information, may be directly forwarded to the competent authorities or entities and, once complied with, the result communicated back through the same channels.

6. The provisions of paragraph 4 above shall apply mutatis mutandis to requests that do not

take the form of a letter rogatory.

7. The provisions of paragraph 3 above shall apply mutatis mutandis to letters rogatory addressed by any competent Portuguese judicial authority to any foreign authorities; letters rogatory shall be issued in every instance where any competent Portuguese judicial authority deems that such is necessary in order to obtain evidence of any fact that is essential either to the prosecution or to the defence.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If applicable and available, please provide recent court or other cases**

*Have you ever assessed the effectiveness of the measures adopted to designate a central authority responsible for receiving requests for mutual legal assistance and for executing or transmitting them? (Check one answer)*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

*Has your country notified the Secretary-General of the United Nations as prescribed above? (Check one answer)*

(Y) Yes

*Does your country allow that requests for mutual legal assistance and any related communications be transmitted to the central authorities designated by States Parties? (Check one answer)*

(Y) Yes

*Does your country require that such requests and related communications be addressed to it through diplomatic channels? (Check one answer)*

(Y) Yes

The requests for mutual legal assistance and any related communications can be directly transmitted to the Portuguese central authority and the transmission through diplomatic channels is no need. However, it's up to the requesting State to decide whether the transmission of such requests is made directly or through diplomatic channels.

*Does your country agree that, in urgent circumstances, requests for mutual legal assistance and related communications be addressed to it through the International Criminal Police Organization? (Check one answer)*

(Y) Yes

## **203. Paragraph 14 of article 46**

14. **Requests shall be made in writing** or, where possible, by **any means capable of producing a written record, in a language acceptable** to the requested State Party, under conditions allowing that State Party to establish authenticity. The **Secretary-General of the United Nations shall be notified of the language or languages acceptable** to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

*Has your country notified the Secretary-General of the United Nations as prescribed above? (Check one answer)*

(Y) Yes

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s) and language(s)*

Please cite the text(s)

Law n° 144/99

Article 20

Language to be used

1. Requests for co-operation shall be accompanied by a translation into the official language of the requested State, unless otherwise stipulated in a convention or agreement, or unless that State exempts from the need for a translation.
2. The provisions of the preceding paragraph shall also apply to the requests addressed to Portugal.
3. The decisions concerning the admissibility or the refusal of a request for co-operation shall be notified to the authority of the requesting State, accompanied by a translation into the official language of that State, save in the cases mentioned in paragraph 1 above.
4. The provisions of this Article shall also apply to the documents that accompany the request.

Please attach the text(s)

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

#### **204. Paragraph 15 of article 46**

15. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
- (c) A summary of the relevant facts, except in relation to requests for the service of judicial documents;
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
- (e) Where possible, the identity, location and nationality of any person concerned; and
- (f) The purpose for which the evidence, information or action is sought.

*Is your country in compliance with provision (a) above? (Check one answer)*

**(Y)** Yes

*Is your country in compliance with provision (b) above? (Check one answer)*

**(Y)** Yes

*Is your country in compliance with provision (c) above? (Check one answer)*

**(Y)** Yes

*Is your country in compliance with provision (d) above? (Check one answer)*

**(Y)** Yes

*Is your country in compliance with provision (e) above? (Check one answer)*

**(Y)** Yes

*Is your country in compliance with provision (f) above? (Check one answer)*

**(Y)** Yes

**Please provide a sample request for mutual legal assistance containing all the requirements**

*Have you ever assessed the effectiveness of any of the measures adopted to comply with the provision under review?(Check one answer)*

**(N)** No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

## 205. Paragraph 16 of article 46

16. The requested State Party **may request additional information** when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s) and types of additional information you may need*

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Law no. 144/99

## Article 23 Requests

1. (...)

2. (...)

3. The competent authority may require that a formally irregular or an incomplete request be modified or completed, without that precluding the possibility of taking provisional measures whenever such measures should not await the revised request.

Please cite the text(s)

According to Article 23 of Law no.144/99 the competent authority may request additional information.

## 206. Paragraph 17 of article 46

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies) or other measure(s)*

**Please cite the text(s)**

According to Article 2, 150, paragraph c) of Article 151 and paragraph 1 of Article 146, all the requests for cooperation submitted to Portugal should be executed in accordance with domestic law and where possible, in accordance with the requests or procedures specified in the request by the requesting State.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

**Article 2**

Scope

1. Enforcement of this law shall be subject to the protection of the interests of sovereignty, security, ordre public, or other, constitutionally defined, interests of the Portuguese Republic.

2. No right to compel any form of international co-operation in criminal matters shall derive from this law.

**Article 150**

Powers

Any foreign authority or entity that has powers to take criminal proceedings under the law of the State or the International Organization involved, may request assistance.

**Article 151**

Contents of the request and supporting documents

Other than the documents and statements mentioned in Article 23 above, requests shall include, as applicable:

a) and b) (...)

c) any reference to particulars of the proceedings or to requirements, including time-limits and confidentiality, that the foreign State or judicial entity wishes to be met.

**Article 146**

Applicable law

1. Requests for assistance addressed to Portugal shall be carried out in conformity with the Portuguese law.

2. However, where the foreign State so requests explicitly or where it results from an international agreement, treaty or convention, the assistance sought may be given in conformity with the law of that State, if such is not incompatible with the fundamental principles of Portuguese law and if it does not carry serious prejudice to the parties involved.



**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**Please provide information on requests executed in ways different from those specified in the request due to domestic legal requirements**

There is no information on requests executed in different ways from those specified in the requests.

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **207. Paragraph 18 of article 46**

18. Whenever possible and consistent with fundamental principles of domestic law, when an **individual** is in the **territory of a State Party** and **has to be heard as a witness or expert by the judicial authorities of another State Party**, the first State Party may, at the request of the other, **permit the hearing to take place by video conference** if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

*Does your country permit hearings of individuals mentioned above to take place by video conference as described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Law no. 144/99

### **Article 145 Principle and scope**

1. Assistance shall include: the communication of information; the service of writs; communication of procedural steps or other public law acts admitted by Portuguese law if they are necessary for the purposes of criminal proceedings; as well as steps that are necessary to seize or recover proceeds from, objects of or instrumentalities of an offence.

2. (...)

3. Where the circumstances of the case so require, subject to an agreement between Portugal and a foreign State or an international judicial entity, any hearings as mentioned in

sub-paragraph d) of paragraph 2 above may take place by using telecommunication means in real time, in accordance with Portuguese criminal procedure law and without prejudice to the provisions of paragraph 10 ahead.

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

According to Article 145 (3) of Law no.144/99 the videoconference could be used for the hearing of witnesses or experts by the judicial authorities of another State Party.

**Please attach the text(s)**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases**

**If applicable and available, please provide information on recent cases in which a hearing has been permitted to take place by video conference if it was not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party**

**Please provide information on recent relevant cases in which you made or received such a request**

There is no information about this kind of requests

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **208. Paragraph 19 of article 46**

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

According to Articles 148 and 149 of Law no. 144/99 the information or evidence provided by other State shall not be used or transmitted for investigations, prosecutions or judicial proceedings other than those stated in the request without prior consent of the other State.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

**Law no. 144/99**

**Article 148**

Prohibition to use information obtained

1. Any information obtained in order to be used within the criminal proceedings mentioned in the foreign State's request shall not be otherwise used.
2. At the request of a foreign State or an international judicial entity, the Minister of Justice, after having sought the opinion of the Attorney-General, may exceptionally authorize that information to be used in the framework of other criminal proceedings.
3. Any authorization given to a foreign State to consult a Portuguese criminal proceedings file within the framework of which that State is an injured party, shall be made subject to the conditions mentioned in the preceding paragraphs.

**Article 149**

Confidentiality

1. Upon application of a foreign State or an international judicial entity, the request for assistance, its purpose, the measures taken upon the request, as well as the documents involved, shall be kept confidential.
2. If the assistance requested cannot be carried out without unveiling information thereupon, the Portuguese authority shall invite the interested authority to confirm or annul its request for assistance.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**Please provide information on the handling of recent cases in which exculpatory evidence was disclosed by your authorities**

No information on recent cases in which exculpatory evidence was disclosed by authorities.

**Please provide information on recent court or other cases in which exculpatory evidence was disclosed by the authorities of a requesting State**

Same answer.

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

## 209. Paragraph 20 of article 46

20. The requesting State Party may require that the requested State Party **keep confidential the fact and substance of the request**, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

According to Article 149 the confidentiality of the requests of assistance could be kept.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Law no. 144/99

### Article 149 Confidentiality

1. Upon application of a foreign State or an international judicial entity, the request for assistance, its purpose, the measures taken upon the request, as well as the documents involved, shall be kept confidential.

2. If the assistance requested cannot be carried out without unveiling information thereupon, the Portuguese authority shall invite the interested authority to confirm or annul its request for assistance.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent cases in which it was not possible to comply with the requirement of confidentiality**

**Please provide information on how such cases were handled**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

## **210. Subparagraph 21 (a) of article 46**

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

The grounds for refusal of a request of international judicial cooperation are foreseen in Articles 6 to 10, 18 and 32 of Law no. 144/99.

**Please attach the text(s)**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If applicable and available, please provide information on recent court or other cases in which you refused mutual legal assistance because the request was not made in conformity with the provisions of this article**

**If applicable and available, please provide information on other recent cases in which you were refused mutual legal assistance because the request was not made in conformity with the provisions of this article**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

## **211. Subparagraph 21 (b) of article 46**

21. Mutual legal assistance may be refused:

...

(b) If the requested State Party considers that **execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

According to Article 2 of Law no. 144/99, the enforcement of this law on international judicial cooperation in criminal matters shall be subject to the protection of the interests of sovereignty, security, ordre public, or other, constitutionally defined, interests of the Portuguese Republic.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Law no. 144/99

## **Article 2**

### Scope

1. Enforcement of this law shall be subject to the protection of the interests of sovereignty, security, ordre public, or other, constitutionally defined, interests of the Portuguese Republic.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If applicable and available, please provide information on recent court or other cases in which you refused mutual legal assistance because you considered that the execution of the request was likely to prejudice your sovereignty, security, ordre public or other essential interests**

**If applicable and available, please provide information on recent other cases in which you were refused mutual legal assistance because the execution of the request was considered to be likely to prejudice other States parties' sovereignty, security, ordre public or other essential interests**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **212. Subparagraph 21 (c) of article 46**

21. Mutual legal assistance may be refused:

...

(c) If the **authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested** with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

The grounds for refusal of a request of international judicial cooperation are foreseen in Articles 6 to 10, 18 and 32 of Law no. 144/99.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If applicable and available, please provide information on recent court or other cases in which you refused mutual legal assistance because the requested action was prohibited by your domestic law**

**If applicable and available, please provide information on other recent cases in which you were refused mutual legal assistance because the requested action was prohibited by the requested State Party's domestic law**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **213. Subparagraph 21 (d) of article 46**

**21. Mutual legal assistance may be refused:**

...

(d) If it would be **contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

The grounds for refusal of a request of international judicial cooperation are foreseen in Articles 6 to 10, 18 and 32 of Law no. 144/99.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If applicable and available, please provide information on recent court or other cases in which you refused mutual legal assistance because it would have been contrary to your legislative framework on mutual legal assistance**

**If applicable and available, please provide information on other recent cases in which you were refused mutual legal assistance because it would have been contrary to the requested State Party's legislative framework on mutual legal assistance**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **214. Paragraph 22 of article 46**

22. States Parties **may not refuse a request for mutual legal assistance on the sole ground** that the offence is also considered to **involve fiscal matters**.

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

Fiscal matters are not included in the grounds for refusal international judicial cooperation, including mutual legal assistance, in Articles 6 to 10 and Article 32 of Law no. 144/99. Mentioned provisions are attached to previous answers.

**Please attach the text(s)**



Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review, including mutual legal assistance in recent cases involving fiscal matters

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

## 215. Paragraph 23 of article 46

23. Reasons shall be given for any refusal of mutual legal assistance.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

Please cite the text(s)

Paragraph 3 of Article 20 of Law no. 144/99 states that reasons shall be given for any refusal of mutual legal assistance referring that the decisions concerning the admissibility or the refusal of a request for cooperation shall be notified to the authority of the requesting State, accompanied by a translation into the official language of that State, except in the cases mentioned in paragraph 1 of the same provision.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Law no. 144/99

Article 20

Language to be used

1. Requests for co-operation shall be accompanied by a translation into the official language of the requested State, unless otherwise stipulated in a convention or agreement, or unless

that State exempts from the need for a translation.

2. The provisions of the preceding paragraph shall also apply to the requests addressed to Portugal.

3. The decisions concerning the admissibility or the refusal of a request for co-operation shall be notified to the authority of the requesting State, accompanied by a translation into the official language of that State, save in the cases mentioned in paragraph 1 above.

4. The provisions of this Article shall also apply to the documents that accompany the request.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related cases**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **216. Paragraph 24 of article 46**

24. The requested State Party shall **execute the request for mutual legal assistance as soon as possible** and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

A special provision stating that the Portuguese State shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State and for which reasons are given, preferably in the request is not directly foreseen in Law no. 144/99.

However, according to Chapter II, on general provisions of the procedure for international

cooperation - Articles 20 to 30 - this cooperation should be provided in an expedite way taking especially into account the particularities or requests for urgency highlighted by the requesting States. A special provision stating that the Portuguese State shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State and for which reasons are given, preferably in the request is not directly foreseen in Law no. 144/99.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

## **217. Paragraph 25 of article 46**

25. **Mutual legal assistance may be postponed** by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

According to Article 18 of Law no. 144/99, of 31 August, mutual legal assistance could be postponed or refused (optional refusal) by Portugal on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review, including recent cases in which the provision of mutual legal assistance was postponed by the requested State Party on the ground that it interfered with an ongoing investigation, prosecution or judicial proceeding**

**Please provide information on recent cases in which you postponed the provision of mutual legal assistance on the ground that it interfered with an ongoing investigation, prosecution or judicial proceeding**

There is no information on such cases.

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **218. Paragraph 26 of article 46**

26. **Before refusing a request** pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall **consult** with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

According to the general provisions of the international judicial cooperation, foreseen in paragraph 3 of Article 23 of in Law no. 144/99, the competent authority may require that a formally irregular or an incomplete request be modified or completed, without that precluding the possibility of taking provisional measures whenever such measures should not await the revised request, meaning that consultations between the requested State and the requesting State, even informally and directly (paragraph 4 of Article 21 of the same Law), could be promoted in order to opinions be presented and relevant information to the allegation of the requesting State be provided. Both requested State and requesting State could promote informally the consultations need in order do take a decision on the postponement or refusal of a cooperation request.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

**Article 23  
Requests**

1. and 2. (...)

