



UNODC

United Nations Office on Drugs and Crime

Country Review Report of Portugal

Review by Norway and Croatia of the implementation by
Portugal of articles 5-14 and 51-59 of the United Nations
Convention against Corruption for the review cycle 2016-
2021

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by Portugal of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Portugal, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Norway, Croatia and Portugal, by means of telephone conferences, e-mail exchanges or any further means of direct dialogue in accordance with the terms of reference and involving Antonio Folgado from Portugal; Mona Ransedokken and Anders Worren from Norway; Maja Baricevic and Dinko Kovacevic from Croatia. The staff members of the secretariat were Lindy Muzila and Meder Begaliev.
6. A country visit, agreed to by Portugal, was conducted from 27 February to 1 March 2018 in Lisbon. The review report reflects the situation at the time of the country visit.

III. Executive summary

1. Introduction: overview of the legal and institutional framework of Portugal in the context of implementation of the United Nations Convention against Corruption

Portugal ratified the United Nations Convention against Corruption on 21 September 2007 and deposited the instrument of ratification on 28 September 2007. Pursuant to article 8 of the Constitution of the Portuguese Republic (CRP), ratified treaties are enforceable in the same manner as all other laws from the moment they are published

in the Official Gazette.

Portugal is a member of the European Union, the Organization for Economic Cooperation and Development, the Organization for Security and Cooperation in Europe and the Council of Europe, among others. The anti-money-laundering regime is based on a legal framework defined at both the European Union and national levels.

The implementation by Portugal of chapters III and IV of the Convention against Corruption was reviewed in the second year of the first review cycle, and the executive summary of that review was published on 7 August 2013 (CAC/COSP/IRG/I/2/1/Add.18).

The main legislation for preventing and combating corruption in Portugal includes, notably, the CRP, the Criminal Code, the General Law on Civil Service Employment (Law 35/2014), the Law on Public Control of the Wealth of Public Office Holders (Law 4/83), the Law on Funding of Political Parties and Election Campaigns (Law 19/2003), the Public Procurement Code (Decree-Law 18/2008), the Code of Criminal Procedure (CPC), the Anti-Money-Laundering Law (Law 83/2017) and the Law establishing a special regime for the collection of evidence and confiscation of assets to the State (Law 5/2002).

The main entities in preventing corruption include, notably, the Council for Corruption Prevention (CCP), the Public Prosecution Service (PPS) and the Directorate-General for Justice Policy, within the Ministry of Justice (DGPJ), as well as the Inspectorate-General of Finance (IGF) and the Directorate-General for Administration and Public Employment, both within the Ministry of Finance and Public Administration (MFPA). Regarding the recovery of assets, the main entities are the Public Prosecution Office, particularly its Central Department for Criminal Investigation and Prosecution (DCIAP), the Asset Recovery Office (GRA), the National Unit against Corruption within the Criminal Police, the Office for the Management of Assets (GAB) and the Financial Intelligence Unit (FIU).

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

Portugal has no stand-alone national anti-corruption strategy but relies on the existing legal and administrative framework to ensure integrity, transparency and accountability in the public sector and to prevent corruption.

CCP is an independent administrative institution with a mandate to conduct research on the occurrence of corruption, monitor the implementation of relevant legal and administrative measures and evaluate their effectiveness (Law 54/2008). It issues recommendations to public entities, including State-owned companies, to develop, implement and periodically review their prevention plans, provides legal opinions, drafts codes of ethics and provides training on ethics and transparency if requested.

PPS is responsible for the prevention, investigation and prosecution of crimes, including corruption. Both PPS and CCP report that they have sufficient resources and

specialized staff.

In addition, General Inspectorates in all Ministries monitor compliance with the legislation, the execution of the Prevention Plans for Risks of Corruption as recommended by CCP, as well as the occurrence of corruption. They conduct administrative inquiries and inspections and report to PPS if a crime is suspected. Notably, IGF, as an internal audit authority, plays an active role in promoting ethics and preventing fraud and corruption in the public sector.

CCP, the Centre for Judicial Studies (CEJ), the Criminal Police School and other public bodies conduct various awareness-raising activities on corruption prevention, including among the general public.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The law governing civil service is Law 35/2014. Recruitment to public sector posts is conducted through open competitions that are based on merit, equity and aptitude. There are separate procedures for recruitment to management (Law 2/2004) and special regime career positions (Law 35/2004). Rotations are available when required by public interest considerations, but they are limited in duration and may require agreement of the public official in question. There is a comprehensive legal framework addressing the promotion, pay and retirement of public officials. Training in relevant fields is provided by the Directorate-General for Qualification of Public Employees and CCP.

Criteria concerning candidature for and election to public office are prescribed in the Constitution and in Law 2/2004, which approves the Statute of the management personnel of central, regional and local administration bodies, Decree-Law 71/2007, which approves the Statute of the public managers, and article 13 of Law 27/1996 on administrative tutelage.

Regulations on electoral funding are provided under Law 19/2003. Anonymous donations, gifts or loans of a monetary nature or in kind from national or foreign legal persons to political parties, with some exceptions, are prohibited (art. 8 of Law 19/2003). Article 20 of the same Law defines the limits on election campaign expenses, and article 23 requires that the annual accounts of political parties and accounts of electoral campaigns be examined by the Constitutional Court.

Law 4/83 requires specified public officials to declare their income and assets to the Constitutional Court. Although the Law contains a list of officials who should submit the declarations, in practice there is some ambiguity as to who exactly should declare. The declarations are paper-based and must be submitted when public officials assume their office, when there is a change in their assets beyond a certain threshold, and when they leave office.

Law 64/93 creates a public register of interests at Parliament that contains all public and private activities of members of Parliament and Government that may lead to conflicts of interest (impediments and incompatibilities). In addition, the Law introduces a three-year “cooling-off” period for designated officials, unless they return to the business they held prior to assuming the public office. Other guarantees of

impartiality are provided under the Code of Administrative Procedure (arts. 69–76).

Many public entities have adopted codes of conduct or codes of ethics. The codes vary and do not always provide for detailed and effective systems of disclosure and management of, inter alia, conflicts of interest and gifts. In addition, all public servants remain bound by the general duties of public officials listed in article 3 of the Disciplinary Statute (Law 58/2008) and in the Ethical Chart of Public Administration — Ten Ethical Principles of Public Administration, and the Government's Code of Conduct. Portugal is also considering the adoption of a Code for Public Transparency specifically for political office holders and managers of State-owned companies, among others.

Violations of the codes and general duties of public officials may result in disciplinary action (arts. 176–240 of Law 35/2014 (General labour law in public functions)).

Reports on suspected acts of corruption may be submitted to law enforcement authorities, PPS, CCP, and internally to the General Inspectorates. Public officials must report any crime they become aware of (art. 242 of CPC). The general principle on whistle-blower protection in both public and State-owned companies, as well as in the private sector, is provided under Law 19/2008 (art. 4). However, the Law is too general and does not establish any system of reporting and protection.

