

THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY PORTUGAL

ARTICLE 7, PARAGRAPH 4 UNCAC

CONFLICT OF INTEREST

PORTUGAL (NINTH MEETING)

UNCAC - Working Group on Prevention

(a) Preventing and managing conflicts of interest (Article 7 (4));

Conflict of interests is a matter of fundamental importance in the relationship between citizens and public entities and essential to the promotion of a culture of integrity and transparency in public management.

The wording of the Constitution of the Portuguese Republic is clear in assuming that the "Public Administration aims at the pursuit of the public interest" (Article 266) and, therefore, "in the exercise of their functions, Public Administration workers and other agents of the State and other public entities are exclusively at the service of the public interest" (Article 269).

The performance of public functions can not therefore have any other reason than this one. Ensure, on an exclusive basis, the satisfaction of the general interest of the society.

The emergence of issues related to conflicts of interest has mainly arisen from the way in which the relationship between the citizen and the State has evolved and, in correlation, the models of organization and management of the entities of the Public Administration.

It has been in this evolutionary context that issues such as ethics in the public service, transparency in procedures, access to information, as well as efficiency, effectiveness and even the economy in administrative action have become particularly relevant.

The assumption of these concepts has led to a change of values and of intervention in the functioning of public services in relation to such important aspects as organizational culture, accountability and relationship with the citizen and with society.

Portugal has been naturally involved in this process, notably through the creation and application of a legal framework that corresponds to the meaning and scope of international standards and

conventions, especially those related to the prevention and fight against corruption, in order to prevent the occurrence of risk situations.

Portugal has in force legal instruments that include provisions for the prevention of conflicts of interest, of which the following are examples:

- Constitution of the Portuguese Republic, in relation to liability, to the statutes and to the regime of public administration officials;
- Code of Administrative Procedure;
- Regime of incompatibilities of personnel of free designation by holders of political office (Decree-Law 11/2002, of 20 January);
- Legal Regime of incompatibilities and impediments of holders of political office and of high public positions (Law 64/93, of 26 August and subsequent amendments);
- Statute of the persons in charge of the services and bodies of central, regional and local administration of the State (Law 2/2004, of January 15 and subsequent amendments);
- Statute of the public manager (Decree-Law 71/2007, of 27 March and subsequent amendments);
- Regime for the attachment, careers and remuneration of workers who perform public functions (Law 12-A / 2008, of 27 February and subsequent amendments);
- Disciplinary Statute for workers who perform public functions (Law 58/2008, of 9 September).

It should also be referred the principles enshrined in the 'Ethics of Public Administration - 10 ethical principles for Public Administration', with the principles of public service, legality, justice, impartiality, loyalty and integrity being particularly relevant in the field of conflicts of interest.

As internationally recognized, in particular in the framework of the GRECO mutual evaluations, Portugal is equipped with a satisfactory set of provisions and measures safeguarding the risks associated with situations of conflicts of interest.

Regarding the Members of the Parliament and in accordance with its Statute, approved by Law 7/93 of March 1, and subsequent amendments, the most recent of April 2009 (Law 16/2009), is created in the Assembly of the Republic (Parliament) a register of interests.

The registration of interests consists in the inscription, in own document, of all the acts and activities that may create impediments (Article 26). According to this provision, registration must include the registration of activities carried out, regardless of their form or regime, namely a) Indication of positions, functions and activities, public and private, carried out in the last three years; b) Indication of positions, functions and activities, public and private, to exercise cumulatively with the parliamentary mandate.

The registration of relevant financial interests shall as well include the identification of the acts that generate, directly or indirectly, payments. The register of interests is public and should be made available for consultation on the Assembly of the Republic website, or to whoever requests it.

Article 27 (Eventual conflict of interest) of the Statute of the Members of the Parliament states that MPs when they present a draft bill or intervene in any Parliamentary work, in a Commission or in the the Plenary, must first declare the existence of particular interests, if any, in the matter under discussion.

Issues that could be considered as possible conflict of interests are (a) MPs, spouses or their relatives or other persons in direct line or until the second degree of the collateral line, or people with whom they live in the common economy, holders of rights or parties in legal transactions whose existence, validity or effects are affected as a direct consequence of the law or resolution to be adopted by the Assembly of the Republic; (b) MPs, spouses or relatives or other persons in a straight line or until the second degree of the collateral line, or people with whom they live in the common economy, are members of corporate bodies, agents, employees or permanent employees of companies or non-profit companies, whose legal situation may be modified directly by the law or resolution to be adopted by the Assembly of the Republic.