3. The competent authority may require that a formally irregular or an incomplete request be modified or completed, without that precluding the possibility of taking provisional measures whenever such measures should not await the revised request.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review, recent related cases, and ways in which they were handled**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **219. Paragraph 27 of article 46**

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other **person who**, at the request of the requesting State Party, **consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding** in the territory of the requesting State Party **shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty** in that territory **in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party**. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

According to Articles 154 to 156 of Law no. 144/99, as well the principle of reciprocity set forth in Article 4, witnesses, experts or other persons who consents or give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding shall not be prosecuted, detained, punished or subject to any other restriction of his or her personal liberty in the territory of the requested State.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

**Article 154**

Summons to appear

1. Suspect or accused persons, witnesses or experts who are summoned to appear for the

purposes of foreign criminal proceedings, service of which has been requested, may fail to appear.

2. When the summons are served, the person concerned shall be informed of his right not to appear.

3. The Portuguese authority shall refuse to service any summons where the person concerned is threatened with sanctions or where the safety of the person concerned is not safeguarded.

4. Consent to appear, if it is given, shall be freely given by way of a written statement.

5. Requests shall indicate the allowances and remunerations, as well as the travelling and subsistence expenses, to be paid out; they ought to be transmitted reasonably in advance so that they can be received 50 days at least before the date at which the person should appear.

6. In urgent cases, the time-limits indicated in the preceding paragraph may be shortened.

7. The allowances, remunerations and expenses mentioned in paragraph 5 above shall be calculated as from the place of residence of the person concerned and shall be at the rates provided for in the law of the State where the hearing is intended to take place.

#### **Article 155**

##### **Temporary surrender of persons in custody**

1. A person arrested or imprisoned in Portugal may be temporarily surrendered to an authority of a foreign State for the purposes mentioned in the preceding Article, provided that that person consents, that his remaining in custody is guaranteed and that he shall be returned within the period stipulated by the Portuguese authorities or when his presence in that State is no longer necessary.

2. Without prejudice to the provisions of the preceding paragraph, surrender shall be refused if:

a) the presence of the person concerned is necessary at criminal proceedings pending in Portugal;

b) it is liable to prolong the provisional arrest of the person concerned;

c) regarding the circumstances of the case, the Portuguese judicial authority does not deem surrender to be convenient.

3. The provisions of sub-paragraphs 1 and 2 of Article 21 shall apply to the requests mentioned in this Article.

4. The time during which the person remains out of Portugal shall be taken into consideration for the purposes of provisional arrest or sentence imposed in Portugal.

5. If the sentence imposed on the person surrendered expires while that person is on the territory of a foreign State, that person shall be set free and shall as from that moment enjoy such rights as enjoy the persons who are not under custody.

6. The Minister of Justice may grant the assistance requested subject to specified requirements.

#### **Article 156**

##### **Temporary transfer of persons in custody for purposes of investigation**

1. The provisions of Article 155 shall apply to cases in which, upon agreement, a person arrested or imprisoned in Portugal may be temporarily transferred to the territory of another

State for purposes of investigation in the framework of Portuguese criminal proceedings.

2. The agreement mentioned in paragraph 1 above shall not be required where the transfer is made under an international agreement, treaty or convention that does not impose it.

3. The provisions of the preceding paragraph shall apply *mutatis mutandis* to requests of assistance submitted to Portugal.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related cases**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **220. Paragraph 28 of article 46**

28. The **ordinary costs** of executing a request shall be **borne by the requested State Party**, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies) or other measure(s)*

**Please cite the text(s)**

Article 26 of Law no. 144/99 states as general rule, that the execution of a request for international co-operation shall be free of charge, meaning that Portugal, as requested State will support the expenses derived from a request of cooperation submitted by other State. However, exceptions apply, as foreseen in paragraph 2 of the same provision.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

## Article 26

### Expenses

1. As a general rule, the execution of a request for international co-operation shall be free of charge.
2. The requesting State or the requesting international judicial entity shall however bear the following expenses:
  - a) compensation and remuneration, as well as travel and subsistence allowances, due to witnesses and experts;
  - b) expenses incurred by reason of sending or handing over property;
  - c) expenses incurred with the transfer of persons to the territory of that State or the seat of that entity;
  - d) expenses incurred with the transit of persons coming from a foreign State or from the seat of that entity, en route to a third State or to the seat of that entity;
  - e) expenses incurred with carrying out video-conferences at the request of third parties;
  - f) other expenses deemed by the requested State to be of relevance on account of the human or technological means used.
3. For the purposes mentioned in sub-paragraph a) of the preceding paragraph, an advance payment may be made to a witness or an expert; such an advance shall be notified to the other party and reimbursed after the execution of the request.
4. The provisions of paragraph 2 above may be departed from by way of an agreement between Portugal and the relevant foreign State, or international judicial entity.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**Please provide examples of recent arrangements related to cases in which costs were not covered (only) by the requested State**

As an example, the bilateral agreement between Portugal and Uruguay on mutual legal assistance foresees in article 20 the sharing of expenses by both states where necessary and upon previous consultation of the parties.

***Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?***

**(N) No**

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**



## 221. Subparagraph 29 (a) of article 46

29. The requested State Party:

(a) **Shall provide** to the requesting State Party **copies of government records, documents or information** in its possession that under its domestic law are **available to the general public**;

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

### **Article 159**

Handing over of property, valuables, documents or files

1. At the request of the competent foreign authorities, any property, in particular documents or valuables, the seizure of which is consistent with the Portuguese law, may be put at the disposal of those authorities if they are relevant to the criminal proceedings.
2. Any proceeds from an offence may be returned to their owners regardless of criminal proceedings having been instituted in the requesting State.
3. Criminal files or other records which are of importance to criminal proceedings pending in a foreign State may be handed over to the competent authorities of that State, provided that they shall be returned within the time-limit fixed by the competent Portuguese authorities.
4. The handing over of any property, valuables, documents or criminal files may be delayed if they are required in connection with pending criminal proceedings.
5. Authenticated copies of the documents or files requested may be handed over instead of the originals; however, should the foreign authority expressly request the transmission of originals, the request shall as far as possible be complied with if the condition for their restitution provided in paragraph 3 above is met.

**Please cite the text(s)**

Portugal is able to provide to the requesting States copies of records, documents or information in the framework of a request for mutual legal assistance, according to Article 159 of Law no. 144/99.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide information on how such records, documents or information can be obtained and how they were provided to the requesting State Party**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **222. Subparagraph 29 (b) of article 46**

29. The requested State Party:

...

**(b) May**, at its discretion, **provide** to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, **copies of any government records, documents or information** in its possession that under its domestic law are **not available to the general public**.

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

Portugal is able to provide to the requesting States copies of records, documents or information in the framework of a request for mutual legal assistance, according to Article 159 of Law no. 144/99.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Law no. 144/99

### **Article 159**

Handing over of property, valuables, documents or files

1. At the request of the competent foreign authorities, any property, in particular documents or valuables, the seizure of which is consistent with the Portuguese law, may be put at the disposal of those authorities if they are relevant to the criminal proceedings.
2. Any proceeds from an offence may be returned to their owners regardless of criminal proceedings having been instituted in the requesting State.
3. Criminal files or other records which are of importance to criminal proceedings pending in a foreign State may be handed over to the competent authorities of that State, provided

that they shall be returned within the time-limit fixed by the competent Portuguese authorities.

4. The handing over of any property, valuables, documents or criminal files may be delayed if they are required in connection with pending criminal proceedings.

5. Authenticated copies of the documents or files requested may be handed over instead of the originals; however, should the foreign authority expressly request the transmission of originals, the request shall as far as possible be complied with if the condition for their restitution provided in paragraph 3 above is met.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review, including the types of records, documents or information not available to the general public and ways in which they were provided to the requesting State Party and provided to you by a requested State Party**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **223. Paragraph 30 of article 46**

30. States Parties shall consider, as may be necessary, the possibility of **concluding bilateral or multilateral agreements or arrangements** that would serve the purposes of, give practical effect to, or enhance the provisions of this article.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable bilateral or multilateral agreement(s) or arrangement(s) or other measure(s)*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please cite the text(s)**

Portugal celebrated a number of bilateral agreements on mutual legal assistance with other States. A multilateral on the same matter has been celebrated in the framework of CPLP - the Portuguese Speaking Countries Community.

**Please attach the text(s)**

**Please provide examples of the successful implementation of domestic measures adopted to comply**

with the provision under review:

*Have you ever assessed the effectiveness of the measures adopted to conclude such bilateral or multilateral agreements or arrangements?*

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

## 224. Article 47

States Parties shall consider the possibility of **transferring to one another proceedings for the prosecution of an offence** established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

The transfer of criminal proceedings is foreseen in Articles 79 to 94 of Law no 144/99, of 31 August.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If available, please provide information on recent court or other cases in which proceedings for the prosecution of an offence of corruption have been transferred to and from you**

*Have you ever assessed the effectiveness of the measures adopted to facilitate the transfer of proceedings for the prosecution of an offence established in accordance with the Convention?*

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

## 225. Subparagraph 1 (a) of article 48

1. States Parties shall **cooperate closely** with one another, consistent with their respective domestic legal and administrative systems, to **enhance the effectiveness of law enforcement action to combat the offences covered by this Convention**. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish **channels of communication between their competent authorities, agencies and services** in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

Regarding the international information exchanging channels, the Portuguese law enforcement authorities and the Public prosecution Service can use the INTERPOL, EUROPOL and EUROJUST as well as the provisions of bilateral agreements concluded with some countries and in force for the prevention and fight against crime, in particular international organized crime.

Domestically, as stated in previous answers the police bodies, particularly the Criminal Police, operates under the authority and coordination of the Public Prosecution Service. The Criminal Police conduct criminal investigations delegated by any Public Prosecutor. For this purpose the Public Prosecution Service has the central direction of the criminal investigations. This direction is on criminal files (criminal and correctional) and can direct the investigations carried out by specialized services of investigation.

The DCIAP - Central Department for Criminal Investigation and Prosecution, the Criminal Police and the FIU have regular and periodic contacts and meetings on financial and others investigation issues. So, direct channels of communication exists between the law enforcement authorities and the judiciary (Public Prosecution) in order to facilitate the secure and rapid exchange of information concerning all the aspects of crimes suspected or under investigation.

The criminal investigation can be shared through a central database within the Criminal police - the so-called SIIC - Integrated System for Criminal Information.

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please attach the text(s)**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**Do you have a database through which information can be shared?**

**If available, please provide examples of recent cases in which your law enforcement authorities have exchanged information with those of other State Parties for offences covered by this Convention (please describe the aspects of such offences covered by information exchanges)**

**If applicable, please provide information on exchange of information for recent cases involving other criminal activities**

*Have you ever assessed the effectiveness of the measures adopted to establish or enhance channels of communication with other States Parties' law enforcement authorities, agencies and services?*

**(N) No**

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **226. Subparagraph 1 (b) (i) of article 48**

1. States Parties shall **cooperate closely** with one another, consistent with their respective domestic legal and administrative systems, to **enhance the effectiveness of law enforcement action to combat the offences covered by this Convention**. States Parties shall, in particular, take effective measures:

...

**(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:**

**(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;**

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please attach the text(s)**

**Please cite the text(s)**

Portugal is able to provide information about the identity, whereabouts and activities of persons suspected of involvement in the offences foreseen in the UN Convention against Corruption as well about the location of other persons concerned, according to Article 145 of Law no. 144/99.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Law no. 144/99

Part VI

Mutual legal assistance in criminal matters

CHAPTER I

Provisions common to different forms of assistance

Article 145

Principle and scope

1. Assistance shall include: the communication of information; the service of writs; communication of procedural steps or other public law acts admitted by Portuguese law if they are necessary for the purposes of criminal proceedings; as well as steps that are necessary to seize or recover proceeds from, objects of or instrumentalities of an offence.

2. Assistance shall include namely the following:

- a) the notification of deeds and the service of documents;
- b) the procuring of evidence;
- c) searches, seizure of property, experts examination and analysis;
- d) the service of writs to and hearing of suspects, accused persons, witnesses or experts;
- e) the transit of persons;
- f) the communication of information on Portuguese law or the law of a foreign State, as well as the communication of information relating to the judicial record of suspect, accused or sentenced persons.

3. Where the circumstances of the case so require, subject to an agreement between Portugal and a foreign State or an international judicial entity, any hearings as mentioned in sub-paragraph d) of paragraph 2 above may take place by using telecommunication means in real time, in accordance with Portuguese criminal procedure law and without prejudice to the provisions of paragraph 10 ahead.

4. Within the framework of assistance in criminal matters, either upon authorisation of the Minister of Justice or in conformity with the provisions of any agreement, treaty or convention to which Portugal is a Party, direct communication of information relating to criminal matters may be established between Portuguese and foreign authorities that assist judicial authorities.

5. The Minister of Justice shall be empowered to authorize the participation of foreign judicial authorities and foreign criminal police authorities in criminal proceedings that take place on Portuguese territory, in particular within the framework of joint criminal investigation teams made up of both national and foreign members.

6. Unless provided for by international agreements, treaties or conventions, setting up joint criminal investigation teams requires authorization from the Minister of Justice.

7. Participation as mentioned in paragraph 5 shall be authorized only if reciprocity applies and where its purpose is to assist a Portuguese or foreign judicial authority or a Portuguese or foreign criminal police authority; under the authority and in the presence of Portuguese authorities; the provisions of the Portuguese criminal procedure law shall apply; all must be

recorded in writing.

8. The provisions of Article 29 above shall apply to any measures that come under the competence of the criminal police authorities where such measures are undertaken under the conditions and within the limits provided for in the Code of Criminal Procedure.

9. The powers mentioned in paragraph 5 above may be delegated upon the Central Authority or, where the participation sought is exclusively that of a foreign criminal police authority or body, upon the national Director of the Criminal Police (Policia Judiciária).

10. The provisions of paragraph 5 shall apply mutatis mutandis to requests for assistance submitted by Portugal.

11. The provisions of this Article shall not prejudice the application of more favourable provisions in agreements, treaties or conventions to which Portugal is a party.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related cases**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **227. Subparagraph 1 (b) (ii) of article 48**

1. States Parties shall **cooperate closely** with one another, consistent with their respective domestic legal and administrative systems, to **enhance the effectiveness of law enforcement action to combat the offences covered by this Convention**. States Parties shall, in particular, take effective measures:

...

*b)* To **cooperate** with other States Parties in **conducting inquiries with respect to offences covered by this Convention** concerning:

...