An ad-hoc committee for the enhancement of transparency in the exercise of public functions has been created in the Parliament to improve the legislation applicable to public officials. Currently, several draft laws on, inter alia, conflicts of interest and lobbying are under analysis and debate by the Committee.

CRP, CPC, the Code of Civil Procedure (CPCiv), the Statute of Judicial Magistrates (Law 21/85), the Law on Organization of the Judicial System (Law 62/2013) and other legislation provide for the independence, ethical principles and core values of the judicial system and regulate recruitment, pay, disciplinary measures and conflicts of interest. CEJ manages the initial and ongoing training of judges and prosecutors, which includes topics on professional ethics and deontology. There is no code of conduct applicable to the Portuguese judiciary, and its members are exempted from filing asset declarations.

CRP, the Statute of PPS (Law 60/98), CPC, CPCiv and other laws and regulations contain ethical principles and core values and measures for ensuring integrity and preventing conflicts of interest among PPS staff. They must disclose impediments and incompatibilities in any civil or criminal case where they intervene. Violations of this duty lead to disciplinary actions. There are neither express rules on the acceptance of gifts nor a code of conduct applicable to PPS.

Public procurement and management of public finances (art. 9)

Decree-Law 18/2008, approving the Public Procurement Code, is the main legal framework for public procurement. The conditions for participating in, selecting and awarding a contract are established and published sufficiently in advance. The only criterion for awarding a contract is the most economically advantageous offer.

Decree-Law 18/2008 also includes rules for BASE, an online platform that advertises all contracts resulting from all types of procurement procedures and publishes

information on contract performance. The publication of contracts in both BASE and in the Official Gazette is mandatory for certain categories of contracts, such as direct awards. Failure to publish direct award contracts renders them null and void. All information is accessible to the auditing authorities and PPS. Complaints may be raised at different stages of procurement directly with the contracting authority.

Stakeholders involved in procurement must declare the absence of conflicts of interest prior to participating. All individuals and legal entities previously convicted of money-laundering or corruption may not apply for public tenders.

The Ministry of Economy oversees the development and definition of procurement policy. The central purchasing body is ESPAP, which manages large framework contracts. Any public body may join the national system of public procurement in order to use ESPAP services. The Court of Auditors conducts external ex ante and ex post control. Internal controls are performed by the General Inspectorates.

The legal framework regulating the national budget process consists of CRP, the Public Accounting Principles Law (Law 8/90), the Budget Framework Law (Law 151/2015) and local and regional finance laws. The budget process and the accounting systems are based on the International Public Sector Accounting Standards.

CRP prescribes the procedures for the adoption of the national budget. The discussions on the draft budget and the draft budget execution law at the Budget and Finance Committee of the Parliament are open to the public. Information on the budget execution process is published in clear and accessible language through the “Knowing the Budget Process” project run by the Budget General Directorate.

IGF conducts internal audits and the Court of Audit conducts external audits. The Public Finance Council assesses fiscal projections and compliance with fiscal rules. Forgery of documents, including accounting books, records and financial statements, is a crime pursuant to article 256 of the Criminal Code.

Public reporting; participation of society (arts. 10 and 13)

CRP provides for the universal right of access to information (art. 37 (1)). According to article 268 (1), citizens also have the right to be informed by the administration of decisions that are taken in relation to them. Law 83/95 defines the terms of participation in administrative procedures and the right to popular action to prevent and repress offences caused by diffuse interests. Comprehensive laws establishing privacy exceptions also apply.

Law 26/2016 establishes the right and procedure to access administrative documents. Law 65/93 established the Committee for Access to Administrative Documents, which monitors compliance with Law 26/2016 and can issue non-binding recommendations if requested. Individuals and legal entities also have the right to seek redress in the administrative courts (Code of Administrative Procedure, approved by Law 15/2002).

Information technologies are widely used to simplify administrative procedures. Examples include the BASE portal, CITIUS (a public platform for, inter alia, submitting documents to courts and keeping track of cases), E-invoice (an electronic invoicing system within public administration), et cetera.

The reporting of alleged corruption crimes, including anonymously, is possible via, inter alia, the website of PPS.

Many public bodies publish their corruption prevention plans on their websites. CCP publishes reports that identify and evaluate corruption risks.

Interested parties may participate in the parliamentary legislative procedure (art. 167 of CRP). Parliament may also solicit public input. Decree-Law 274/2009 regulates the Government's public consultation procedure.

Private sector (art. 12)

The Criminal Police, PPS and DGPJ organize workshops for private sector representatives to raise awareness, share experiences, promote good practices and strengthen cooperation. FIU regularly organizes workshops for reporting entities to discuss the issues of, inter alia, beneficial ownership and reporting obligations under the regime on anti-money-laundering and countering the financing of terrorism (AML/CFT).

The Ministry of Economy has developed a National Action Plan for Responsible Business Conduct and Human Rights 2017–2020 to promote socially responsible behaviour. Relevant measures in contractual relations between businesses and the State in procurement procedures are addressed in the Code of Public Procurement.

All legal persons must be registered in the National Registry for Legal Persons and in the Commercial Registry and shall disclose the names of the management board and shareholders. Parliament has passed legislation that creates a central register of beneficial owners (Law 89/2017) and abolishes bearer shares (Law 15/2017).

All companies are required to follow appropriate accounting and auditing standards and to maintain books and records. Companies falling under the General Regime of the Accounting Normalization System must have a chartered accountant who ensures compliance with these obligations and tax obligations and signs all company tax returns.

Decree-Law 224/2008 approves the Statute of the Portuguese Order of Statutory Auditors (OROC) and requires all statutory auditors to report corruption offences to PPS through OROC. False accounting offences are foreseen in articles 103 and 104 of the Legal Regime on Tax Offences.

The tax deduction of illicit expenditures is expressly prohibited, even when the expenditure occurs outside Portugal.

Measures to prevent money-laundering (art. 14)

Law 83/2017 ("the AML/CFT Law") establishes a list of financial institutions and non-financial businesses and professions subjected to the AML/CFT regime (arts. 3–5). Supervisory and oversight authorities of those institutions, businesses and professions are categorized by sector and are listed under articles 84–91 of the AML/CFT Law. Article 14 of the AML/CFT Law provides details on risk management

by obliged entities.

In 2015, Portugal underwent a national risk assessment that was designed to identify, assess and understand the risks of money-laundering and the financing of terrorism. Based on this assessment, it is taking action to manage the risks, applying a risk-based approach. Portugal established its Financial Intelligence Unit (FIU) in 2003 and has domestic coordination meetings and platforms such as the Commission for the Coordination of Policies for the Prevention of and Fight against Money-laundering and the Financing of Terrorism and its Executive Committee and the Technical Permanent Secretariat. All supervisory authorities from the financial and non-financial sectors, FIU, PPS, law enforcement and other authorities are represented on the Commission and the Executive Committee and meet periodically to address relevant issues.

