

THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY PORTUGAL

ARTICLE 14 UNCAC

PREVENTION OF MONEY-LAUNDERING

PORTUGAL (SIXTH MEETING)

The offence of money laundering is foreseen under Article 368-A of the Criminal Code, stating in paragraph 2 that any person who converts, transfers, assists or facilitates, whether directly or indirectly, any operation of conversion or transfer of proceeds, obtained by him/herself or by a third party, for the purpose of disguising the illicit origin of the property or of assisting any person who commits or is involved in the commission of such an offence or offences to evade the legal consequences of his/her actions shall be punished by imprisonment for a term between two and twelve years.

The same applies when the person conceals or disguises the true nature, source, location, disposition, movement, rights with respect to, or ownership of proceeds (paragraph 3). 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 (paragraph 4).

For the purposes of the mentioned paragraphs 2 to 4, proceeds of crime are those assets which derive from the criminal offences of 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 on influence, corruption and other offences referred to in Article 1(1) of the Law nr. 36/94 of 29 September and from a criminal offence punishable by a minimum term of imprisonment exceeding six months or by a maximum term of imprisonment exceeding five years, as well as those obtained with such proceeds (paragraph 1).

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

The comprehensive domestic regulatory and supervisory regime for financial and non-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 nr. 25/2008, of 5 June, setting out preventive and repressive measures to combat money laundering and terrorist financing, transposing into Portuguese law the 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.

The above mentioned law includes, among others, provisions on beneficial owner's identification and the verification of such identification, record-keeping and the duty to report suspicious transactions.

The financial and non-financial entities subject to Law nr. 25/2008 are foreseen in Articles 3 and 4 of this legal instrument. In addition, Decree-Law nr. 298/92 identifies the types of credit institutions and financial institutions.

Article 3 (Financial entities)

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

- a) Credit institutions;
- b) Investment companies and other financial companies;
- c) Entities in charge of the management or trading of hedge funds;
- d) Collective investment undertakings marketing their units;
- e) Insurance undertakings and insurance intermediaries carrying on the activities referred to in subparagraph c) of Article 5 of Decree-Law nr. 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;
- f) Pension-fund management companies;
- g) Credit securitisation companies;
- h) Risk capital companies and investors;
- i) Investment consultancy companies;
- j) Companies trading goods or services related to investment in fixed assets.

2 - 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.

3 - This Law shall also apply to entities providing postal services and to the 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.

4 - 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:

- a) Casino operators;
- b) Operators awarding betting or lottery prizes;
- c) Real estate agents as well as construction entities selling directly real property;
- d) 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;
- e) Certified auditors, chartered accountants, external auditors and tax advisors;
- f) 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:
 - i) Purchase and sale of real property, business entities and shareholdings;
 - ii) Management of client money, securities or other assets;
 - iii) Opening or management of bank, savings or securities accounts;
 - iv) Creation, operation or management of companies or similar structures, as well as legal arrangements;
 - v) Financial or real estate operations representing a client;
 - vi) Acquisition and sale of rights over professional sportspersons;

Avenida D. João II, n.º 1.08.01 E, Torre H, pisos 2/3, 1990-097 Lisboa – Portugal Tel.: (+351) 21 792 40 00 Fax: (+351) 21 792 40 90

Correio eletrónico: correio@dgci.mj.pt

Internet: www.dgci.mj.pt

- g) Service providers to companies and other legal entities or arrangements that are not covered by the provisions of subparagraphs e) and f).

Banks and other financial institutions are under the supervision of the Banco de Portugal (the Portuguese Central Bank) and should comply with the so-called Banking Law, approved by Decree-Law nr. 298/92 of 31 December.

Regarding supervisory authorities of the financial sector, this issue is covered by Decree-Law nr. 298/92, regulating the Legal Framework of Credit Institutions and Financial Companies concerning banking and financial sector in general; by Decree-Law nr. 94-B/98, respecting insurance sector; and by the Statutes of the Securities Market Commission and the Securities Code, as regards financial intermediation activity.

Furthermore, emphasis should be given to the provisions laid down in Decree-Law nr. 228/2000, of 23 September, which set up the National Council of Financial Supervisors, comprising the three supervisory authorities.

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 nr. 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 the BdP and the 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 review.

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

Regarding measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, Portugal applies the Regulation (EC) nr. 1889/2005, of the European Parliament and of the council, of 26 October, on controls of cash entering or leaving the Community. This Regulation has been developed by the approval of Decree-Law nr. 61/2007, of 14 March, on the controls of cash entering or leaving the Community through Portuguese territory, executing the said Regulation (EC) nr. 1889/2005, as well on the controls of movements of cash with other Member States.

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The Portuguese Financial Intelligence Unit (FIU) was created by Decree-Law nr. 304/2002, of 13 December as an independent body in the performance of its competences and is foreseen as well in Law nr. 37/2008, of 6 August, approving the Organization Law of the Criminal Police.

The FIU centralizes, 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 financial and non-financial entities subject to Law nr. 25/2008 (AML/CFT Law).

The FIU is a member of the Egmont Group and collaborates regularly in initiatives and promotes regular working meetings with the supervision authorities of the financial sector 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.

For more information on the comprehensive Portuguese regulatory and supervisory regime for the prevention and fighting money laundering and terrorism financing, a non-official translation of Law nr. 25/2008 (AML/CFT Law) is attached.

It should be pointed out that due to the review of the FATF Recommendations and to the approval of the new (fourth) EU Directive 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 the Portuguese legislation will be updated accordingly.

Portugal is a member of FATF and has a status of observer in GIABA, GAFILAT and ESAAMLG, which are FATF-style regional bodies. Moreover, with the aim to promote bilateral cooperation Portugal supports especially the Portuguese speaking countries in training activities, translation of legislation, preparation of legislation, creation and development of FIUs. A number of bilateral agreements on the cooperation to fight transnational organized crime and terrorism, where money laundering, the financing of terrorism and corruption offences are included has been celebrated with States from different regions of the world.