(ii) The **movement of proceeds of crime or property derived from the commission of such offences;**

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

Portugal is able to provide information about the movement of proceeds of crime or property derived from the commission of offences lay down in the UN Convention against



Corruption, according Articles 145 and 160 of Law no. 144/99.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

**Article 160**

Proceeds, objects and instrumentalities

1. At the request of a competent foreign authority, steps may be taken in order to trace the proceedings of an allegedly committed offence; the results thereof shall be communicated to the requesting authority.
2. The foreign authority must state the grounds on which it deems that such proceedings might be located in Portugal.
3. The Portuguese authority shall take such steps as are necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence; the provisions of Part IV shall apply mutatis mutandis.
4. When the foreign authority communicates its intention to request the enforcement of any decision as mentioned in the preceding paragraph, the Portuguese authority may take such steps as are consistent with the Portuguese law in order to prevent any dealing in, transfer or disposal of property which at a later stage shall be, or may be, the subject of that decision.
5. The provisions of this Article also apply to objects and instrumentalities of an offence.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related cases**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **228. Subparagraph 1 (b) (iii) of article 48**

1. States Parties shall **cooperate closely** with one another, consistent with their respective domestic legal and administrative systems, to **enhance the effectiveness of law enforcement action to combat the offences covered by this Convention**. States Parties shall, in particular, take effective measures:

...

b) To **cooperate** with other States Parties **in conducting inquiries with respect to offences covered by this Convention** concerning:

...

(iii) The **movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;**

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

Portugal is able to provide information about the movement of property, equipment or other instrumentalities used or intended for use in the commission of offences lay down in the UN Convention against Corruption, according Articles 145 and 160 of Law no. 144/99.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

**Article 160**

Proceeds, objects and instrumentalities

1. At the request of a competent foreign authority, steps may be taken in order to trace the proceedings of an allegedly committed offence; the results thereof shall be communicated to the requesting authority.
2. The foreign authority must state the grounds on which it deems that such proceedings might be located in Portugal.
3. The Portuguese authority shall take such steps as are necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence; the provisions of Part IV shall apply mutatis mutandis.
4. When the foreign authority communicates its intention to request the enforcement of any decision as mentioned in the preceding paragraph, the Portuguese authority may take such steps as are consistent with the Portuguese law in order to prevent any dealing in, transfer or disposal of property which at a later stage shall be, or may be, the subject of that decision.
5. The provisions of this Article also apply to objects and instrumentalities of an offence.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related cases**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

Please see the answer provided to paragraph 1 of Article 26 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **229. Subparagraph 1 (c) of article 48**

1. States Parties shall **cooperate closely** with one another, consistent with their respective domestic legal and administrative systems, to **enhance the effectiveness of law enforcement action to combat the offences covered by this Convention**. States Parties shall, in particular, take effective measures:

...

(c) To **provide**, where appropriate, necessary **items or quantities of substances for analytical or investigative purposes**;

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

For the provision, where appropriate, necessary items or quantities of substances for analytical or investigative purposes, same provisions apply, that's to say, Articles 145 and 160 of Law no. 144/99.

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

**Article 160**

Proceeds, objects and instrumentalities

1. At the request of a competent foreign authority, steps may be taken in order to trace the proceedings of an allegedly committed offence; the results thereof shall be communicated to the requesting authority.
2. The foreign authority must state the grounds on which it deems that such proceedings might be located in Portugal.
3. The Portuguese authority shall take such steps as are necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence; the provisions of Part IV shall apply mutatis mutandis.
4. When the foreign authority communicates its intention to request the enforcement of any

decision as mentioned in the preceding paragraph, the Portuguese authority may take such steps as are consistent with the Portuguese law in order to prevent any dealing in, transfer or disposal of property which at a later stage shall be, or may be, the subject of that decision.

5. The provisions of this Article also apply to objects and instrumentalities of an offence.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Law no. 144/99**

**Article 160**

Proceeds, objects and instrumentalities

1. At the request of a competent foreign authority, steps may be taken in order to trace the proceedings of an allegedly committed offence; the results thereof shall be communicated to the requesting authority.

2. The foreign authority must state the grounds on which it deems that such proceedings might be located in Portugal.

3. The Portuguese authority shall take such steps as are necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence; the provisions of Part IV shall apply mutatis mutandis.

4. When the foreign authority communicates its intention to request the enforcement of any decision as mentioned in the preceding paragraph, the Portuguese authority may take such steps as are consistent with the Portuguese law in order to prevent any dealing in, transfer or disposal of property which at a later stage shall be, or may be, the subject of that decision.

5. The provisions of this Article also apply to objects and instrumentalities of an offence.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

**230. Subparagraph 1 (d) of article 48**

1. States Parties shall **cooperate closely** with one another, consistent with their respective domestic legal and administrative systems, to **enhance the effectiveness of law enforcement action to combat the offences covered by this Convention**. States Parties shall, in particular, take effective measures:

...

(d) To **exchange**, where appropriate, **information with other States Parties concerning specific means and methods used to commit offences covered by this Convention**, including the use of false identities, forged, altered or false documents and other means of concealing activities;

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

Mentioned provisions, namely Article 160 of Law no. 144/99, which are broad, apply for the exchange of information with other States concerning specific means and methods used to commit offences covered by the UN Convention against Corruption or other offences, including the use of false identities, forged, altered or false documents and other means of concealing activities.

We should also state that the exchange of information concerning specific means and methods used to commit offences including the use of false identities, forged, altered or false documents and other means of concealing activities is usually included in the provision of the bilateral agreements concluded with other countries in the framework of the prevention and fight against crime

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please attach the text(s)**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

**Article 160**

Proceeds, objects and instrumentalities

1. At the request of a competent foreign authority, steps may be taken in order to trace the proceedings of an allegedly committed offence; the results thereof shall be communicated to the requesting authority.
2. The foreign authority must state the grounds on which it deems that such proceedings might be located in Portugal.
3. The Portuguese authority shall take such steps as are necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence; the provisions of Part IV shall apply mutatis mutandis.
4. When the foreign authority communicates its intention to request the enforcement of any decision as mentioned in the preceding paragraph, the Portuguese authority may take such steps as are consistent with the Portuguese law in order to prevent any dealing in, transfer or disposal of property which at a later stage shall be, or may be, the subject of that decision.
5. The provisions of this Article also apply to objects and instrumentalities of an offence.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related analyses, reports or typologies related to means and**

**methods used to commit offences established in accordance with the Convention**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

**231. Subparagraph 1 (e) of article 48**

1. States Parties shall **cooperate closely** with one another, consistent with their respective domestic legal and administrative systems, to **enhance the effectiveness of law enforcement action to combat the offences covered by this Convention**. States Parties shall, in particular, take effective measures:

...

(e) To facilitate **effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts**, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

The domestic coordination between the competent authorities, agencies and law enforcement services is made under the coordination of the Secretary for Internal Security

The wording of subparagraph 1 (e) of Article 48 of the UN Convention against Corruption is usually used by Portugal in the negotiation of bilateral agreements with other States. Therefore provisions are included in order to identify liaison officers, to promote the exchange of personal and experts, as well the exchange of experiences.

Portugal appointed liaison officers of the Criminal Police in Cape Verde and Guinea-Bissau. The Border and Aliens Service appointed as well liaison officers in countries like Brazil and Mozambique.

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please attach the text(s)**

**Please provide examples of the successful implementation of domestic measures adopted to comply**

with the provision under review:

**If applicable, please identify/describe the liaison officer positions within your law enforcement authorities**

*Have you ever assessed the effectiveness of the measures adopted to facilitate the exchange of personnel and other experts?*

**(N) No**

Please see the answer provided to Article 17 regarding the assessment of effectiveness of domestic measures.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **232. Subparagraph 1 (f) of article 48**

1. States Parties shall **cooperate closely** with one another, consistent with their respective domestic legal and administrative systems, to **enhance the effectiveness of law enforcement action to combat the offences covered by this Convention**. States Parties shall, in particular, take effective measures:

...

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of **early identification of the offences covered by this Convention**.

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

The exchange of relevant criminal information between law enforcement authorities can be made upon request, spontaneously or through an international cooperation (mutual legal assistance) request. Law enforcement authorities can also use the INTERPOL and EUROPOL channels for this goal.

In this regard, the Portuguese law enforcement authorities (Criminal Police) are able to exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by the UN Convention against Corruption. According to the Law on the Organization of the Criminal Investigation, approved by Law no. 48/2009, mentioned offences are subject to priority investigation.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

*Have you ever assessed the effectiveness of the measures adopted to exchange information and coordinate administrative and other measures taken for the purpose of early identification of offences established in accordance with the Convention?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **233. Paragraph 2 of article 48**

2. With a view to giving effect to this Convention, States Parties shall consider entering into **bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies** and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

*Has your country entered into bilateral or multilateral agreements or arrangements on direct cooperation with law enforcement agencies of other States Parties? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable bilateral or multilateral agreement(s) or arrangement(s) or other measure(s)*

**Please cite the text(s)**

Portugal doesn't consider UNCAC as the basis for mutual law enforcement cooperation with other States Parties.

Portugal celebrated a number of bilateral agreements with other States Parties namely on law enforcement authorities cooperation, on cooperation for the prevention and fight crime. The crimes set forth in the convention are included as well the crimes of terrorism, the different types of trafficking, cybercrime or forgery of documents.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

*Does your country consider this Convention as the basis for mutual law enforcement cooperation in respect*



*of the offences covered by this Convention? (Check one answer)*

(N) No

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If applicable and available, please provide information on mutual law enforcement cooperation provided or received using this Convention as the legal basis**

**If applicable and available, please provide information on mutual law enforcement cooperation provided or received making use of international or regional organizations**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

*Which challenges and issues are you facing in (fully) adopting/implementing the provision under review? (Check all the answers that apply and provide an explanation in the "Comments" field)*

(MYSYS) Specificities in our legal system

**Please provide an account of your country's efforts to date to implement the provision under review:**

Please see first answer.

**Please outline the steps or action (and related timeframe) that domestic or other authorities would need to take to ensure full compliance with the provision under review**

Please see first answer.

*Which of the following forms of technical assistance, if available, would assist your country in adopting or better implementing the provision under review? (Check all the answers that apply)*

(NO) No assistance would be required

*Are any of the forms of technical assistance previously mentioned already provided? (Check one answer)*

(N) No

### **234. Paragraph 3 of article 48**

3. States Parties shall endeavour to **cooperate** within their means **to respond to offences covered by this Convention committed through the use of modern technology.**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

The use of modern technology to respond to offences covered by UNCAC is in place in

Portugal. That's the case of the interception of communications including mobile communications and other techniques such as financial investigations and financial intelligence.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Law no. 144/99

**Article 145 - A**  
Joint criminal investigation teams

1. Joint investigation teams shall be set up by mutual agreement between the Portuguese State and a foreign State, in particular where:

- a) in the framework of a foreign State's criminal investigation, specially complex investigations having links with Portugal or with another State are required;
- b) a number of States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the States involved.

2. Requests for the setting up of joint investigation teams shall, in addition to the information referred to in the relevant provisions of Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty of 27 June 1962, as amended by Protocol of 11 May 1974, include proposals for the composition of the team.

3. Seconded members of a joint investigation team may be present when criminal investigation acts are carried out in the Portuguese territory, unless the national authority leading the team decides otherwise, giving the reasons therefore, in accordance with the Portuguese law.

4. Criminal investigation acts may be carried out in the Portuguese territory by seconded members of a joint investigation team by a decision taken by the national authority leading the team and subject to the approval of the Minister of Justice and of the competent authority of the seconding State.

5. Where a joint investigation team needs assistance from a State other than those which have set up the team, the request for assistance may be addressed by the Minister of Justice to the competent authorities of the State concerned in accordance with the relevant instruments or arrangements.

6. Members of joint investigation teams who have been seconded by the Portuguese State may provide their teams with information available in Portugal for the purpose of the criminal investigations conducted by them.

7. Information lawfully obtained by the members of joint investigation teams during the performance of their duties which is not otherwise available to the competent authorities of the seconding States concerned may be used for the following purposes:

- a) for the purposes for which the team has been set up;
- b) subject to the prior consent of the Minister of Justice, for detecting, investigating and prosecuting other criminal offences, provided that such use will not endanger criminal investigations being carried out in Portugal or when facts are at stake in respect of which the State concerned could refuse mutual assistance;

c) for preventing an immediate and serious threat to public security and, without prejudice to subparagraph (b), if a criminal investigation is subsequently opened;

d) for other purposes provided that an agreement thereon exists between States setting up the team.

8. Arrangements may be agreed for persons other than representatives of the States setting up a joint investigation team to take part in the activities of the team, in accordance with national laws or the provisions of any legal instrument applicable. Such persons shall not enjoy the rights conferred upon the seconded members of the team unless an agreement expressly states otherwise.

#### **Article 160 - A Controlled and surveyed deliveries**

1. For the purposes of obtaining the identification of largest possible number of offenders and establishing their criminal liability, in co-operation with one or more foreign States, the Public Prosecution shall be empowered to authorise on a case by case basis, upon request from one or more foreign States, in particular where such is provided for in a conventional instrument, that criminal police bodies abstain from acting within the framework of trans-border criminal investigations concerning extraditable offences.

2. The Portuguese authorities shall have the legal powers to act as well as the supervision and control of the criminal investigation operations conducted within the framework of the provisions of the preceding paragraph, without prejudice to the necessary co-operation with the competent foreign authorities.

3. Authorisations given under paragraph 1 above shall be without prejudice to the exercise of criminal proceedings for the facts in respect of which the Portuguese law is applicable; they shall be given only where :

a) the competent foreign authorities have ensured that both their legislation provides adequate criminal sanctions for the offence at stake and criminal proceedings shall be exercised; and

b) the competent foreign authorities have ensured the security of the substances and goods at stake against the risks of flight and loss; and

c) the competent foreign authorities have undertaken urgently to communicate detailed information about the results of the operation as well as the acts performed by each of the offenders, in particular those who acted in Portugal.

4. Even where the above-mentioned authorisation has been granted, the criminal police bodies shall act if safety margins noticeably decrease or if any circumstance arise that renders the arrest of the culprits, or the seizure of the substances or goods, more difficult; where such action by the police bodies was not previously communicated to the authority that granted the authorisation, such shall be done in writing within the next 24 hours.

5. Subject to the existence of an agreement with the country of destination, where prohibited or dangerous substances are in transit, they may be partially replaced by innocuous; a written record shall be filed.

6. Non-compliance of obligations undertaken by foreign authorities may constitute grounds for refusal of authorisation in case of future requests.

7. International agreements are made by the National Bureau of INTERPOL, through the "Policia Judiciária" (criminal police organisation).

8. Any other entity that receives requests for controlled deliveries, in particular the "Direcção-Geral de Alfândegas" (Directorate General of Customs), either through the

Customs Co-operation Council or through its foreign counterparts, without prejudice of processing of custom-specific data, shall address such a request to the "Policia Judiciária" (criminal police organisation) for action.

9. The Public Prosecution magistrate of the judicial circle of Lisbon shall be empowered to decide upon requests for controlled deliveries.

**Article 160 - B**  
Undercover action

1. Criminal investigation officials of other States may develop undercover action in Portugal, in accordance with the applicable law; in such cases, their status shall be similar to that of Portuguese criminal investigation officials.