Article 3 (1) of Decree-Law 61/2007 requires all persons entering or leaving European Union territory to declare amounts of cash and bearer negotiable instruments equal to or exceeding 10,000 euros. According to the Circular of the Tax Authority 9630/411, this entity is responsible for centralizing, collecting, registering and processing the information contained in the declarations. Information gathered in the declaration/disclosure process is sent to FIU, which forwards the information to the Criminal Police when a crime is suspected. Various provisions to regulate electronic transfers and money remitters exist. These include European Union Regulation 2015/847, on information accompanying transfers of funds, European Union Regulation 260/2012, establishing technical and business requirements for credit transfers and direct debits in euros, Law 125/2008 and the Single Euro Payments Area Regulation.

2.2. Successes and good practices

- *Anonymous donations, gifts or loans of a monetary nature or in kind from national or foreign legal persons to political parties are prohibited (art. 7, para. 3).*
- *The creation of the BASE portal (public procurements exclusively done through an electronic platform), which is a tool allowing for transparency and prevention of corruption (art. 9, para. 1).*
- *Portugal has established domestic coordination meetings and platforms within the AML/CFT sector that meet periodically, with the attendance of all supervisory and oversight authorities, as well as, among others, PPS and FIU (art. 14, para. 1 (b)).*
- *Portuguese anti-money-laundering supervisors systematically use relevant initiatives of various international bodies, as well as best-practice papers and guidance papers from the Financial Action Task Force and the European Banking Authority, in their work on supervision and guidance to the private sector (art. 14, para. 4).*
- *The Portuguese authorities provide training, particularly to countries in South America and Portuguese-speaking countries, which represents additional efforts in promoting global, regional and subregional cooperation (art. 14, para. 5).*

2.3. Challenges in implementation

It is recommended that Portugal:

- *Develop a nationwide, effective and coordinated anti-corruption strategy (art. 5, para. 1).*
- *Establish a body or bodies with the necessary independence and sufficient resources or entrust an existing body or bodies with the necessary mandate to oversee or coordinate the implementation of the nationwide anti-corruption strategy and provide such a body with the necessary independence and sufficient resources (art. 6, paras. 1 and 2).*
- *Consider developing procedures to determine positions vulnerable to corruption and establish appropriate systems to periodically rotate staff on such positions (art. 7, para. 1).*
- *Endeavour to adopt codes of conduct and other appropriate measures, including training, to provide ethical guidance to all categories of public officials (art. 8, paras. 1–3).*
- *Endeavour to develop Comprehensive regulations applicable to all public officials on disclosure and management of conflicts of interest and acceptance of gifts, in particular to those in top executive positions, members of Parliament and the judiciary and PPS (arts. 8, para. 5, and 11).*
- *Continue efforts to revise, adopt and implement the amendments to the legislation currently under consideration before the parliamentary ad hoc committee and ensure that they are in line with the requirements of the Convention (arts. 7 and 8).*
- *Consider adopting comprehensive legislation establishing measures and systems to facilitate the reporting of acts of corruption to appropriate authorities by public officials, including by strengthening measures to protect reporting persons (art. 8, para. 4).*
- *Consider strengthening the systems for declaring assets and conflicts of interest by, inter alia, merging the existing registers and improving the review and verification systems, clarifying which public officials should file declarations and including the judiciary and PPS staff as declarants (art. 8, para. 5).*
- *Strengthen the existing measures on access to information, including by establishing effective internal appeal mechanisms and clear timelines (art. 10 (a)).*

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

The asset recovery legal framework in Portugal consists mainly of the Criminal Code, CPC, the AML/CFT Law, Law 144/99 on international judicial cooperation in criminal matters and Law 88/2009 on approving the legal regime for issuing and executing decisions of confiscation of instruments, proceeds and advantages of crime. In addition, the self-executing provisions of the Convention are directly applicable in Portugal in accordance with article 8 of CRP.

The competent authority for receiving, considering and implementing requests for asset recovery in Portugal is the Public Prosecution Service (PPS). The Criminal Police supports public prosecutors in identifying, tracing and seizing assets for confiscation and/or return to the requesting States. GRA, which is set up under the remit of the Criminal Police, is the Portuguese Asset Recovery Office. The mandate of GRA is to identify and trace criminal proceeds or instrumentalities and cooperate with the asset recovery offices of other States. The management of seized and confiscated property is carried out by GAB.

Portuguese legislation provides for the spontaneous transmission of information domestically or internationally (art. 129 of the AML/CFT Law). Furthermore, information may be shared with relevant authorities of other States through the Egmont Group, the European platform of asset recovery offices, the Camden Asset Recovery Inter-Agency Network (CARIN), the International Criminal Police Organization and the European Union Agency for Law Enforcement Cooperation.

Portugal has concluded one bilateral agreement with Switzerland on the recovery of assets.

Prevention and detection of transfers of proceeds and crime; financial intelligence unit (arts. 52 and 58)

Obligated entities are required to identify their clients, including occasional clients and all representatives and beneficial owners (arts. 23 and 24 of the AML/CFT Law). They are also required to verify the identities of their clients, to set up their risk profiles and implement an appropriate risk management system (art. 14 of the AML/CFT Law). The obligation to identify beneficial owners is defined in articles 29 to 34 of the AML/CFT Law. Beneficial owners are defined under article 30 of the AML/CFT Law and in Bank of Portugal Notice 2/2018 (former Notice 5/2013). A new law creates a central register of beneficial owners and abolishes bearer shares (Law 89/2017). The AML/CFT Law defines politically exposed persons (PEPs) in article 2 (1) (cc), and persons known to be close associates in article 2 (1) (dd). Obligated entities are required to have risk-based procedures to determine if the customer is a PEP, a close family member of a PEP, or a person known to be closely associated with a PEP (art. 19 (1) and (3) of the AML/CFT Law). Portuguese authorities provide further guidance on how to detect the criminal activity of former PEPs. This includes a set of indicators on how to identify former PEPs (arts. 19, 39 and 52 (2) of the AML/CFT Law).

Article 36 of the AML/CFT Law requires financial institutions to apply enhanced due diligence measures to situations identified as high-risk. To this end, its annex III provides for an indicative list of potentially higher-risk factors, to which financial institutions must pay particular attention. Competent authorities, including the Bank of Portugal, may define other situations of potentially higher risk (art. 36 (1) and

(3) (b) of the AML/CFT Law). Article 52 of the AML/CFT Law defines the “obligation of scrutiny”, and according to article 41 (2) of Bank of Portugal Notice 2/2018, the Bank of Portugal shall disseminate and update a list of examples of potentially suspicious indicators, listing conduct, activities or operations that may be related to funds or other assets that originate from criminal activities or that are related to the financing of terrorism.

