

# **THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY PORTUGAL**

## **ARTICLE 9 UNCAC**

### **PUBLIC PROCUREMENT**

#### **PORTUGAL (SEVENTH MEETING)**

##### **Portal BASE**

The creation of the portal BASE in the area of public procurements is another key measure for transparency and prevention of corruption.

The Code for Public Procurement (CCP) regulates the procedures required for the formation of contracts and provides for the creation of an Internet portal dedicated to public procurement, aggregating information on public procurement. The CCP includes six major principles efficiency, simplification, rigor, innovation, monitoring and transparency. One of the corollaries of the Code application is precisely to promote transparency in transactions carried out by the contacting authorities. They are good allies in this objective the obligation to use electronic platforms in the formation of contracts that, once signed, its publication in the portal BASE.

The legal framework for public procurement in Portugal provides for guarantees of transparency, non-discrimination and fair competition. Amendments to the public procurement code were adopted in July 2012 aiming at improving public contract award practices to ensure a more transparent and competitive business environment. The amendments address, in particular, the system for awarding additional works and services, and eliminate exemptions permitting direct awards.

The e-procurement programme was launched in June 2003 as a centralised and high-quality platform that promotes efficiency and competition through increased transparency, as well as savings in the public procurement process. Through enhanced transparency, the use of eprocurement creates the framework for enhanced prevention and detection of irregularities affecting the procurement process, including potential

corrupt practices.

The portal <http://www.ancp.gov.pt/EN/ENPages/Home.aspx> offers the possibility of downloading the entire bid documentation and specifications free of charge. It also disseminates calls for tender, receives suppliers' queries and manages all information exchange online. A Contract Management Tool allows for uploading of public contracts, the monitoring of contracts concluded and e-invoicing. The Information Management System also helps collect, store and organise statistics on the procurement process.

Since 2008, after the entry into force of the Public Contracts Code, Portugal put in place a national web portal, BASE ([www.base.gov.pt](http://www.base.gov.pt)) that centralises information on public contracts.

The Institute for Public Procurement, Construction and Real Estate LP. (IMPIC) is responsible for the management of this portal. BASE receives data from the electronic edition of the Portuguese Official Journal and from the certified electronic platforms concerning open and restricted pre-award procedures. All public contracting authorities use the reserved area of the portal to record contract data, upload the contracts and record information on their performance.

From 2008 to 2011, BASE only publicised contracts relating to direct awards. Since January 2012, and as a result of measures adopted under the Adjustment Programme, BASE must advertise all contracts resulting from all types of procedures subject to the Public Contracts Code. It also publishes information on contract performance. The publication of contracts in both BASE and in the Official Gazette is now mandatory for direct awards, increases of 15% in the price of already concluded contracts and potential penalties.

Another example of a program in place in the Public administration is the SIMPLEX Program, which combines the electronic administration and simplification policies.

This program had an annual run rate always higher than 80%, with initiatives that

decided that structural problems of regulation and decreased context costs significantly (as in the field of business creation). The progress made in electronic services, not only in the number of services, but also in its functionality and usability, put Portugal in the 1 st place of the eGovernment Benchmarking in 2009 and 2011, as well as the positive evaluation that citizens and businesses do either of online services, either of the single counters created are facts that demonstrate the added value of this instrument and the importance of deepening, as indeed was recognized and recommended by the Organization Economic Cooperation and Development.

Important to this result was also the participatory aspect given to Simplex, through different instruments, from the program preparation (with employees, companies and citizens), the public consultation and the use of social networks to collect, permanently, new suggestions. For example, the Simplex Exports, the first thematic program was fully organized from suggestions from 111 companies and business associations, thus contributing not only to greater transparency but for the involvement of stakeholders in matters that directly related to its activities.

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED  
BY PORTUGAL**

**ARTICLE 9, PARAGRAPH 1 UNCAC**

**PUBLIC PROCUREMENT**

**PORTUGAL (SIXTH MEETING)**

**INTEGRITY IN PUBLIC PROCUREMENT PROCESSES AND TRANSPARENCY AND  
ACCOUNTABILITY IN THE MANAGEMENT OF PUBLIC FINANCES (UNCAC, Articles 9 and  
10)**

Portugal approved in 2008 the new Code of Public Procurement – Decree-Law nr. 18/2008, of 28 January, transposing into domestic law EU Directives 2004/17/CE and 2004/18/CE, from the Council and the European Parliament, of 31 March and Directive 2005/51/CE, from the Commission of 7 of September and Directive 2005/75/CE from the Council, of 16 November.

The legal framework for public procurement in Portugal is comprehensive and provides for guarantees of transparency, non-discrimination and fair competition and approved the rules for the constitution, functioning and management of a single Internet website for public procurement (an electronic platform that centralizes information on public contracts).

Amendments to the public procurement Code were adopted in July 2012 aiming at improving public contract award practices to ensure a more transparent and competitive business environment.<sup>1</sup> The amendments address, in particular, the system for awarding additional works and services, and eliminate exemptions permitting direct awards. The Court of Auditors' regulations were amended in 2012 to strengthen its auditing powers and notably its capacity to perform *ex ante* and *ex post* control of public contracts.

As good practice it could be referred the transparency of procurement procedures.

The e-procurement programme was launched in June 2003 as a centralised and high-quality platform that promotes efficiency and competition through increased transparency, as well as savings in the public procurement process. Through enhanced transparency, the use of e-procurement creates the framework for enhanced prevention and detection of irregularities affecting the procurement process, including potential corrupt practices.

The portal <http://www.ancp.gov.pt/EN/Pages/Home.aspx> offers the possibility of downloading the entire bid documentation and specifications free of charge. It also disseminates calls for tender, receives suppliers' queries and manages all information exchange online. A Contract Management Tool allows for uploading of public contracts, the monitoring of contracts concluded and e-invoicing. The Information Management System also helps collect, store and organise statistics on the procurement process.

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Since January 2012, and as a result of measures adopted under the Adjustment Programme, BASE must advertise all contracts resulting from all types of procedures subject to the Public Contracts Code. It also publishes information on contract performance. The publication of contracts in both BASE and in the Official Gazette is now mandatory for direct awards, increases of 15% in the price of already concluded contracts and potential penalties. Such information is recorded in the database and is accessible to the auditing authorities.

All individuals and legal entities that have been convicted by money laundering or corruption are forbidden to apply to public tenders, as a form of prevention and fighting against crime.

In terms of control and oversight of the activities of those who hold political office or important functions in public administration, Law nr. 34/87, of 16 July also enshrines the concept – in line with the logic of good governance – that the holders of high offices are responsible for the criminal actions they engage in during their period in office.

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:

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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, gender, 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 swift way.
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 Secretary of State for Justice 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, prepared a draft text for the "Reference Framework", which was approved by the Parliament.

The "Management plans on risks of corruption and related offences" established by the various entities concerned, which are monitored by the CPC - Council for the Prevention of Corruption, set up in September 2008, by Law nr. 54/2008, of 4 September, as an independent body competent for the definition of corruption preventive policies, serves 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 State owned 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.

Regarding the preventive side of corruption it should be highlighted the important role that the Council for the Prevention of Corruption is playing 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, for example, to Recommendation of 1 July 2009, on the elaboration and application of Plans on the prevention of risks of corruption and related offences 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.

As an example, 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 sites. 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.