2. Action as mentioned in paragraph 1 above is subject both to a request based on an international agreement, treaty or convention, and reciprocity.

3. The judge of the "Tribunal Central de Instrução Criminal" (Central Court of Criminal Investigation) shall be empowered to authorise such action, upon a proposal of the Public Prosecution magistrate at the "Departamento Central de Investigação e Acção Penal - DCIAP" (Central Department for Criminal Investigation and Action)

**Article 160 - C**  
Interception of telecommunications

1. Upon request of the competent authorities of a foreign State, the interception of telecommunications effectuated in Portugal may be authorised, if such is provided for in an international agreement, treaty or convention and provided that, in similar national circumstances, interception would be admissible under the Portuguese criminal procedural law.

2. The "Policia Judiciária" (criminal police organisation) shall be empowered to receive requests for interception; it shall thereupon submit the requests to the Criminal Investigations' judge of Lisbon for authorisation.

3. The decision concerning the authorisation mentioned in the preceding paragraph shall include an authorisation for the immediate transmission of the communication to the requesting State, should such transmission be provided for in the international agreement, treaty or convention under which the request was made.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## 235. Article 49

States Parties shall consider concluding **bilateral or multilateral agreements or arrangements** whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish **joint investigative bodies**. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

*Has your country concluded bilateral or multilateral agreements that allow for the establishment of joint investigative bodies or has your country undertaken joint investigations on a case-by-case basis as described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable bilateral or multilateral agreement(s) or arrangement(s) or other measure(s)*

**Please cite the text(s)**

Joint investigative teams are allowed by Law no. 144/99 - Article 145-A.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

Law no. 144/99

### **Article 145 - A**

#### Joint criminal investigation teams

1. Joint investigation teams shall be set up by mutual agreement between the Portuguese State and a foreign State, in particular where:
  - a) in the framework of a foreign State's criminal investigation, specially complex investigations having links with Portugal or with another State are required;
  - b) a number of States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the States involved.
2. Requests for the setting up of joint investigation teams shall, in addition to the information referred to in the relevant provisions of Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty of 27 June 1962, as amended by Protocol of 11 May 1974, include proposals for the composition of the team.
3. Seconded members of a joint investigation team may be present when criminal investigation acts are carried out in the Portuguese territory, unless the national authority leading the team decides otherwise, giving the reasons therefore, in accordance with the Portuguese law.
4. Criminal investigation acts may be carried out in the Portuguese territory by seconded members of a joint investigation team by a decision taken by the national authority leading the team and subject to the approval of the Minister of Justice and of the competent authority of the seconding State.
5. Where a joint investigation team needs assistance from a State other than those which

have set up the team, the request for assistance may be addressed by the Minister of Justice to the competent authorities of the State concerned in accordance with the relevant instruments or arrangements.

6. Members of joint investigation teams who have been seconded by the Portuguese State may provide their teams with information available in Portugal for the purpose of the criminal investigations conducted by them.

7. Information lawfully obtained by the members of joint investigation teams during the performance of their duties which is not otherwise available to the competent authorities of the seconding States concerned may be used for the following purposes:

a) for the purposes for which the team has been set up;

b) subject to the prior consent of the Minister of Justice, for detecting, investigating and prosecuting other criminal offences, provided that such use will not endanger criminal investigations being carried out in Portugal or when facts are at stake in respect of which the State concerned could refuse mutual assistance;

c) for preventing an immediate and serious threat to public security and, without prejudice to subparagraph (b), if a criminal investigation is subsequently opened;

d) for other purposes provided that an agreement thereon exists between States setting up the team.

8. Arrangements may be agreed for persons other than representatives of the States setting up a joint investigation team to take part in the activities of the team, in accordance with national laws or the provisions of any legal instrument applicable. Such persons shall not enjoy the rights conferred upon the seconded members of the team unless an agreement expressly states otherwise.

### **Article 145 - B**

#### **Civil liability regarding members of joint investigation teams**

1. The seconding State shall be liable for any damage caused to third parties by its own officials during the exercise of their functions as seconded members of a joint investigation team, in accordance with the law of the State in whose territory such damage was caused.

2. The Portuguese State shall make good any damage caused in the national territory by seconded members of a team, and shall exercise its right to claim return of all sums it has paid.

3. The Portuguese State shall reimburse any sums paid to third parties by the seconding State for damage caused by its own members of joint investigation teams.

4. The Portuguese State shall waive all requests for reimbursement of damages it has sustained, caused by members of joint investigation teams who have been seconded by the foreign State, without prejudice to the exercise of its rights vis-à-vis third parties."

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide information on all joint investigations and joint investigative bodies**

*Have you ever assessed the effectiveness of the measures adopted to provide for joint investigations and joint investigative bodies?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **236. Paragraph 1 of article 50**

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of **controlled delivery** and, where it deems appropriate, **other special investigative techniques**, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

The use of special investigative techniques is allowed under domestic law. Controlled deliveries are foreseen in the Portuguese criminal law since 1993 in Decree-Law n° 15/93 establishing the legal regime for the fight against drug trafficking.

Law no. 144/99 also includes provision related to the use of special investigative techniques in Articles 160-A, 160-B and 160-C. As well, Law no. 101/2001 of 25 August established the legal regime for the use of undercover operations.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

**Article 160 - A**

Controlled and surveyed deliveries

1. For the purposes of obtaining the identification of largest possible number of offenders and establishing their criminal liability, in co-operation with one or more foreign States, the Public Prosecution shall be empowered to authorize on a case by case basis, upon request from one or more foreign States, in particular where such is provided for in a conventional instrument, that criminal police bodies abstain from acting within the framework of

trans-border criminal investigations concerning extraditable offences.2. The Portuguese authorities shall have the legal powers to act as well as the supervision and control of the criminal investigation operations conducted within the framework of the provisions of the preceding paragraph, without prejudice to the necessary co-operation with the competent foreign authorities.

3. Authorizations given under paragraph 1 above shall be without prejudice to the exercise of criminal proceedings for the facts in respect of which the Portuguese law is applicable; they shall be given only where :

a) the competent foreign authorities have ensured that both their legislation provides adequate criminal sanctions for the offence at stake and criminal proceedings shall be exercised; and

b) the competent foreign authorities have ensured the security of the substances and goods at stake against the risks of flight and loss; and

c) the competent foreign authorities have undertaken urgently to communicate detailed information about the results of the operation as well as the acts performed by each of the offenders, in particular those who acted in Portugal.

4. Even where the above-mentioned authorization has been granted, the criminal police bodies shall act if safety margins noticeably decrease or if any circumstance arise that renders the arrest of the culprits, or the seizure of the substances or goods, more difficult; where such action by the police bodies was not previously communicated to the authority that granted the authorization, such shall be done in writing within the next 24 hours.

5. Subject to the existence of an agreement with the country of destination, where prohibited or dangerous substances are in transit, they may be partially replaced by innocuous; a written record shall be filed.

6. Non-compliance of obligations undertaken by foreign authorities may constitute grounds for refusal of authorization in case of future requests.

7. International agreements are made by the National Bureau of INTERPOL, through the Criminal Police.

8. Any other entity that receives requests for controlled deliveries, in particular the "Direcção-Geral de Alfândegas" (Directorate General of Customs), either through the Customs Co-operation Council or through its foreign counterparts, without prejudice of processing of custom-specific data, shall address such a request to the Criminal police for action.

9. The Public Prosecutor of the judicial circle of Lisbon shall be empowered to decide upon requests for controlled deliveries.

#### **Article 160 - B** Undercover actions

1. Criminal investigation officials of other States may develop undercover action in Portugal, in accordance with the applicable law; in such cases, their status shall be similar to that of Portuguese criminal investigation officials.

2. Action as mentioned in paragraph 1 above is subject both to a request based on an international agreement, treaty or convention, and reciprocity.



3. The judge of the "Tribunal Central de Instrução Criminal" (Central Court of Criminal Investigation) shall be empowered to authorize such action, upon a proposal of the Public Prosecutor at DCIAP - Central Department for Criminal Investigation and Prosecution.

**Article 160 - C**  
Interception of telecommunications

1. Upon request of the competent authorities of a foreign State, the interception of telecommunications effectuated in Portugal may be authorized, if such is provided for in an international agreement, treaty or convention and provided that, in similar national circumstances, interception would be admissible under the Portuguese criminal procedural law.

2. The Criminal Police shall be empowered to receive requests for interception; it shall thereupon submit the requests to the Criminal Investigations' judge of Lisbon for authorization.

3. The decision concerning the authorization mentioned in the preceding paragraph shall include an authorization for the immediate transmission of the communication to the requesting State, should such transmission be provided for in the international agreement, treaty or convention under which the request was made.

**Law no. 101/2001 of 25 August 2001**

**To make provision as to undercover operations undertaken for the purposes of crime prevention and criminal investigation**

**Article 1**  
Object

1. This Law sets forth the legal regime of undercover operations carried out for the purposes of crime prevention and criminal investigation.

2. Any operations conducted by criminal investigation officers or third persons subject to the scrutiny of the Criminal Police, acting under undisclosed capacity and identity for the purpose of preventing or punishing the offences specified in this Act, shall be deemed to be undercover operations.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases**

**If available, please provide information (statistics, types of cases, outcome) on related legal (civil, administrative or criminal) cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)**

No statistics are available.

**If available, please provide information on recent cases in which controlled delivery or other special investigative techniques have been used and admitted in court**

*Have you ever assessed the effectiveness of the measures adopted to allow for the use of controlled delivery and other special investigative techniques, and for the admissibility in court of evidence derived therefrom?*

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

### 237. Paragraph 2 of article 50

2. For the purpose of investigating the offences covered by this Convention, States parties are encouraged to conclude, when necessary, appropriate **bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level**. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable bilateral or multilateral agreement(s) or arrangement(s) or other measure(s)*

**Please cite the text(s)**

- Portugal concluded a number of bilateral agreements on the fight against crime and on law enforcement cooperation, where the use of special investigative techniques is foreseen.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide information on recent cases in which bilateral or multilateral agreements or arrangements have facilitated the use of special investigative techniques**

*Have you ever assessed the effectiveness of the measures adopted to encourage agreements or arrangements to facilitate cross-border cooperation in the use of special investigative techniques?*

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

### 238. Paragraph 3 of article 50

3. In the **absence of an agreement or arrangement** as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a **case-by-case basis** and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s) or policy(ies)*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please cite the text(s)**

Portugal concluded a number of bilateral agreements on the fight against crime and on law enforcement cooperation, where the use of special investigative techniques is foreseen.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review, including instances when decisions to use special investigative techniques at the international level were made on a case-by-case basis**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### 239. Paragraph 4 of article 50

4. Decisions to use **controlled delivery at the international level may**, with the consent of the States Parties concerned, **include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

**Article 160 - A**  
Controlled and surveyed deliveries

1. For the purposes of obtaining the identification of largest possible number of offenders and establishing their criminal liability, in co-operation with one or more foreign States, the Public Prosecution shall be empowered to authorize on a case by case basis, upon request from one or more foreign States, in particular where such is provided for in a conventional instrument, that criminal police bodies abstain from acting within the framework of trans-border criminal investigations concerning extraditable offences. 2. The Portuguese authorities shall have the legal powers to act as well as the supervision and control of the criminal investigation operations conducted within the framework of the provisions of the preceding paragraph, without prejudice to the necessary co-operation with the competent foreign authorities.

3. Authorizations given under paragraph 1 above shall be without prejudice to the exercise of criminal proceedings for the facts in respect of which the Portuguese law is applicable; they shall be given only where :

a) the competent foreign authorities have ensured that both their legislation provides adequate criminal sanctions for the offence at stake and criminal proceedings shall be exercised; and

b) the competent foreign authorities have ensured the security of the substances and goods at stake against the risks of flight and loss; and

c) the competent foreign authorities have undertaken urgently to communicate detailed information about the results of the operation as well as the acts performed by each of the offenders, in particular those who acted in Portugal.

4. Even where the above-mentioned authorization has been granted, the criminal police bodies shall act if safety margins noticeably decrease or if any circumstance arise that renders the arrest of the culprits, or the seizure of the substances or goods, more difficult; where such action by the police bodies was not previously communicated to the authority that granted the authorization, such shall be done in writing within the next 24 hours.

5. Subject to the existence of an agreement with the country of destination, where prohibited or dangerous substances are in transit, they may be partially replaced by innocuous; a written record shall be filed.

6. Non-compliance of obligations undertaken by foreign authorities may constitute grounds for refusal of authorization in case of future requests.

7. International agreements are made by the National Bureau of INTERPOL, through the Criminal Police.

8. Any other entity that receives requests for controlled deliveries, in particular the "Direcção-Geral de Alfândegas" (Directorate General of Customs), either through the Customs Co-operation Council or through its foreign counterparts, without prejudice of processing of custom-specific data, shall address such a request to the Criminal police for action.

9. The Public Prosecutor of the judicial circle of Lisbon shall be empowered to decide upon requests for controlled deliveries.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**If available, please provide information on recent cases where goods or funds have been intercepted or allowed to continue intact or removed or replaced in whole or in part**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

## V. Asset recovery

### 52. Prevention and detection of transfers of proceeds of crime

#### 240. Paragraph 1 of article 52

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to **require financial institutions** within its jurisdiction to **verify the identity of customers**, to take reasonable steps to **determine the identity of beneficial owners of funds deposited into high-value accounts** and to **conduct enhanced scrutiny of accounts** sought or maintained by or on behalf of **individuals** who are, or have been, entrusted with **prominent public functions** and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s) and threshold amount above which these apply*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Do these measures apply equally to all types of financial institutions (eg, banks, money service businesses, money transfer service providers, bureaux de change, brokerages, mutual funds, mortgage providers, casinos, etc.)? Please outline current provisions regarding nominee accounts**

Law no. 25/2008

#### Article 7

##### Customer identification obligation

- 1- The entities covered by this Law shall identify and verify the identity of their customers and the respective representatives:
  - a) When establishing a business relationship;
  - b) When carrying out occasional transactions amounting to EUR 15000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
  - c) When there is a suspicion of money laundering or terrorist financing operations, regardless of their amount, and any exemption or threshold, taking into account, in particular the nature, complexity, atypical or unusual pattern of the transaction regarding the customer's profile or activity, amounts involved, frequency, source and destination of funds, economic and financial situation of intervening parties or means of payment used;
  - d) When there are doubts about the veracity or adequacy of previously obtained customer identification data.
- 2- In the case of casino operators and operators awarding betting or lottery prizes, the identification obligation shall apply for amounts higher than those set out respectively in subparagraph *a)* of paragraph 1 of Article 32 and in Article 33.
- 3- Verification of the identity shall be made:
  - a) In the case of a natural person, through the presentation of a valid original document with photo, containing the full name, date of birth and nationality;

- b) In the case of a legal person, through the presentation of the legal person identification card, commercial registration certificate or, in the case of non-residents in the national territory of an equivalent document.
- 4- Where the customer is a legal person or legal arrangement or, in any event, whenever it is known or there is grounded suspicion that a customer is not acting for his/her own account, the entities covered by this Law shall obtain from the customer information on the identity of the beneficial owner; this information shall be adequately verified, according to the risk of money laundering or terrorist financing.