PEPs and United Nations Security Council resolutions are included in the screening tools pursuant to articles 2 (1) and 18 (2) of the AML/CFT Law.

Article 51 of the AML/CFT Law provides that records and files should be kept for at least seven years in a durable medium, preferably electronic. Furthermore, obliged entities shall carry out proper ongoing monitoring of business relationships, including monitoring of clients, their risk profiles, transactions and other relevant activities, and update regularly the information received for customer due diligence purposes (arts. 18 (2), 27 (3) (c) and 40 of the AML/CFT Law).

The establishment of “shell banks” is prohibited (art. 66 of the AML/CFT Law). Financial institutions are prohibited from establishing or maintaining correspondent banking relationships with any fictitious financial institution and must verify that their correspondents abroad are subject to the same obligation.

The asset declaration system for selected officials includes sanctions for non-compliance. Declarations are not available online but may be consulted in the Constitutional Court by anyone. The declarations may be shared with foreign States upon a request received through mutual legal assistance procedures. Article 1 of Law no 4/83 requires public officials to declare assets and liabilities “in Portugal and abroad”, such as securities portfolios, term bank accounts, equivalent financial investments and, if their amount is greater than fifty minimum wages, current bank accounts and credit rights.

Obliged entities are required to submit suspicious transaction reports (STRs) to FIU and DCIAP (art. 43 of the AML/CFT Law). In case of non-compliance, financial penalties may be imposed by supervisory or oversight entities (art. 169 (cc) of the AML/CFT Law). FIU does not have investigative powers. As a result, it receives and analyses STRs and forwards them to the law enforcement authorities where a crime involving money-laundering or the financing of terrorism or any predicate offence is suspected. FIU disseminates information to financial and non-financial entities, assesses systemic risks and regularly hosts discussions with financial and non-financial entities and supervisory, oversight and other public authorities. FIU cannot freeze accounts but may temporarily suspend transactions. FIU is composed of members from the police service who are experts in anti-money-laundering and countering terrorist financing, as well as three experts seconded from the tax authorities. It cooperates with other FIUs pursuant to memorandums of understanding and via the EGMONT Group, as well as to article 137 of the AML/CFT Law, which allows for the exchange of information between FIUs.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

Foreign States may initiate civil action, sue for compensation and be recognized as legitimate owners of property acquired through the commission of offences under the Convention in accordance with article 2 (Guarantee of access to the court system) and article 30 (Definition of lawful parties) of the CPCiv. However, Portugal has never had a corruption case involving a foreign State as a civil party.

Portugal does not require a treaty to render international cooperation. Portuguese legislation allows for the direct enforcement of foreign judgments and orders for confiscation (art. 160 of Law 144/99 and, within the European Union area, Law 25/2009), as well as the transfer of confiscated property. In legislation applicable to European Union members (Law 25/2009), Portugal establishes a legal regime that simplifies the procedures further. However, Portugal has not been requested to provide such assistance in a corruption case.

Articles 109 to 111 of the Criminal Code foresee the general rule for confiscation, including extended confiscation. Confiscation of proceeds and instrumentalities of money-laundering, corruption and other crimes is provided for in articles 1, 7 and 12 of Law 5/2002, including when the crime is committed outside Portugal or if the funds are of foreign origin. The provisions protect bona fide owners (art. 111 (2) of the Criminal Code and article 28 of Law 144/99). Article 178 of CPC allows for the Public Prosecutor and Criminal Police to temporarily seize and freeze assets until a court order is issued. Articles 111 (4) and 228 of CPC and article 10 (2) of Law 5/2002 provide that goods may be seized equal to the value of the unexplained wealth.

Portugal provides for the possibility of civil or non-conviction-based confiscation (in accordance with Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union). Portugal has never had a corruption case involving civil recovery.

A foreign State party may request enforcement of interim measures in Portugal. Such requests do not require a court order but should take the form of letters rogatory transmitted directly between the competent judicial authorities (art. 152 of Law 144/99). With respect to European Union member States, Portugal applies the provisions of Law 25/2009, which provides detailed guidance on the recognition and execution of freezing orders in Portugal, issued by a judicial authority of another European Union member State, in criminal proceedings, in order to collect evidence or confiscate property. It is not clear whether it is possible to enforce foreign judgments or orders for freezing, seizing or confiscating assets in Portugal that do not relate to criminal proceedings. Nevertheless, Portugal does not have other mechanisms to proactively preserve property for confiscation. Because Portugal has not yet had a case involving enforcement of interim or confiscation orders related to corruption, implementation of article 55, paragraphs 1 and 2, cannot yet be assessed.

Portuguese legislation and procedures do not give the requesting State party the opportunity to present its reasons in favour of continuing the measures before lifting any provisional measures taken in relation to assets. Portugal submitted copies of its pertinent laws at the time of the review.

Return and disposal of assets (art. 57)

Law 144/99 (art. 160) mentions and provides for the disposal of property to its prior legitimate owners. In addition, the Convention could be used as the legal basis, and reciprocity can be used. Portugal provides for the return of assets minus expenses, but the return is conditional upon the requesting State having obtained a sentence, demonstrating a special interest and reciprocity being assured (arts. 26 and 110 (4) of Law 144/99). Furthermore, where requesting States are European Union member States, confiscated property in excess of €10,000 is shared on a 50 per cent basis, although non-cash assets may be returned in full to the requesting States (art. 18 of Law 88/2009). Portugal has concluded an agreement on the final disposal of confiscated assets with Switzerland. Portugal has not yet received any request for the return of assets from any foreign State.

3.2. Successes and good practices

- *Portuguese authorities go beyond the minimum and provide guidance on how to detect the criminal activity of PEPs. This includes a set of indicators on how to identify PEPs after they are no longer politically exposed (art. 52, para. 2).*
- *The practice of spontaneously sharing information, with a wide number of counterparts, which has led to the successful freezing of assets in concrete cases (art. 56).*
- *The creation of a Central Register for Beneficial Owners (arts. 12 and 52).*

3.3. Challenges in implementation

It is recommended that Portugal:

- *Monitor the implementation of the legislation in order to ensure that another State party is allowed to initiate civil action, sue for compensation and be recognized as the legitimate owner of property acquired through the commission of an offence established in accordance with the Convention. Should the judiciary not interpret the law in this way, legislative reform will be necessary. (art. 53).*
- *Take measures to clarify that, before the lifting of any provisional measure, the requesting State party should be given an opportunity to present its reasons in favour of continuing the measure (art. 55, para. 8).*
- *Adopt such legislative and other measures as may be necessary to give effect to a request made by another State party for the return and disposal of assets referred to in the Convention (art. 57, para. 3 (a) and (b)).*
- *Consider concluding further bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to the Convention (art. 59).*

IV. Implementation of the Convention

A. Ratification of the Convention

The United Nations Convention against Corruption (UNCAC) was approved for ratification by the Assembly of the Republic (Parliament) through Resolution no 47/2007, of 19 July 2007.

UNCAC was ratified by Decree of the President of the Portuguese Republic no 97/2007, of 21 September, and published in the National Official Journal (“Diário da República”) on 21 September 2007.

The deposit of the instrument of ratification was deposited on 28 September 2007, having taken effect on the same date, therefore the UNCAC entered into force in Portugal, in accordance with Article 68 (2) thereof, on said date.

The procedure for ratification, acceptance, approval or accession to international instruments is made in accordance to Article 8 of the Constitution of the Portuguese Republic (CRP), which states that the norms and principles of general or common international law form an integral part of Portuguese law.

The norms contained in duly ratified or approved international conventions come into force in the Portuguese internal law once they have been officially published and remain so for as long as they are internationally binding on the Portuguese state.

The norms issued by the competent organs of international organisations to which Portugal belongs come directly into force in Portuguese internal law, on the condition that this is laid down in the respective constituent treaties.

The provisions of the treaties that govern the European Union and the norms issued by its institutions in the exercise of their respective competences are applicable in Portuguese internal law in accordance with Union law and with respect for the fundamental principles of a Democratic State based on the rule of law.

According to Article 134 of the Constitution of the Portuguese Republic (Personal competences), the President of the Republic has the competences to sign the resolutions of Parliament (“Assembleia da República”) that approve international agreements (paragraph b)). Article 135 of the same diploma (Competences in international relations) states that in international relations the President of the Republic has the competences to ratify international treaties, once they have been duly approved (paragraph b)).

Before the ratification by the President of the Republic and according to Article 161 (i) of the Constitution of the Portuguese Republic (CRP), Parliament should approve for ratification treaties, particularly those that concern Portugal’s participation in international organisations, friendship, peace, defence, the rectification of borders or military affairs, as well as international agreements that address matters in which Parliament has exclusive competence, or which the Government deems fit to submit to Parliament for consideration.

Article 119 of the CRP (Publicising of acts) states that international conventions and the respective ratification notices, together with the rest of the notices in relation thereto, shall

be published in the National Official Journal.

Failure to advertise international conventions and the respective ratification notices, together with the rest of the notices in relation thereto and of any act with a generic content of entities that exercise sovereignty, organs of autonomous regions and local government organs shall cause them to have no legal effect.

B. Legal system of Portugal

Portugal covers a land area of 92.152 km² and is located at the southwest corner of Europe. To the south and west, Portugal borders the Atlantic Ocean; to the north and east, it shares territorial boundaries with Spain. The capital is Lisbon. Portugal also counts two archipelagos located in the Atlantic Ocean -Azores and Madeira -, which are autonomous regions with separate political and administrative statutes.

Portugal has a population of approximately 10.5 million. About 3.8% of the population are foreign residents, mainly from Brazil. Another significant portion of foreign people living in Portugal is retired European citizens. Portugal's GDP was 30 601 USD per capita in 2016. Since 2013, the country is gradually recovering from a major financial and economic crisis. The level of unemployment reaches 8.8 % of the labour force, according to the National Institute for Statistics.

Portugal has been a member of the European Union (EU) since 1986 and a member of the Eurozone since 2002. The AML/CFT Regime in Portugal is based on a legal framework defined both at EU and at national level.

Portugal has been a Republic since 1910 and is governed by a Constitution establishing a democratic state of law since 1976. The constitutional system establishes four sovereign bodies:

a) President of the Republic, who is the Head of State. Under the terms of the Constitution of the Portuguese Republic, the President "represents the Portuguese Republic", "guarantees national independence, the unity of State and the regular functioning of democratic institutions" and is the Supreme Commander of the Armed Forces. His/her functions include assuring the normal functioning of the democratic institutions, with a special duty to defend, comply with and enforce the Constitution of the Portuguese Republic.

Elections for President of the Republic are held every 5 years and a President cannot accumulate more than two consecutive terms.

b) Parliament (legislative power), which represents the Portuguese citizens. 230 members, elected through a direct, secret and universal ballot, compose it. The elections for Parliament take place every 4 years.

c) Government (executive power), conducts the general policy of the country and directs the Public Administration, which executes the state policy.

The Government has political, legislative and administrative functions.

The Government has the following functions:

- negotiate with other States or international organizations,
- propose laws to the Parliament,

- study problems and decide on the best solutions (usually making laws),
- make technical regulations so that laws can be enforced,
- decide where public money is spent.

The main decisions of the Government are taken in the Council of Ministers, which also discusses and approves proposals and requests for legislative authorization to the Parliament (for laws that define general or sectoral policies) discusses and approves Decree-Laws and Resolutions (which determine measures or how policies are implemented).

The Government has responsibilities to the President of the Republic - to whom he answers through the Prime Minister - and to the Parliament - through the accountability of its political activities, for example in the biweekly debates in which the Prime Minister answers questions of members of Parliament.

d) Courts (judiciary power) - they are enshrined in the Portuguese Constitution 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 and are the only organ of sovereignty not elected. 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)).

Judicial organization:

- Constitutional Court;
- Judicial Courts - Supreme Court Justice, Courts of Appeal (“Relação”) and Courts of First Instance;
- Administrative and Tax Courts - Supreme Administrative Court, Central Administrative Courts and Administrative and Tax Courts;
- Court of Auditors;
- Other Categories - peace judges (“julgados de paz”) and arbitral courts.

A comprehensive legislation for preventing and combating corruption is in force in Portugal:

- Criminal Code (Articles 372 to 374 and 341);
- Law no 34/87, of 16 July (Crimes of the responsibility of persons holding public office);
- Law no 50/2007, of 31 August (Crimes of corruption in the sports activity);
- Law no 20/2008, of 21 April (Crimes of foreign corruption and corruption in the private sector).

The preparation of the replies to the self-assessment checklist was coordinated at the level of the central administration of the Portuguese State by the International Affairs Department

of the Directorate-General for Justice Policy/Ministry of Justice (GRI/DGPJ) which, due to the subject matter, coordinates the issue of corruption and related offences and attends the meetings of the Conference of the Parties of the UNCAC.

This preparation entailed prior awareness raising for this assessment exercise and the subsequent transmission of the self-assessment checklist to all Ministries in Portugal, requesting the relevant information about the implementation of the provisions of Chapters II and V and the answers to questions set forth in the different provisions to be assessed.

The same questionnaire was also sent to different entities and bodies of Public Administration, despite the fact that they are under the remit of the Ministries. In some cases, they had a direct working relationship with private companies and with the private sector.

The questionnaire was also sent to Parliament (ad-hoc Committee for the reinforcement of transparency in the exercise of public functions), to the Judiciary High Council, to the Prosecutor's General Office, to the Criminal Police and, specifically concerning Chapter V, to the Asset Recovery Office ("Gabinete de Recuperação de Ativos").