### **Article 8**

#### Identity verification moment

- 1- Verification of identity of a customer, its representatives and, where applicable, of the beneficial owner shall take place before the establishment of a business relationship or before the carrying out of an occasional transaction.
- 2- Without prejudice to the provisions of the foregoing paragraph, where there is limited risk of money laundering or terrorist financing and except as otherwise provided for in a legal rule or regulation applicable to the activity carried on by the entity covered by this Law, the verification of the identity of the customer mentioned in the foregoing paragraph can be completed after the establishment of a business relationship, if this is necessary to the normal conduct of business, in which case these identification procedures shall be completed as soon as practicable.
- 3- When opening a bank account, credit institutions shall not allow any credit or debit movements to the account after the initial deposit, make available any payment instruments on the said account or make any change to the ownership, until full compliance with the customer's identification procedure, in accordance with the legal or regulatory provisions applicable.
- 4- In the case of life insurance contracts, verification of the identity of the beneficiary under the policy may take place after the business relationship has been established, but always at or before the time of payout or at or before the time the beneficiary intends to exercise rights vested under the policy.

### **Article 12**

#### Enhanced customer due diligence

- 1- Without prejudice to the provisions of Articles 7 and 9, the entities covered by this Law shall apply enhanced due diligence measures, in respect of customers and transactions which by their nature or characteristics can present a higher risk of money laundering or terrorist financing.
- 2- Enhanced customer due diligence measures shall always apply to remote transactions and in particular to those operations that may favour anonymity, to the operations carried out with politically exposed persons residing outside the national territory, correspondent banking operations with credit institutions established in third countries and any others designated by the competent supervisory or monitoring authorities, provided that they are legally empowered thereto.
- 3- Without prejudice to the regulations issued by the competent authorities, where the operation takes place without the customer or his/her representative being physically present, verification of identity can be supplemented by one of the following means:

- a) Additional documents or information considered adequate to verify or certify the data provided by the customer, namely those supplied through a financial entity;
- c) ensuring that the first payment of the operation is carried out through an account opened in the customer's name with a credit institution.

l - In respect of business relationships or occasional transactions with politically exposed persons residing outside the national territory, the entities covered by this Law shall:

- a) have appropriate risk-based procedures to determine whether the customer is a politically exposed person;
- b) have senior management approval for establishing business relationships with such customers;
- c) take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or occasional transaction;
- d) conduct enhanced ongoing monitoring of the business relationship.

- Compliance is promoted through the sending of guidelines of the supervisory authorities of the financial sector as well as through the prudential inspections made to the financial entities.

- Sanctions for non compliance with the provision set forth in Law no.25/2008 are foreseen in Article 53 and Article 54.

- Law no. 25/2008

**Article 53**  
Breach of regulations

The following typical illicit acts shall constitute breaches of regulations:

- a) Failure to comply with the obligations of identification and identity verification of customers, representatives and beneficial owners, breaching the provisions of Article 7, subparagraph *a)* of paragraph 1 and of paragraph 2 of Article 32 and of Article 33;
- b) Failure to comply in due time with the rules laid down in paragraphs 1, 2 and 4 of Article 8 regarding the identity verification of customers, representatives and beneficial owners;
- c) Allowing debit and credit movements in bank deposit accounts, making available any payment instruments on the said accounts or making changes to their ownership, until full compliance with the customer's identification procedure, breaching the provisions laid down in paragraph 3 of Article 8;
- d) Failure to comply with the customer due diligence measures and procedures set out in subparagraphs *a) to e)* of paragraph 1 of Article 9;
- e) Failure to adapt the nature and extent of customer identification and verification procedures and customer due diligence on a risk-sensitive basis, breaching the provisions laid down in paragraph 1 of Article 10, as well as failure to provide evidence to the competent authorities of that adaptation, breaching the provisions laid down in paragraph 2 of the same Article;
- f) Adoption of simplified customer identification and due diligence procedures, failing to comply with the terms and conditions set out in Articles 11 and 25;
- g) Total or partial omission of enhanced customer due diligence to customers and transactions liable of presenting a higher risk of money laundering or terrorist financing and cross-frontier correspondent banking relationships with institutions



- established in third countries, breaching the provisions laid down in Articles 12 and 26 respectively;
- h) Failure to comply with the obligation to refuse to carry out transactions through a bank account, establishment of business relationships or carrying out of occasional transactions, where the identification or information elements referred to respectively in subparagraphs *a)* and *b)* of paragraph 1 of Article 13 are not furnished;
  - i) Failure to analyse the circumstances that give rise to refusal of a transaction, business relationship or occasional transaction and their prompt communication to the Attorney-General of the Republic and the FIU, breaching the provisions laid down in paragraph 2 of Article 13;
  - j) Failure to keep original documents, copies, references or any other durable support systems admissible in court proceedings, supporting the identification and due diligence of customers and the execution of transactions, under the terms and within the periods set out respectively in paragraphs 1 and 2 of Article 14;
  - l) Failure to comply with the obligation to examine with particular care and pay special attention to any conduct, activity or transaction regarded as particularly likely to be related to money laundering or terrorist financing, breaching the provisions laid down in paragraph 1 of Article 15;
  - m) Failure to comply with the obligations of registration, document and record keeping and provision of access to the results of the examination of suspicious conducts, activities or transactions, breaching the provisions laid down in paragraph 2 of Article 15;
  - n) Failure to promptly inform the Attorney-General of the Republic and the FIU of suspicious money laundering or terrorist financing-related transactions, breaching the provisions laid down in Article 16;
  - o) Failure to comply with the obligation to refrain from carrying out the suspicious transactions referred to in paragraph 1 of Article 17 as well as with the obligation to promptly inform the Attorney-General of the Republic and the FIU, breaching the provisions laid down in paragraphs 2 and 4 of the same Article;
  - p) Failure to comply with the suspension order of suspicious transactions under the terms of paragraph 2 of Article 17, as well as the carrying out of such transactions after the judicial confirmation of the suspension order mentioned in paragraph 3 of the same Article;
  - q) Failure to promptly cooperate with the Attorney-General of the Republic, the FIU, the judicial authority responsible for the conduct of the inquiry, or the competent authorities monitoring compliance with the obligations laid down in this Law, breaching the provisions laid down in Article 18;
  - r) Disclosure to customers or to third parties of the reporting of information to the Attorney-General of the Republic and the FIU or of a pending criminal investigation, breaching the provisions laid down in paragraph 1 of Article 19;
  - s) The disclosure and the exchange of information between the entities referred to in paragraphs 3 and 4 of Article 19, failing to comply with the purposes, terms and conditions referred to therein;
  - t) Failure to define and apply policies and internal control procedures, breaching the provisions laid down in Article 21;
  - u) Failure to adopt disclosure and training programmes and measures on the prevention of money laundering and terrorist financing, breaching the provisions laid down in Articles 22 and 37;
  - v) Opening anonymous accounts or the existence of anonymous passbooks, breaching the provisions laid down in paragraph 2 of Article 23;
  - ) Execution of the obligations of identification and customer due diligence by relying on a third party, breaching the terms and conditions set out in Article 24;
  - ) Failure to communicate to the Attorney-General of the Republic and the FIU transactions which present a special risk of money laundering or terrorist financing and whose reporting obligation has been determined by the competent supervisory authority,

breaching the provisions laid down in Article 27;

aa) Failure to have systems and instruments in place that enable financial entities to respond fully and rapidly to enquiries from the Attorney-General of the Republic, the FIU, or the judicial authorities, breaching the provisions laid down in Article 28;

ab) Failure to comply with the obligations to apply equivalent preventive measures, communication of policies and internal procedures, reporting of information to supervisory or monitoring authorities and adoption of additional preventive measures, within the scope of the activity of branches and subsidiaries established in a third country, breaching the provisions laid down in Article 29;

ac) Establishment or maintenance of business relationships with shell banks or credit institutions with which they have a business relationship, breaching the provisions laid down in Article 30;

ad) Issuance of cheques to the order of casino customers, breaching the terms and conditions set out in subparagraphs *b)* and *c)* of paragraph 1 and in paragraph 3 of Article 32;

ae) Failure to comply with the obligations of communication imposed on real estate agents, breaching the provisions laid down in Article 34;

af) Failure to comply with the injunction issued in accordance with the terms of paragraph 2 of Article 48;

ag) Failure to comply with the rules laid down in regulatory ordinances for the specific sectors, issued pursuant to this Law, in the performance of the competences laid down in subparagraph *a)* of paragraph 1 of Article 39.

#### **Article 54**

##### Fines

The breaches of regulations referred to in the foregoing Article shall be punishable as follows:

a) Where the offence is committed within the scope of activity of a financial entity:

i) By a fine from EUR 25000 to EUR 2500000, where the agent is a legal person;

ii) By a fine from EUR 12500 to EUR 1250000, where the agent is a natural person;

b) Where the offence is committed within the scope of activity of a non-financial entity, with the exception of lawyers and *solicitadores*:

i) By a fine from EUR 5000 to EUR 500000, where the agent is a legal person;

ii) By a fine from EUR 2500 to EUR 250000, where the agent is a natural person.

#### **Article 55**

##### Additional penalties

In addition to the fines, the responsible for any of the breaches of regulations referred to in Article 53, may be punished with the following additional penalties, depending on the seriousness of the offence and guilt of the offender:

a) Prohibition, for a maximum period of up to three years, from exercising the profession or activity to which the breach of regulations relates;

- b) Prohibition, for a maximum period of up to three years, from being member of management or auditing boards as well as from holding chief executive, senior management, or management and supervisory posts in legal persons covered by this Law, where the offender is a member of the management or auditing boards, holds chief executive, senior management, or management posts or legally or voluntarily acts on behalf of the legal person;
- c) Publication of the final decision, at the expense of the offender, in one of the most widely read newspapers of the area where the offender has its head office or permanent establishment or, if the offender is a natural person, of the area of his/her residence.

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please cite the text(s)**

Law No 25/2008 of 5 June sets out preventive and repressive measures to combat money laundering of illicit origin and terrorist financing, transposing into Portuguese law Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 and Commission Directive 2006/70/EC of 1 August 2006 on the prevention of the use of the financial system and designated non-financial businesses and professions for the purposes of money laundering and terrorist financing.

Mentioned law includes a set of duties that are mandatory to financial entities and to designated non financial businesses and professions. The entities covered by Law no. 25/2008, in the exercise of their professional activities, shall be obliged to fully comply with the following general legal duties: customer identification; customer due diligence; to refuse to carry out transactions; to keep documents and records; scrutiny; to report information; to refrain from carrying out transactions; to cooperate; professional secrecy; to control; to train staff.

Article 7 establishes the customer identification obligation and Article 8 establishes the identity verification moment. Article 12 on enhanced customer due diligence should also be mentioned. Law no. 25/2008 will be attached to the answers provided to the present self-evaluation questionnaire.

**Please attach the text(s)**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide statistical or other information on suspicious activities/transactions reported in connection with politically exposed persons (PEPs) and on cases of non-compliance. Please provide per annum figures since the year 2003 (or further back, if available)**

**How do you promote compliance?**

Compliance is promoted through the sending of guidelines of the supervisory

authorities of the financial sector as well as through the prudential inspections made to the financial entities.

**What sanctions, if any, are provided for non-compliance?**

Sanctions for non compliance with the provision set forth in Law no. 25/2008 are foreseen in Article 53 and Article 54.

*Have you ever assessed the effectiveness of the measures adopted to require financial institutions to verify the identity of their customers and conduct enhanced scrutiny of accounts sought or maintained by the individuals mentioned above?*

**(Y) Yes**

The AML/CFT preventive and repressive measures have been evaluated in the framework of FATF (3<sup>rd</sup> mutual evaluation in 2006 and updating reports in 2008 and 2010) and European Union (mutual evaluations about financial crimes and financial investigations in 2010, which discussion took place in June 2011 in Brussels).

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

## **241. Subparagraph 2 (a) of article 52**

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) **Issue advisories** regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply **enhanced scrutiny**, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

Regardless of the nature of the client - legal persons or natural persons - and based on a risk based approach, Law 25/2008 includes detailed provisions on customer enhanced due diligence for financial and non financial entities (Article 12) as well about the adequate measures to be adopted regarding accounting-opening, maintenance and record-keeping

measures to take concerning such accounts.

We should also mention that the Legal Framework of Credit Institutions and Financial Companies (the banking law), approved by Decree-Law no. 298/92 of 31 December (and amended by Decree-Laws no. 246/95 of 14 September, no. 232/96 of 5 December, no. 222/99 of 22 June, no. 250/2000 of 13 October, no. 285/2001 of 3 November, no. 201/2002 of 26 September, no. 319/2002 of 28 December and no. 252/2003 of 17 October).also includes provisions on accounting-opening, maintenance and record keeping measures.

Regularly and where needed the Bank of Portugal enacts Instructions to define procedure and provide guidelines to the banking industry, like Instruction no. 48/96 on opening of bank deposit accounts. Instruction and all relevant legislation is available in the website of the Bank of Portugal and sent to all financial supervised entities.

**Please attach the text(s)**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**How often are advisories issued?**

As a sample of guidelines we provide Instruction no. 48/96:

### **Bank of Portugal Instructions**

#### **Instruction No 48/96**

Subject: **Opening of bank deposit accounts**

The Decree-Law No 454/91, of 28 December, has given the Bank of Portugal powers to define the requirements to be observed by credit institutions when opening bank deposit accounts, namely as for the identification of the account holders and their representatives.

Therefore, in use of the powers conferred on it by Article 7 of the said Decree-Law No 454/91 and by paragraph (b) of No (1) of Article 22 of its Organic Law, Bank of Portugal provides for the following:

#### **CHAPTER I Scope**

**1.** This Instruction applies to:

- a)** Banks;
- b)** General Savings Bank (*Caixa Geral de Depósitos*);

- c) Savings banks (*Caixas económicas*),
- d) Central Mutual Agricultural Credit Bank (*Caixa Central de Crédito Agrícola Mútuo*);
- e) Mutual Agricultural Credit Banks (*Caixas de Crédito Agrícola Mútuo*).

## CHAPTER II

### Opening of Bank Deposit Accounts

2. Opening a bank deposit account requires particular care, especially concerning the accurate identification of the account holders and, when applicable, of their representatives.

#### 3. Natural persons' bank deposit accounts

3.1. The files for the opening of bank deposit accounts in the name of natural persons residing in Portugal must contain, relating to the account holders and their representatives, at least the following elements:

- a) full name, as stated in the identity card;
- b) address;
- c) profession;
- d) identification of the employer (where applicable);
- e) name of parents;
- f) birthplace and nationality;
- g) date of birth;
- h) number, date and entity issuing the identity card;
- i) indication that the elements of (a), (e), (f), (g) and (h) above have been confirmed through the exhibition of the identity card;

3.2. Holders of documents replacing the identity card, namely, members of the Army or paramilitary forces, shall be preferentially identified through their civil identity card.