It should be noted that the Ministries, bodies and services within its remit, make the necessary contacts, including with private sector entities, in collecting information for the answers to the self-assessment checklist.

It was incumbent upon the GRI/DGPJ to collect and compile all the contributions received, to prepare the final answers to each of the evaluated UNCAC provisions, as well as to translate into English the answers and the legislation referred to in them.

Measures considered by Portugal to be good practices in the implementation of the chapters of the Convention that are under review

CHAPTER II

- Portal BASE (public procurements exclusively done through an electronic platform) <http://www.base.gov.pt/Base/pt/Homepage>
- SIMPLEX (Programme for the simplification and promoting transparency in the Public Administration) <https://www.simplex.gov.pt/>
- Activities of preventing corruption for young people promoted by the Council for Corruption Prevention <http://www.cpc.tcontas.pt/projetos.html>
- Public Prosecution Service initiative for online submission of denunciations of corruption crimes https://simp.pgr.pt/dciap/denuncias/den_criar.php
<http://www.ministeriopublico.pt/>

CHAPTER V

- The creation of the Assets Recovery Office (GRA) and the Property Management Office (GAB).
- The legal possibility for the returning of assets and for allowing another State Party to initiate civil action to establish title to or ownership of property acquired through the commission of an offence established in accordance with the UNCAC.

C. Implementation of selected articles

II. Preventive measures

Article 5. Preventive anti-corruption policies and practices

Paragraph 1 of article 5

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

(a) Summary of information relevant to reviewing the implementation of the article

Portugal maintains a coordinated anti-corruption policy that promotes the participation of civil society and reflects the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

Preventing and combating corruption are associated with the promotion of a culture of transparency and integrity, as well as accountability in all the different areas and sectors of Public Administration.

In efforts to maintain public policies to prevent corruption, the XXI Constitutional Government has included in its Program a set of measures to be implemented to increase transparency in Public Administration and to prevent and combat corruption.

Among those measures, it could be pointed out the improvement of the democracy's quality by preventing and combating corruption through greater transparency, scrutiny of democratic governance and control of legality, the increase of transparency of public service and the approval of a Code for Public Transparency, the increase of prevention and control of serious, violent and highly organized crime, by the improvement of Criminal Police training for the rapid clarification of the serious and organized crime, in particular terrorism, cybercrime, crimes against sexual self-determination and economic and financial crime, specifically corruption.

The Code for Public Transparency aims to promote integrity, anti-corruption practices and transparency and it will be applicable, in particular, to political office holders, State owner company's managers, public officials and other employees of Public Administration. The Code for Public Transparency will regulate, among other aspects, the acceptance of gifts and "hospitality" made available free of charge by private entities (for instance gifts or invitations to attend conference).

The Code of Public Procurement includes a national web portal (Portal BASE - www.base.gov.pt), that centralises information on public contracts. Several amendments were included in the Code of Public Procurement in order to provide better guarantees of transparency, non-discrimination and fair competition, and also the Court of Auditors' regulations to strengthen auditing powers and notably its capacity to perform ex ante and ex

post control of public contracts.

The Government is also promoting the increase of transparency in the exercise of public office, the adoption of measures that contribute to the increase of levels of independence and impartiality, as well as initiatives that allow the valorisation of political activity and the exercise of public office.

Another objective is the reinforcement of the independence of regulators and supervisors vis-a-vis sectors regulated, by reducing management positions that may hamper regulatory action by the dispersion of competences that should be concentrated in single leaders. Also, requiring that the selection of such officers be preceded by a competition or other mechanisms will ensure the transparency of appointments.

At the same time, regarding credit institutions, it is foreseen the compulsory establishment of a 'risk committee' and an 'integrity and transparency committee', composed by members of independent bodies, in order to monitor their performance and prevent and healing of any conflicts of interest.

In the field of corruption prevention, it should be referred the creation, by Law no 54/2008, of 4 September, of the Council for Corruption Prevention (CCP), an independent administrative body that works within the Portuguese Court of Auditors. This body's overall aim is to develop an activity nationwide, under the law, exclusively geared towards the field of prevention of corruption (<http://www.cpc.tcontas.pt/>).

According to the Statute of the Public Prosecution Service, this body has a relevant role in the prevention and fight of crime, in particular regarding corruption. As established by the Statute, the Public Prosecution Service represents the State, defends the interests prescribed by law, takes part in the enforcement of criminal policy as defined by the organs of sovereignty, carries out the prosecution

according to the principle of legality, and defends the democratic legality, pursuant to the Constitution of the Portuguese Republic, to the Statute and to the law.

A department was created within the Public Prosecution Service - the Central Department for Criminal Investigation and Prosecution (DCIAP) -, which coordinates and directs the investigation and prevention of violent, highly organised or particularly complex crimes. It is incumbent upon the DCIAP to implement actions of prevention provided for by law, concerning the following crimes:

- a) Money laundering;
- b) Corruption, embezzlement and corrupt economic participation in a transaction;
- 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 organised crime, namely by using information technology.
- f) Economic or financial breaches on an international or transnational level.

Regarding the effective and coordinated anti-corruption policies, Law no 72/2015, of 20 July, should also be referred. This Law defines the objectives, priorities and guidelines of the criminal policy for the biennium 2015-2017, in accordance with Law no 17/2006, of 23 May, approving the Framework Law of Criminal Policy.

According to Article 2 (Crimes of priority prevention) of Law no 72/2015, and taken into

account the dignity of the legally protected interests and the need to protect potential victims, it is considered as criminal phenomena of priority prevention, for the purposes of this law, among others:

- i) crimes against the State, including crimes of corruption and trade in influence and money laundering.
- j) economic and financial crimes.

Article 3 identifies the crimes of priority investigation, which include, among others, the crimes of terrorism and terrorism financing, money laundering and corruption. Article 5 states that all Portuguese criminal police bodies shall cooperate in the prevention and investigation of the offences referred to in Articles 2 and 3, particularly through the sharing of information under the Law of the Organization of Criminal Investigation, approved by Law no 49/2008, of 27 August. Criminal police bodies perform their investigative activities under the coordination and direction of the Public Prosecution Service.

Society participation in law making processes is foreseen in Decree-Law no 274/2009, of 2 October, which regulates the Government's consultation procedure of public and private entities during the phase of creation and instruction of laws and acts that are to be approved by the Council of Ministers or by Government members.

In addition, in Portugal, society participation through public consultation is a fundamental instrument of the Parliamentary legislator, by stripping it of its purely formal nature and by reinforcing the participatory democracy and the quality of legislation. The general guarantees of citizens' participation in the parliamentary legislative procedure are foreseen in article 167 of the Constitution of the Portuguese Republic (CRP).