3.3. Non-resident natural persons may be identified through their identity card, an equivalent document or their passport; the provisions of (3.1.) above shall be applicable, duly adapted.

#### 4. Legal persons' bank deposit accounts

4.1. The files for the opening of bank deposit accounts in the name of legal persons or of entities without legal personality, but registered in the legal persons' central files, must contain at least the following elements:

- a) business name, as stated in the identification document issued by the National Registration of Legal Persons (*Registo Nacional de Pessoas Colectivas*);
- b) address of the head office;
- c) main purpose;
- d) legal person identification number;
- e) name of the natural persons authorised to operate the

account.

**4.2.** Nos. (3.1.), (3.2.) and (3.3.) above are applicable to the natural persons referred to in (e) and their representation powers must be confirmed through a certified document that clearly states them; if such document is not legally possible to obtain, it may be replaced by a non-certified document.

**4.3.** The provisions applicable to the opening of bank deposit accounts in the name of natural persons are also applicable to limited liability individual enterprises and individual entrepreneurs who have a legal person identification number.

### CHAPTER III Final Provisions

**5.** Bank of Portugal - Markets and Credit Operations Department (*Departamento de Operações de Crédito e Mercados*) - shall remove any doubts arising.

Regarding the frequency of advisories issuing, it depends of different factors as the urgency, the need for interpretation of a piece of legislation, the need to respond for instance to a UN Resolution about application of sanctions and some other situations as the information to the financial industry about decisions taken by FATF about non-cooperative countries and territories.

**If the advisories are publicly available, how can they be obtained?**

**If available, please attach relevant sample advisories or guidelines**

*Have you ever assessed the effectiveness of the measures adopted to issue advisories regarding the types of natural or legal person to whose accounts financial institutions will be expected to apply enhanced scrutiny?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

#### **242. Subparagraph 2 (b) of article 52**

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

...

(b) Where appropriate, **notify financial institutions** within its jurisdiction, at the request of another State Party or on its own initiative, of the **identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny**, in addition to those whom the financial

institutions may otherwise identify.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

The Bank of Portugal, in the framework of its competence, established by Decree-Law no. 298/92 of 31 December (Legal Framework of Credit Institutions and Financial Companies - the banking law), is empowered to notify financial institution at the request of another foreign supervisory authority, at a request of a judiciary authority or on its own initiative of the identity of particular natural or legal persons to whose accounts such institutions will be to apply enhanced scrutiny.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide information on such requests made by another State Party and the ways in which those requests were handled/successfully fulfilled**

*Have you ever assessed the effectiveness of the measures adopted to notify financial institutions of the identity of natural or legal persons to whose accounts enhanced scrutiny is expected to apply?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

### **243. Paragraph 3 of article 52**

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to **ensure that its financial institutions maintain adequate records**, over an appropriate period of time, of **accounts and transactions involving the persons mentioned in paragraph 1 of this article**, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.



*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s). Please specify the period of time for which different types of institutions must maintain such records. Please provide information on sanctions provided in cases of non-compliance*

**Please cite the text(s)**

Record keeping is one of the general duties that financial entities are obliged to comply with, as established by Decree-Law no. 298/92 of 31 December (Legal Framework of Credit Institutions and Financial Companies - the banking law).

As well, Law no. 25/2008 requires to financial entities to keep records of the customer identification or business relationship identification, original documents, copies, references or any other durable support systems equally admissible in court proceedings, of supporting evidence and records of transactions shall always be kept to enable the reconstruction of the transaction for a period of seven years.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 25/2008**

Article 14

**Obligation to keep documents and records**

- 1- A copy or the references of the evidence required in the case of customer due diligence, shall be kept for a period of seven years after customer identification or in the case of a business relationship, after the business relationship with the customer has ended.
- 2- Original documents, copies, references or any other durable support systems equally admissible in court proceedings, of supporting evidence and records of transactions shall always be kept to enable the reconstruction of the transaction, for a period of seven years after its execution, even if the transaction is part of a business relationship that has already ended.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

*Have you ever assessed the effectiveness of the measures adopted to ensure that financial institutions maintain adequate records of accounts and transactions involving the persons mentioned in paragraph 1 of this article?*

**(Y) Yes**

**Please outline (or, if available, attach) the results of such an assessment including methods, tools**

and resources utilized:

#### 244. Paragraph 4 of article 52 (part 1)

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to **prevent**, with the help of its regulatory and oversight bodies, the **establishment of banks that have no physical presence and that are not affiliated with a regulated financial group...**

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable rule(s) or measure(s)*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no.25/2008**

#### **Article 30**

Shell banks

- 1- Credit institutions shall be prohibited from entering into a correspondent banking relationship with shell banks.
- 2- Credit institutions shall take appropriate measures to ensure that they do not enter into correspondent banking relationships with other credit institutions that are known to permit their accounts to be used by shell banks.
- 3- As soon as it is known to a credit institution that it has a correspondent banking relationship with the entities referred to in the foregoing paragraphs, it shall terminate that relationship.

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

According to Article 2 (7) of Law no.25/2008 a "Shell bank" is defined as a credit institution, incorporated in a State or jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is unaffiliated with a regulated financial group. No shell banks are allowed in Portugal.

Article 30 of the same Law clearly states that Credit institutions in Portugal shall be prohibited from entering into a correspondent banking relationship with shell banks, shall take appropriate measures to ensure that they do not enter into correspondent banking relationships with other credit institutions that are known to permit their accounts to be used by shell banks and As soon as it is known to a credit institution that it has a correspondent banking relationship with the entities referred to in the foregoing paragraphs, it shall

terminate that relationship.

**Please attach the text(s)**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If applicable and available, please provide information on how such cases were handled**

**Please outline regulatory arrangements for online financial institutions**

Online financial institutions are not foreseen in our law, and therefore, its creation is not allowed by our legal framework on financial activity.

*Have you ever assessed the effectiveness of the measures adopted to prevent the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

#### **248. Subparagraph (a) of article 53**

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to **permit another State Party to initiate civil action in its courts** to establish title to or ownership of **property** acquired through the commission of an offence established in accordance with this Convention;

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please attach the text(s)**

**Please cite the text(s)**

According to the Code of Civil Procedure all the persons - natural or legal, States included - which have legal capacity, judicial personality and legitimacy (article 5 of Code of Civil Procedure) are allowed to initiate a civil action in Portugal to establish title to or ownership of property acquired through the commission of an offence established in the UN Convention against Corruption.

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases

*Have you ever assessed the effectiveness of the measures adopted to permit another State Party to initiate civil action in your courts as prescribed by the provision under review?*

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

### **249. Subparagraph (b) of article 53**

Each State Party shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to **permit its courts to order** those who have committed offences established in accordance with this Convention to **pay compensation or damages to another State Party** that has been harmed by such offences; and

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

The compensation for damages resulting from crime is established in Articles 129 and 130 of the Criminal Code which made a remission to the civil law.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Criminal Code**

### **TITLE VI COMPENSATION FOR DAMAGES RESULTING FROM CRIME**

#### **Article 129**

Civil responsibility resulting from crime  
The compensation for damages resulting from crime is ruled by civil law.

#### **Article 130**

Compensation for the injured complainant

1. Special legislation fixes the conditions in which the State can ensure compensation in consequence of criminally typified facts, whenever they cannot be done by the agent.
2. In cases not covered by the legislation referred to in the previous number, the court may grant the complainant, on his request and to the limit of the damage he has suffered, the objects declared to have been lost, the product or the price of their sale, or the value corresponding to the advantages resulting from the crime, paid to the State, or transferred in its favour by force of the articles 109 and 110.
3. Leaving out the cases prescribed in the legislation referred to in number one, if the damage caused by the crime is so serious as to have left the complainant without a means of living, and it is to believe that the agent will not make amends to compensate him, the court will grant the complainant, on his request, the amount of the fine, wholly or partially, to the limit of the damage.
4. The State becomes subrogate regarding the rights of the injured for the compensation to the amount it has fulfilled.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases**

*Have you ever assessed the effectiveness of the measures adopted to permit your courts to order corruption offenders to pay compensation or damages to another State Party harmed by such offences?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **250. Subparagraph (c) of article 53**

Each State Party shall, in accordance with its domestic law:

...

(c) Take such measures as may be necessary to **permit its courts or competent authorities**, when having to decide on **confiscation**, to **recognize another State Party's claim as a legitimate owner of property** acquired through the commission of an offence established in accordance with this Convention.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

The courts when having to decide the confiscation can recognize another State Part's claim as a legitimate owner of property acquired through the commission of an offence established in accordance of the UN Convention against Corruption. In addition, according to paragraph 3 of Article 28 of Law no. 144/99, handing over of property or money, in the

framework of an international cooperation request, any rights which bona fide third parties or legitimate owners or possessors may have over the property shall be preserved; any rights of the State that might result from the property being declared lost in its favour shall also be preserved.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases**

*Have you ever assessed the effectiveness of the measures adopted to permit your courts or competent authorities, when deciding on confiscation, to recognize another State Party's claim as prescribed by the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **251. Subparagraph 1 (a) of article 54**

1. Each State Party, in order to provide **mutual legal assistance** pursuant to article 55 of this Convention **with respect to property acquired through or involved in the commission of an offence** established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to **permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party**;

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please attach the text(s)**

**Please cite the text(s)**

Paragraph 3 of Article 160 of Law no. 144/99 states that the Portuguese authorities shall take such steps as are necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence; the provisions of Part IV shall apply mutatis mutandis, that to say, according to paragraph 1 Article 95, final and enforceable foreign criminal judgments may be enforced in Portugal under the conditions laid down in Law no.

144/99.

We should also mention Law no. 88/2009, of 31 August establishing the legal regime for the emission and execution of confiscation orders of instrumentalities, proceeds and advantages resulting from crime, transposing into domestic Law Council Framework Decision no. 2006/783/JHA, of 6 October. The purpose of mentioned law is to establish the rules under which a Portugal shall recognize and execute in its territory a confiscation order issued by a court competent in criminal matters of another Member State, or to submit to a competent court of another Member State a request for execution of a confiscation order issued by a Portuguese court.

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

**Article 95**

Principle

1. Final and enforceable foreign criminal judgments may be enforced in Portugal under the conditions laid down in this law.

**Article 160**

Proceeds, objects and instrumentalities

3. The Portuguese authority shall take such steps as are necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence; the provisions of Part IV shall apply *mutatis mutandis*.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases**

*Have you ever assessed the effectiveness of the measures adopted to permit your competent authorities to give effect to an order of confiscation issued by a court of another State Party?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

**252. Subparagraph 1 (b) of article 54**

1. Each State Party, in order to provide **mutual legal assistance** pursuant to article 55 of this Convention **with respect to property acquired through or involved in the commission of an offence** established in accordance with this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to **permit its competent authorities**, where they have jurisdiction, to **order the confiscation of such property of foreign origin** by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

According to Articles 109 to 111 of the Criminal Code and Article 160 of Law no.144/99, in the framework of mutual legal assistance, the Portuguese courts are able to confiscate the property of property of foreign origin found in Portugal (regardless of the place where the offence has been committed), by adjudication of an offence of money-laundering or such other offence.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases**

*Have you ever assessed the effectiveness of the measures adopted to permit your competent authorities to order the confiscation of property of foreign origin by adjudication of an offence of money-laundering or such other offence as prescribed by the provision under review?*

**(Y) Yes**

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

## **254. Subparagraph 2 (a) of article 54**

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to **permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party** that provides a reasonable basis for the requested State Party to believe that there are sufficient



grounds for taking such actions and that the **property** would eventually be subject to an order of **confiscation** for purposes of paragraph 1 (a) of this article;

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please cite the text(s)**

As already stated in previous answers, the freezing and seizure of property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party is allowed by Articles 178 and following of the Code of Criminal Procedure.

In addition we should mention Law no. 25/2009 of 5 June establishing the legal regime for the emission and execution of orders freezing or seizing property or evidence, transposing into domestic law the Framework Decision no. 2003/577/JHA, of 22 July 2003. The purpose of mentioned law is to establish the rules under which a Portugal shall recognize and execute in its territory a freezing or seizure order issued by a judicial authority of another Member State in the framework of criminal proceedings, or to submit to a competent judicial authority of another Member State a request for freezing or seizure property or evidence.

**Please provide examples and as much detail as possible of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases**

*Have you ever assessed the effectiveness of the measures adopted to permit your competent authorities to freeze or seize property upon a freezing or seizure order as prescribed by the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **255. Subparagraph 2 (b) of article 54**

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to **permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions** and that the **property** would eventually be subject to an order of **confiscation** for purposes of paragraph 1 (a) of this article; and

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

According to the previous answer, the freezing and seizure of property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party is allowed by Articles 178 and following of the Code of Criminal Procedure.

In addition we should mention Law no. 25/2009 of 5 June establishing the legal regime for the emission and execution of orders freezing or seizing property or evidence, transposing into domestic law Framework Decision no. 2003/577/JHA, of 22 July 2003. The purpose of mentioned law is to establish the rules under which a Portugal shall recognize and execute in its territory a freezing or seizure order issued by a judicial authority of another Member State in the framework of criminal proceedings, or to submit to a competent judicial authority of another Member State a request for freezing or seizure property or evidence.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases**

*Have you ever assessed the effectiveness of the measures to permit your competent authorities to freeze or seize property upon a request as prescribed by the provision under review?*

**(N) No**

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **256. Subparagraph 2 (c) of article 54**

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking additional measures to **permit its competent authorities to preserve property for confiscation**, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such **property**.

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

As said before, the Code of Criminal Procedure (articles 178 to 186) allows the seizure of instrumentalities that server or were meant to serve for the commission of an offence or that constitute the proceeds, profits, price or reward of it. Paragraph 2 of Article 178 states, that, where possible, seized objects should be attached to the proceedings and, where this is not possible, in order to avoid its conveyance, transfer or disposition, they are entrusted to a court official linked with the proceeding or to a custodian.

The entry in force of the Law 45/2011 establishing the legal regime of the Portuguese National Assets Recovery Office provides a new ground for the management and preservation property for confiscation.

As already stated, mentioned Law is able for the management and administration of frozen, seized and confiscated property.

The Asset Recovery Office referred to shall be under the remit of the Criminal Police, shall have investigation powers similar to those of the criminal police bodies and shall, by determination of the Public Prosecution Service, carry out financial or patrimonial inquiries whenever at stake are instruments, property or products related to crimes punishable with a prison sentence equal or higher than three years and when their universal estimated value is higher than 1.000 units of account (€ 102 000).