The consultation should comply with procedural rules, which are diverse and may involve:

- Hearings of citizens and entities with an interest in the subject matter of the norms;
- Direct written consultation;
- Formal procedures of public appreciation of legislative initiatives disseminated through its publication separately to the Official Journal of Parliament (Diário da Assembleia da República);
- New consultation procedures, i.e. online forums; public hearings, conferences, seminars or colloquiums, both in the Parliament or outside, regarding legislative initiatives already submitted and in discussion or prior to their presentation.

Finally, citizens are able to report crimes of corruption or fraud that have come to their knowledge through various platforms available online, by telephone, e-mail or in person, and it's their prerogative to do it anonymously or not, since the protection of whistle-blowers is guaranteed by Law no 19/2008, of 21 April. The Prosecutor's General Office has also made available the possibility of checking on a previous criminal report, through an access key given at the time of the reporting.

Society participation in law making processes <http://www.portugal.gov.pt/pt/consultas-publicas.aspx>

On several public entities' websites, it is possible for citizens to report crimes/submit complaints, ensuring protection for whistle-blowers:

- Prosecutors' General Office (PGR)

<https://simp.pgr.pt/dciap/denuncias/index2.php>

- Criminal Police (PJ)

<https://www.policiajudiciaria.pt/PortalWeb/page/%7B5BFC28DE-D200-4BCC-9422-F495EE8EE82A%7D>

- Inspectorate General of Finance (IGF)

<http://www.igf.gov.pt/deveres-de-comunicacao/denuncia-eletronica.aspx>

- Council for Corruption Prevention (CCP)

<http://www.cpc.tcontas.pt/denuncia.html>

Regarding the Parliamentary activity and society's participation, it could be stated that the promotion of hearings of entities representative of the sectors covered by the legislative initiatives or of entities or citizens who request it to the competent parliamentary committees are the first and most direct instrument of the public consultation in the parliamentary legislative procedure.

Such hearings take place according to the legal provisions that oblige the hearing of entities. The overall purpose is to bring Parliament closer to the citizens and structures which it represents. In fact, the repetition of hearings in committees and parliamentary groups is quite frequent, often determining important changes of the legislative texts in discussion in second reading.

The Parliamentary experience demonstrates that the publicity of the legislative process has in these mentioned forms of consultation one of its added value, and they are now made available on the Parliament's website, by means of a hyperlink set forth in the minutes of the relevant committee meeting, the audio and video of the hearings held in connection with the preparatory work for the legislative initiatives under consideration and the public hearings or colloquia held in connection with each legislative procedure, regardless of its direct or deferred transmission through the Parliament TV Channel.

In addition, the publication of the list of entities whose hearings were carried out in each committee and the written opinions, if any, given by the latter to the hearings is already carried for each initiative of the legislative process database, which is available on the Parliament's website.

Since the XII Legislature, the technological means available to Parliament also allow the hearings through videoconference, facilitating the gathering of input that could otherwise be out of the parliamentary legislative process.

In a different way, the direct written consultation of entities representative of the sectors subject to legislative initiatives, or the consideration of the written contributions of the entities or citizens who spontaneously send them, are also practices adopted by the parliamentary committees with competence for the assessment of each legislative initiative, particularly by the impracticability of the promotion of hearings in all legislative procedures and all the entities with an interest to participate.

The written consultation also complies with the provisions of the aforementioned legal provisions, which require the consultation of certain bodies and entities, contributing in a practical way to the evaluation, by parliamentary committees, of the opinions expressed by the addressees of the legislation and often determining the introduction of changes in texts subject to a vote in the specialty.

In accordance with the rule of Article 131 (h) of the Rules of Procedure of Parliament, the technical note drawn up by the service of Parliament and annexed to the opinion of the committee responsible identifies the compulsory and optional hearings, which, in the course of the parliamentary legislative procedure, must be carried out in connection with each initiative. Article 131 of the Regiment states, in the same way, that the technical note should include, whenever possible, a summary of the contributions issued. In any case, the publicity of the legislative process led to the publicity of the written opinions of the entities which issued them (in addition to the indication of all entities consulted and the dates of the consultation), within the framework of each initiative contained in the database of the legislative process, which is available on-line on the Parliament's website.

Founded on firm historical grounds, the publication of legislative initiatives annexed to the Official Journal of Parliament, accompanied by the public consultation form, performs an important task of dissemination of legislative projects and consultation process.

Please find below some information regarding specific public entities:

Portuguese Insurance and Pension Funds Supervisory Authority (ASF)

The Autoridade de Supervisão de Seguros e Fundos de Pensões (hereinafter “ASF” - the Portuguese Insurance and Pension Funds Supervisory Authority) is an independent regulatory entity governed by a special legal regime, endowed with administrative, financial and management autonomy and its own assets. In general, the ASF is responsible for supervising and regulating the insurance and reinsurance activity, the mediation activity and the management of pension funds.

Bearing in mind the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability, it shall be noted that those principles are entirely applicable to the ASF, since under its Statutes, approved by Decree-Law no 1/2015, of 6 January, the ASF is governed by that which is set forth in Law no 67/2013, of 28 August, which approves the framework law for the independent administrative entities responsible for regulating the economic activity of the private, public and cooperative sectors, by sectorial legislation and applicable European Union law, and additionally, within the scope of the exercise of its public powers, by general laws that apply those principles.

That is the case, among others, of:

- a) The Portuguese Code of Administrative Procedure and any standards and principles of general scope regarding State administrative acts;
- b) The laws of administrative litigation, when the acts practiced in the fulfilment of public authority functions and administrative contracts are in question.
- c) The regime of public procurement;
- d) The regime of the State's civil liability;
- e) The duties to inform, resulting from the State Organisation Information System;
- f) The regime of jurisdiction and financial control of the Court of Auditors;
- g) The inspection and auditing regime of State services.

Furthermore, the members of the governing bodies of the ASF and its workers are subject to civil, criminal, disciplinary, and financial liability for the acts and omissions they practice in the performance of their duties. In particular, the financial liability is enforced by the Court of Auditors.

Finally, it must be enhanced that following a recommendation from the Council for Corruption Prevention (CCP), the ASF's management bodies are required to publish a Prevention Plan for Corruption Risks and Related Offences and an Annual Implementation Report on the Prevention Plan for Corruption Risks and Related Offences. Under the mentioned recommendation, these plans shall include:

- Identification, concerning each area or department, of the corruption risks and related offences;
- Indication of the measures to prevent the verification of said corruption risks and related offences;
- Identification of the person(s) involved in the plan management, under the direction of the management body.