The legal instrument also foresees besides the creation of an Office for Property Management (GAB) which shall have its seat at the Institute for Financial Management and Justice Infra-structure, I.P., a body under the remit of the Ministry of Justice, the establishment of rules related to the administration of the recovered, seized or confiscated assets, bearing in mind their good management and their patrimonial increase.

**Please attach the text(s)**

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases

*Have you ever assessed the effectiveness of the measures adopted to permit your competent authorities to preserve property for confiscation as prescribed by the provision under review?*

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

## 257. Subparagraph 1 (a) of article 55

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s).*

**What is the process by which received requests are processed?**

According to Articles 21 of Law 144/99, the judicial authority of the requesting State must send a request to the Central Authority (General Attorney's Office), which will submit the request to the minister of Justice, who has to decide whether the request can be attended or no. The minister's decision cannot be appealed.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

Please attach the text(s)

Please cite the text(s)

Paragraph 3 of Article 160 of Law no. 144/99 states that the Portuguese authorities shall take such steps as are necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence; the provisions of Part IV shall apply mutatis mutandis, that to say, according to paragraph 1 Article 95, final and enforceable foreign criminal judgments may be enforced in Portugal under the conditions laid down in Law no. 144/99.

We should also mention Law no. 88/2009, of 31 August establishing the legal regime for the emission and execution of confiscation orders of instrumentalities, proceeds and advantages resulting from crime, transposing into domestic Law Council Framework Decision no. 2006/783/JHH, of 6 October. The purpose of mentioned law is to establish the rules under which a Portugal shall recognize and execute in its territory a confiscation order issued by a court competent in criminal matters of another Member State, or to submit to a competent court of another Member State a request for execution of a confiscation order issued by a Portuguese court.

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

**Article 95**

Principle

1. Final and enforceable foreign criminal judgments may be enforced in Portugal under the conditions laid down in this law.

**Article 160**

Proceeds, objects and instrumentalities

3. The Portuguese authority shall take such steps as are necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence; the provisions of Part IV shall apply mutatis mutandis.

**If available, please provide information on the received requests that have resulted in an order for confiscation and, if such an order has been granted, on the orders which have been given effect**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

**258. Subparagraph 1 (b) of article 55**

1. A **State Party that has received a request** from another State Party having jurisdiction over an offence established in accordance with this Convention **for confiscation of proceeds of crime, property, equipment or other instrumentalities** referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

...

(b) **Submit to its competent authorities**, with a view to giving effect to it to the extent requested, an **order of confiscation issued by a court in the territory of the requesting State Party** in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to **proceeds of crime, property**, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

Paragraph 3 of Article 160 of Law no. 144/99 states that the Portuguese authorities shall take such steps as are necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence; the provisions of Part IV shall apply mutatis mutandis, that to say, according to paragraph 1 Article 95, final and enforceable foreign criminal judgments may be enforced in Portugal under the conditions laid down in Law no. 144/99.

We should also mention Law no. 88/2009, of 31 August establishing the legal regime for the emission and execution of confiscation orders of instrumentalities, proceeds and advantages resulting from crime, transposing into domestic Law Council Framework Decision no. 2006/783/JHA, of 6 October. The purpose of mentioned law is to establish the rules under which a Portugal shall recognize and execute in its territory a confiscation order issued by a court competent in criminal matters of another Member State, or to submit to a competent court of another Member State a request for execution of a confiscation order issued by a Portuguese court.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

**Article 95**

Principle

1. Final and enforceable foreign criminal judgments may be enforced in Portugal under the conditions laid down in this law.

**Article 160**

Proceeds, objects and instrumentalities

3. The Portuguese authority shall take such steps as are necessary in order to enforce any

decision of a foreign court imposing the confiscation of proceeds from an offence; the provisions of Part IV shall apply mutatis mutandis.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide information on requests submitted to your competent authorities in response to a request for an order of confiscation issued by a court of another country**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **259. Paragraph 2 of article 55**

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall **take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities** referred to in article 31, paragraph 1, of this Convention for the purpose of eventual **confiscation** to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

As already stated in previous answers, the freezing and seizure of property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party is allowed by Articles 178 and following of the Code of Criminal Procedure.

In addition we should mention Law no. 25/2009 of 5 June establishing the legal regime for the emission and execution of orders freezing or seizing property or evidence, transposing into domestic law Framework Decision no. 2003/577/JHA, of 22 July 2003. The purpose of mentioned law is to establish the rules under which a Portugal shall recognize and execute in its territory a freezing or seizure order issued by a judicial authority of another Member State in the framework of criminal proceedings, or to submit to a competent judicial authority of another Member State a request for freezing or seizure property or evidence.

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please attach the text(s)**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases**

**If available, please provide information on recent cases in which you have made a request for identification, freezing and tracing or seizure of the proceeds of crime for the purpose of eventual confiscation**

**If available, please provide information on recent cases in which you have received a request to identify, freeze and trace or seize the proceeds of crime for the purpose of eventual confiscation**

*Have you ever assessed the effectiveness of the measures adopted to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities for the purpose of eventual confiscation as prescribed by the provision under review?*

**(N) No**

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **260. Subparagraph 3 (a) of article 55**

3. The provisions of **article 46** of this Convention are **applicable, mutatis mutandis, to this article. In addition** to the information specified in article 46, paragraph 15, **requests made pursuant to this article shall contain:**

*(a)* In the case of a request pertaining to paragraph 1 *(a)* of this article, a **description of the property to be confiscated**, including, to the extent possible, the location and, where relevant, the estimated value of the **property** and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

Portuguese law on international cooperation in criminal matters - Law no.144/99 - complies with paragraphs a) to f) of article 15 of the UN Convention against Corruption, as set forth in Article 23, regarding the contents of the request for mutual legal assistance.

Article 151 of the same law requests additional information namely a statement to the effect of certifying that search, seizure or handing of property, as requested, are admissible under the law of the requesting State, where the description of the property could be included stating the location and the estimated value of such property. In addition, Law no. 88/2009,



of 31 August establishing the legal regime for the emission and execution of confiscation orders of instrumentalities, proceeds and advantages resulting from crime includes a template form where such detailed description can be made.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

### **Law n° 144/99**

#### **Article 23**

#### **Request**

1. Requests for international co-operation shall indicate:

a) The requesting as well as the requested authorities, even if the indication of the latter may be in general terms;

b) the purpose of and the reasons for the request;

c) the legal qualification of the facts on the grounds of which the request is made;

d) the identification of the suspect, the accused or the sentenced person, of the person whose extradition or transfer is requested, as well as the identification of the witness or the expert whose evidence is sought;

e) a description of the facts, including time and place, proportional to the importance of the co-operation requested;

f) the text of the legal provisions applicable in the requesting State;

g) any relevant documents.

2. The authentication of the documents shall not be required.

3. The competent authority may require that a formally irregular or an incomplete request be modified or completed, without that precluding the possibility of taking provisional measures whenever such measures should not await the revised request.

4. The requirement mentioned in sub-paragraph f) of paragraph 1 above may be dispensed with where the form of co-operation requested is that which is mentioned in Article 1 paragraph 1(f).

### **Article 151**

#### **Contents of the request and supporting documents**

Other than the documents and statements mentioned in Article 23 above, requests shall include, as applicable:

- a) the name, address and capacity of the person to whom the writ or the document should be serviced, as well as specification of the nature of such document;
- b) a statement to the effect of certifying that search, seizure or handing of property, as requested, are admissible under the law of the requesting State;
- c) any reference to particulars of the proceedings or to requirements, including time-limits and confidentiality, that the foreign State or judicial entity wishes to be met.

**If available, please provide relevant parts of sample request(s) and ways in which they were handled**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **261. Subparagraph 3 (b) of article 55**

3. The provisions of **article 46** of this Convention are **applicable, mutatis mutandis, to this article. In addition** to the information specified in article 46, paragraph 15, **requests made pursuant to this article shall contain:**

...

(b) In the case of a request pertaining to paragraph 1 (b) of this article, **a legally admissible copy of an order of confiscation** upon which the request is based issued by the requesting State Party, **a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken** by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and **a statement that the confiscation order is final;**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

The Portuguese law on international cooperation in criminal matters - Law no.144/99 - complies with paragraphs a) to f) of article 15 of the UN Convention against Corruption, as set forth in Article 23, regarding the contents of the request for mutual legal assistance.

Article 151 of the same law requests additional information namely a statement to the effect of certifying that search, seizure or handing of property, as requested, are admissible under the law of the requesting State, where the description of the property could be included stating the location and the estimated value of such property. In addition, Law no. 88/2009, of 31 August establishing the legal regime for the emission and execution of confiscation orders of instrumentalities, proceeds and advantages resulting from crime includes a template form where such detailed description can be made.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide relevant parts of sample request(s) and ways in which they were handled**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **262. Subparagraph 3 (c) of article 55**

3. The provisions of **article 46** of this Convention are **applicable, mutatis mutandis, to this article. In addition** to the information specified in article 46, paragraph 15, **requests made pursuant to this article shall contain:**

...

(c) In the case of a request pertaining to paragraph 2 of this article, a **statement of the facts relied upon by the requesting State Party** and a **description of the actions requested** and, where available, a **legally admissible copy of an order on which the request is based.**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

The Portuguese law on international cooperation in criminal matters - Law no.144/99 - complies with paragraphs a) to f) of article 15 of the UN Convention against Corruption, as set forth in Article 23, regarding the contents of the request for mutual legal assistance.

Article 151 of the same law requests additional information namely a statement to the effect of certifying that search, seizure or handing of property, as requested, are admissible under the law of the requesting State, where the description of the property could be included stating the location and the estimated value of such property. In addition, Law no. 25/2009 of 5 June establishing the legal regime for the emission and execution of orders freezing or seizing property or evidence includes a template form where such detailed description can be made.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide relevant parts of sample request(s) and ways in which they were handled**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **263. Paragraph 4 of article 55**

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in **accordance with and subject to the provisions of its domestic law** and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

## 264. Paragraph 5 of article 55

5. Each State Party shall **furnish copies of its laws and regulations** that give effect to this article and of **any subsequent changes** to such laws and regulations or a description thereof to the **Secretary-General of the United Nations**.

*Has your country furnished copies of its laws to the Secretary-General of the United Nations as prescribed above? (Check one answer)*

(N) No

**Please provide the requisite information here**

Such notification will be made as soon as possible.

## 267. Paragraph 8 of article 55

8. **Before lifting any provisional measure** taken pursuant to this article, the **requested State Party shall**, wherever possible, **give the requesting State Party an opportunity to present its reasons in favour of continuing the measure**.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

As stated before, according to paragraph 3 of Article 23 of Law no. 144/99, the competent authority may require that a formally irregular or an incomplete request be modified or completed, without that precluding the possibility of taking provisional measures whenever such measures should not await the revised request, meaning that Portugal gives the opportunity to requesting States the opportunity to present reasons in favor of the measure requested.

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please attach the text(s)**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

If available, please provide information on recent cases in which a requesting State Party has been given the opportunity to present its reasons in favour of continuing a provisional measure before it is lifted

Please describe how the case(s) were handled

The competent authorities have given the chance of requests to be improved in order to execute the foreign courts' orders.

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

## 268. Paragraph 9 of article 55

9. The provisions of this article shall **not be construed as prejudicing the rights of bona fide third parties.**

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

Please cite the text(s)

The protection of rights of bona fide third parties is foreseen in Articles 109 to 111 of the Criminal Code, related to confiscation, as well as in Article 60 of Law no. 25/2008 (AML/CFT Law). In addition, paragraph 2 of Article 169 of Law no. 144/99 states that any proceeds from an offence may be returned to their owners regardless of criminal proceedings having been instituted in the requesting State.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

**Law no. 25/2008**

**Article 60**

Protection of rights of bona fide third parties

1- If the property which has been seized from defendants against whom criminal proceedings have been instituted for an offence related to the laundering of unlawful

proceeds is recorded in a public register in the name of a third party, the persons whose property is entered in such registers are notified and given the opportunity to defend their rights and summarily submit evidence of their good faith. In such circumstances, the property may be immediately restored to them.

2- If there is no such register, third parties claiming that they purchased the seized property in good faith may defend their rights in the proceedings.

3- Third parties claiming to have acted in good faith may defend their rights by submitting a request to the judge until a confiscation order is made. The party concerned shall include all pieces of evidence in that request.

4- The request shall be attached to the proceedings and, after notifying the Public Prosecution Service that might want to oppose it, the court shall make a decision and, for that purpose, take all the steps it considers appropriate.

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related cases in which innocent third parties were involved**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

## **270. Paragraph 1 of article 57**

1. **Property confiscated** by a State Party pursuant to article 31 or 55 of this Convention shall be **disposed of**, including by return to its prior legitimate owners, **pursuant to paragraph 3 of this article**, by that State Party in accordance with the provisions of this Convention and its domestic law.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

As already explained, according to Articles 109 to 111 of the Criminal Code and Article 160 of Law no. 144/99, it's up to the court the disposing of the confiscated property, including by return to its prior legitimate owners, also protection the rights of bona fide third parties.

**Please provide examples and as much detail as possible of the successful implementation of domestic measures adopted to comply with the provision under review**

**If available, please provide information on recent cases and total monetary value of property(ies) confiscated and disposed of, including by return to its prior legitimate owners, by your country. Please provide per annum figures since the year 2003 (or further back, if available)**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

### **271. Paragraph 2 of article 57**

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to **enable its competent authorities to return confiscated property**, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

According to Articles 109 to 111 of the Criminal Code and paragraphs 1 and 3 of Article 160 of Law no. 144/99, it's up to the court the disposing of the confiscated property, including by return to its prior legitimate owners, also protection the rights of bona fide third parties.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**



**Law no. 144/99**

**Article 160**

Proceeds, objects and instrumentalities

1. At the request of a competent foreign authority, steps may be taken in order to trace the proceedings of an allegedly committed offence; the results thereof shall be communicated to the requesting authority.

3. The Portuguese authority shall take such steps as are necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence; the provisions of Part IV shall apply mutatis mutandis.

**If available, please provide information on recent cases and total monetary value of confiscated property(ies) confiscated, which have been returned when acting on the request of another State Party**

**Please provide examples and as much detail as possible of the successful implementation of domestic measures adopted to comply with the provision under review**

*Have you ever assessed the effectiveness of the measures adopted to enable your competent authorities to return confiscated property as prescribed above?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

**272. Subparagraph 3 (a) of article 57**

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of **embezzlement of public funds or of laundering of embezzled public funds** as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the **confiscated property** to the requesting State Party;

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies) or measure(s):*

**Please cite the text(s)**

According to Articles 109 to 111 of the Criminal Code, paragraph 4 of Article 110 and paragraphs 1 and 3 of Article 160 of Law no. 144/99, it's up to the court the disposing of the confiscated property, including by return to its prior legitimate owners, also protection the rights of bona fide third parties.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

**Article 110**

Proceeds of fines and confiscated property

4. Property confiscated shall revert to the State of enforcement, but may however be remitted to the sentencing State if it so requires, if the property is of special interest to it and if reciprocity is ensured.

**Article 160**

Proceeds, objects and instrumentalities

1. At the request of a competent foreign authority, steps may be taken in order to trace the proceedings of an allegedly committed offence; the results thereof shall be communicated to the requesting authority.

3. The Portuguese authority shall take such steps as are necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence; the provisions of Part IV shall apply mutatis mutandis.

**Please provide examples and as much detail as possible of the successful implementation of domestic measures adopted to comply with the provision under review**

**If available, please provide information on recent cases and total monetary value of confiscated property(ies), in the case of embezzlement of public funds or of laundering of embezzled public funds, which have been returned to a requesting State Party**

**Please outline any lessons learnt, analyses, or reports related to such cases**

The evaluation of such confiscation measures has been evaluated in the framework of FATF (3<sup>rd</sup> mutual evaluation in 2006 and updating reports in 2008 and 2010).

***Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?***

**(Y) Yes**

The evaluation of such confiscation measures has been evaluated in the framework of FATF (3<sup>rd</sup> mutual evaluation in 2006 and updating reports in 2008 and 2010).

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

### 273. Subparagraph 3 (b) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(b) In the case of **proceeds of any other offence** covered by this Convention, when the **confiscation** was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, **return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership** of such confiscated **property** to the requested State Party **or when the requested State Party recognizes damage** to the requesting State Party as a basis for returning the confiscated property;

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

According to Articles 109 to 111 of the Criminal Code, paragraph 4 of Article 110 and paragraphs 1 and 3 of Article 160 of Law no. 144/99, it's up to the court the disposing of the confiscated property, including by return to its prior legitimate owners, also protection the rights of bona fide third parties.

**Please attach the text(s)**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples and as much detail as possible of the successful implementation of domestic measures adopted to comply with the provision under review**

**If available, please provide information on recent cases and total monetary value of confiscated property(ies), as it relates to this provision, which have been returned to a requesting State Party**

**Please outline any lessons learnt, analyses, or reports related to such cases**

The evaluation of such confiscation measures has been evaluated in the framework of FATF (3<sup>rd</sup> mutual evaluation in 2006 and updating reports in 2008 and 2010).

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

### **274. Subparagraph 3 (c) of article 57**

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(c) In all other cases, give **priority consideration to returning confiscated property to the requesting State Party**, returning such **property** to its **prior legitimate owners** or **compensating the victims of the crime**.

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

According to Articles 109 to 111 of the Criminal Code, paragraph 4 of Article 110 and paragraphs 1 and 3 of Article 160 of Law no. 144/99, it's up to the court the disposing of the confiscated property, including by return to its prior legitimate owners, also protection the rights of bona fide third parties.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Law no. 144/99**

#### **Article 110**

Proceeds of fines and confiscated property

4. Property confiscated shall revert to the State of enforcement, but may however be remitted to the sentencing State if it so requires, if the property is of special interest to it and if reciprocity is ensured.

#### **Article 160**

Proceeds, objects and instrumentalities

1. At the request of a competent foreign authority, steps may be taken in order to trace the proceedings of an allegedly committed offence; the results thereof shall be communicated to the requesting authority.

3. The Portuguese authority shall take such steps as are necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence; the provisions of Part IV shall apply mutatis mutandis.

**Please provide examples and as much detail as possible of the successful implementation of domestic measures adopted to comply with the provision under review**

**Please describe relevant cases and outline any lessons learnt, analyses, or reports related to such cases**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(Y) Yes**

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

## VI. Technical assistance and information exchange

### 60. Training and technical assistance

#### 280. Paragraph 1 of article 60

1. Each State Party shall, to the extent necessary, initiate, develop or improve **specific training programmes for its personnel responsible for preventing and combating corruption...** *(Please include here only what does not apply to paragraphs (a) - (j).)*

*Has your country adopted and implemented any measures other than those specified in the sub-paragraphs of the provision under review? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable training programme(s) or other measure(s)*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**

As required by Article 60 of UN Convention against Corruption, training is provided to law authorities and the Public Prosecutors in order to better prevent and fight corruption.

Public Prosecutors, besides attending workshops and seminars, internally and internationally, attend the Annual programme of training for magistrates (Judges and public prosecutors) provide by the CEJ, the Portuguese entity for the initial and advanced training.

Law enforcement officers, in particular those performing its duties in the UNCC - National Unit to Combat Corruption also attend seminars, workshops and training courses internally and internationally provided for instance by INTERPOL and EUROPOL. At national level the EPJ - the School of Criminal Police provide specialized training for Criminal Police officers in many different matters as corruption, money laundering and terrorism financing, investigative techniques, methods for collection of evidence, financial investigations or international cooperation.

**Please attach the text(s)**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

**If available, please provide information on the total number of personnel per training sessions, frequency and length of such sessions. Please provide per annum figures since the year 2003 (or further back, if available)**

No information in available about the total number of personnel per training sessions,

frequency and length of training sessions that have took place.

**If applicable, please provide information and attach evaluations or self-assessments of training sessions**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(N) No

The effectiveness of training has not been assessed.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **282. Paragraph 3 of article 60**

3. States Parties shall strengthen, to the extent necessary, **efforts to maximize operational and training activities in international and regional organizations** and in the framework of relevant **bilateral and multilateral agreements or arrangements**.

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable international or regional training programme(s) or other measure(s)*

**Please cite the text(s)**

Portugal is engaged in the efforts to maximize operational and training activities in international and regional organizations and in the framework of relevant bilateral and multilateral agreements or arrangements.

Portugal promoted training sessions in Portuguese Speaking Countries, for instance in Guinea-Bissau, Cape Verde, Mozambique and Timor-Leste in many different subject-matters as prisons officials, courts officials, officials of the investigative bodies, public prosecutors and judges.

Portuguese experts have attended workshops and seminars internationally delivering presentations and taking part in mutual evaluations of other States, as the mutual evaluation of Iceland in the framework of corruption in international business transactions, the mutual evaluation of Bulgaria and Monaco in the framework of GRECO or the mutual evaluation of Guinea-Bissau and Cape Verde in the framework of GIABA (money-laundering and terrorism financing).

Due to a Portuguese initiative, a working group on corruption in international business

transactions has been created by the Conference of Ministers of Justice of the Portuguese Speaking Countries Community as well as within the COMJIB - Conference of Ministers of Justice of Ibero-American countries in order to study the phenomena, to harmonize or enact legislation and to make recommendations for action to prevent and fight this type of corruption.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review**

**If available, please provide information on the number of staff that have participated in international and regional training sessions as well as information about the content of those training sessions. Please provide per annum figures since the year 2003 (or further back, if available)**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

The effectiveness of training has not been assessed.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **291. Paragraph 1 of article 62**

1. States Parties shall **take measures conducive to the optimal implementation of this Convention** to the extent possible, through international cooperation, taking into account the negative effects of corruption on society in general, in particular on sustainable development.

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**Please cite the text(s)**



Portugal promotes the application of the UN Convention against Corruption and particularly its criminal and international cooperation provisions, namely through the training sessions provided to other countries, especially the member countries of the Portuguese Speaking Countries Community. At the same time, through bilateral agreements celebrated with other countries, provisions on corruption policies and cooperation are established.

As a member of international and regional organizations as UN, Council of Europe, OECE and European Union, Portugal cooperate internationally in order to better apply the UNCAC and the policies for the prevention and fight against corruption.

Examples of successful implementation of Article 62 (1) are, internally, the creation of the CPC - Council for the Prevention of Corruption and, in 2010, the creation of an ad-hoc Commission on the Parliament in order to study this phenomena, to identify gaps or insufficiencies in the national system for prevention and fight against corruption and to prepare and submit proposal for approval by the members of the Parliament.

**Please attach the text(s)**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

The effectiveness of this provision has not been assessed.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

## **292. Subparagraph 2 (a) of article 62**

2. States Parties shall make **concrete efforts** to the extent possible and in coordination with each other, as well as with international and regional organizations:

*(a)* To **enhance their cooperation** at various levels **with developing countries**, with a view to strengthening the capacity of the latter to prevent and combat corruption;

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

A significant support is provided especially to Portuguese speaking countries with a view to strengthening their capacity to prevent and combat corruption. After previous study tours about UNCAC, a specific study tour has been organized in 2004 in the framework of the MoU celebrated between the Ministry of Justice and UNODC in order to help Portuguese speaking countries to ratify and implement UNTOC, UNCAC and the UN instruments related to the terrorism.

In the framework of the EU cooperation regarding the 5 Portuguese-speaking countries in Africa (PIR PALOP), Portugal is actively cooperating and supporting the development of a joint project aiming at reinforcing state building and Rule of Law in Angola, Cape Verde, Guinea-Bissau, Mozambique and S. Tome Prince. Within this project, there is a specific component addressing the prevention and combat of corruption, particularly the one linked to money laundering. It is expected that this project be extended to East Timor. Prior to this project, a previous EU Programme aiming at developing the judicial system in these 5 Portuguese-speaking countries in Africa has benefit from Portuguese aid to train 317 magistrates (Judges and prosecutors), 192 judicial clerks, 36 officers for criminal investigation and 14 experts to the Court of Auditors.

In addition, in the context of the EU SSR Guinea-Bissau mission (2008/2010), Portugal has provided the mission with 2 Prosecutors and 3 criminal investigators agents, being one of them specifically in charge of providing training to the local Interpol liaison office.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

### **293. Subparagraph 2 (b) of article 62**

2. States Parties shall make **concrete efforts** to the extent possible and in coordination with each other, as well as with international and regional organizations:

...

(b) To **enhance financial and material assistance to support the efforts of developing countries** to prevent and fight corruption effectively and to help them implement this Convention successfully;

*Is your country in compliance with this provision? (Check one answer)*

(Y) Yes

*Please cite, summarize and attach the applicable measure(s)*

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please cite the text(s)**

Within the national budget there is a specific financial budgetary line for Aid for development (P0 21), being the Portuguese-speaking African countries the major beneficiaries.

The Justice Sector benefit from a percentage of this budget line to co-finance its Aid activities. Another percentage comes from the Justice budget itself. In the last two years, the financial effort of the Ministry of Justice regarding Aid was the following:

2009 - 877.078,00 €

2010 - 2.135.255,80 €

Within the context of this financial commitment for development a percentage has been allocated to support technical assistance to Angola, Cape Verde, Guinea-Bissau, Mozambique, S. Tome Prince and East Timor. Among the activities implemented, several concerned the prevention of corruption, namely, the support to legislative changes, the training of experts in Prosecution and criminal investigation and the offer of technical material and equipment aiming at facilitating the collecting of evidences/proofs.

**Please attach the text(s)**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

(Y) Yes

**Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:**

## 294. Subparagraph 2 (c) of article 62 (part 1)

2. States Parties shall make **concrete efforts** to the extent possible and in coordination with each other, as well as with international and regional organizations:

...

(c) To **provide technical assistance to developing countries and countries with economies in transition** to assist them in meeting their needs for the implementation of this Convention...;

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

*Please cite, summarize and attach the applicable measure(s)*

**Please cite the text(s)**

Technical assistance is the core of the Portuguese Aid for development. Since the late 80's Portuguese cooperation in the Justice area has been supporting the Portuguese-speaking countries in Africa in the context of state building and the strengthening of Rule of Law.

With a direct impact to the implementation of the UN Convention against corruption, we can highlight the initial and specialized training of around 400 judges and prosecutors, the general and specialized training of criminal investigator officers, the support for the secondment of legal advisors to aid in legislative changes and offer of Law libraries.

The effectiveness of the Portuguese technical assistance in the last 10 years has been submitted to an external evaluation and audit, which has contributed to reinforce some options and to change others.

**Please attach the text(s)**

**Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.**

**If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):**

**Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:**

*Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?*

**(N) No**

The effectiveness of technical assistance provided and results reached has not been assessed.

**Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.**

### **295. Subparagraph 2 (c) of article 62 (part 2)**

2. States Parties shall make **concrete efforts** to the extent possible and in coordination with each other, as well as with international and regional organizations:

...

(c) ...To that end, States parties shall endeavour to **make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism**. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to that account a percentage of the money or of the corresponding value of **proceeds of crime or property confiscated** in accordance with the provisions of this Convention;

*Is your country in compliance with this provision? (Check one answer)*

**(Y) Yes**

**If you have made voluntary contributions to other States Parties through an account specifically designated for that purpose in a United Nations funding mechanism, please list which countries you have assisted. If your contributions have been ear-marked for specific projects, please provide information on allocated budget, priorities, areas of concentration, timeframes, annual reports of activities, and evaluation reports**

Beyond bilateral Aid, Portugal regularly contributes for different programmes of the UN system, namely for the UNDP. As an example, Portugal provides the Justice Program of the UNDP in East Timor with USD 1 million/year.

In addition, contributions have been made for specific projects of UN agencies, such as UNODC, when addressing countries considered a Portuguese priority. Effectively a conference of donors for Guinea-Bissau has been organized in Portugal in 2007 attended by international organizations and a lot of countries and it's the intention of Portuguese authorities to organize another similar conference to São Tomé and Príncipe.

**If you have received voluntary contributions from other States Parties through an account specifically designated for that purpose in a United Nations funding mechanism, please list which countries have assisted you. If the contributions have been ear-marked for specific projects, please provide information on allocated budget, priorities, areas of concentration, timeframes, annual reports of activities, and evaluation reports**

### **296. Subparagraph 2 (d) of article 62**

2. States Parties shall make **concrete efforts** to the extent possible and in coordination with each other, as well as with international and regional organizations:

...

(d) To **encourage and persuade other States and financial institutions as appropriate to join them in efforts** in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

*Is your country in compliance with this provision? (Check one answer)*

(N) No

*Which challenges and issues are you facing in (fully) adopting/implementing the provision under review? (Check all the answers that apply and provide an explanation in the "Comments" field)*

(ISSUE) Other issues (please specify)

Please see above answer to question 295.

**Please provide an account of your country's efforts to date to implement the provision under review:**

Please see above answer to question 295.

**Please outline the steps or action (and related timeframe) that domestic or other authorities would need to take to ensure full compliance with the provision under review**

Please see above answer to question 295.

*Which of the following forms of technical assistance, if available, would assist your country in adopting or better implementing the provision under review? (Check all the answers that apply)*

(NO) No assistance would be required

*Are any of the forms of technical assistance previously mentioned already provided? (Check one answer)*

(N) No

## **B. Other information**

### **B. Other information**

#### **299. Other information**

Please provide any other information you believe is important for the Conference of the States Parties to the United Nations Convention against Corruption to consider at this stage regarding aspects of, or difficulties in, implementing the Convention other than those mentioned above.

**Please provide any other information you believe is important for the Conference of the States Parties to the United Nations Convention against Corruption to consider at this stage regarding aspects of or difficulties in implementing the Convention other than those mentioned above**