The ASF's website where the Prevention Plan for Corruption Risks and Related Offences and an Annual Implementation Report on the Prevention Plan for Corruption Risks and Related Offences is available is: <http://www.asf.com.pt/NR/exeres/02FBDB8F-6D9A-4B22-A715-41E148C73FFD.htm>

Portuguese Securities Market Commission (CMVM)

The Portuguese Securities Market Commission (CMVM) follows the 2009 Recommendation regarding the prevention of corruption risks issued by the Council for Corruption Prevention (CCP). Thereby, the CMVM annually produces and executes a Prevention Plan for Corruption Risks, where the corruption risk is assessed, on a department-by-department basis, and measures are taken in order to prevent corruption. Said Plan, as well as the respective implementation report, is sent to the CCP and to the Ministry of Finance. The execution of this plan is audited by the CMVM Internal Audit Office which, where appropriate, issues recommendations. These recommendations have been integrated in the following year Prevention Plan for Corruption Risks. It is worth noting that the CMVM Supervisory Committee also has the scrutiny of corruption risks and the way they are being mitigated under its scope of action.

One of the tasks pertaining to the CMVM Internal Audit Office is the treatment of all the complaints against the CMVM services. Those complaints are investigated and communicated to the Ministry of Finance, which also receives every feedback given by the CMVM to the complainers. Said feedback is mandatory within a short period of time determined by Law.

It is worth stressing that, like all other public entities, the CMVM is subject to a significant amount of scrutiny and control by the Court of Auditors, the Government and Parliament.

(b) Observations on the implementation of the article

Portugal has no stand-alone national anti-corruption strategy but relies on the existing legal and administrative framework consisting of comprehensive laws and regulations and dedicated institutions to ensure integrity, transparency and accountability in the public sector and to prevent corruption.

Furthermore, the Programme of the XXI Constitutional Government of Portugal sets out a number of measures to be implemented to increase transparency in the public administration, ensure greater participation of society in decision-making processes and prevent and combat corruption. For example, the Programme foresees the development and adoption of a Code for Public Transparency which would seek to strengthen the culture of ethics, integrity and accountability in public bodies and among public officials.

During the country visit, Portugal confirmed that a decision had been made to develop more specific national policy document to guide the country's anti-corruption efforts. The reviewers welcome the update and **encourage Portugal to develop a nationwide, effective and coordinated anti-corruption strategy.**

Paragraph 2 of article 5

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

As stated before, a policy for corruption prevention is implemented through the creation of the Council for Corruption Prevention (CCP), an independent administrative body that works with the Portuguese Court of Auditors and has the purpose to develop an activity nationwide, under the law, exclusively geared towards the field of prevention of corruption.

The CCP issues recommendations in the areas related to the prevention of corruption and corruption related issues, namely the obligation for all public entities to have anti-corruption plans that they must publish on their websites, according to principle of public transparency. <http://www.cpc.tcontas.pt/recomendacoes.html>

Since December 2009, about 1200 public entities adopted their own instruments to prevent corruption risks associated to their functions:

http://www.cpc.tcontas.pt/planos_prevencao.html.

This number includes the bigger public entities and most of them have their preventive instruments online.

Other initiatives of the CCP include:

- Educational visits to entities of different public sectors aiming to raise awareness for the need to have (and update) anti-corruption plans

<http://www.cpc.tcontas.pt/acoaes/acompanhamento.html>.

- Issuing recommendations related to specific matters, namely financing of political parties and electoral campaigns, prevention of corruption risks in public procurement and fighting money laundering

<http://www.cpc.tcontas.pt/recomendacoes.html>

- Seminars and conferences on the subject

<http://www.cpc.tcontas.pt/acoaes/conferencias.html>.

Additionally, the Council of Ministers' Resolution no 53/2016, of 21 September, approved the Governments' Code of Conduct, also applicable to cabinet members, senior managers and administrators of public institutes and state-owned enterprises <http://www.linguee.pt/ingles-portugues/traducao/state-owned+enterprises.html>.

On 8 April 2016, the Portuguese Parliament approved Resolution no 62/2016, establishing an ad-hoc Committee for the reinforcement of transparency in the exercise of public functions.

<http://www.parlamento.pt/sites/COM/XIIIILEG/CERTEFP/Apresentacao/Paginas/Competencias.aspx>

This ad-hoc Committee was set up with the purpose of devising legal and political measures aimed at strengthening the quality of democracy with a focus on the legislation applicable to public office holders (including political positions, public administration leaders, independent administrative entities and public managers), with particular regard to:

- a) Performance of their duties;
- b) Exercise of mandate;
- c) Wealth control;
- d) Incompatibilities and impediments;
- e) Declaration of interests and prevention of conflicts of interest;
- f) Sanctions.

The ad-hoc Committee will also evaluate the relevance of reviewing or issuing complementary legislation for the exercise of public functions and functions, namely:

- a) Legal framework of the activity and prevention of conflicts of interest of private organizations that wish to participate in the definition and execution of public policies and legislation, an activity commonly known as “lobbying”;
- b) Measures to prevent and combat corruption, in the framework, inter alia, of the recommendations of the Group of States against Corruption of the Council of Europe (GRECO);
- c) Identification of good practices in the area of public transparency, such as, among others, access to the votes of members of representative assemblies, internet publicity of the activity of public office holders or the publicity of job offers.

The Committee has in its mandate the obligation to hold hearings of experts from academia and civil society on the status of holders of public office, in particular in the fields of Constitutional Law, Administrative Law and Political Science, and to conduct a survey on comparative law in the European Union and in countries with similar political systems, with the final publication of a report on its activities. This Committee shall stand for a period of 180 days, renewable until the end of its work.

Up to May 2017, the Committee has held 19 ordinary plenary meetings, 14 Bureau and Coordinators meetings and held one extraordinary meeting on 14 September 2016, with a special Conference on Lobbying.

In its ordinary plenary meetings, the Committee held 13 Parliamentary Hearings of entities and personalities such as the Public Prosecution's High Council (CSMP), the Ombudsman, the Centre for Judicial Studies (CEJ), the Council for Corruption Prevention (CCP), and the Criminal Police's National Unit against Corruption.

Regarding the training and public awareness activities, the Centre for Judicial Studies includes in its National Training Programmes for initial and ongoing training for Magistrates (Judges and Public Prosecutors) seminars on the prevention and fight against corruption. The Criminal Police School also provides training in these same issues.

Workshops and seminars have been organized and it should be highlighted the round table about «The crime of corruption in international business transactions and its effects in the national companies», in 2010 in Lisbon, with the presence of the OECD Chair of the Working Group on Foreign Bribery as a speaker, and the conference «The fight against the bribery of foreign public officials in international business transactions, held in Coimbra on 15 February 2013, organized by the Institute of Criminal, Economic and European Law of the University of Coimbra.

The Prosecutor's General Office held on 3 December 2016, in Lisbon, an international conference on «Corruption: a combat of all for all», on the commemoration of the international day against corruption and in the framework of the ETHOS Project.

As practical examples, within the Ministry of Justice, a "Guide to Prevent Corruption" was published and widely circulated to all Public Administration entities, as well as universities.

A booklet on the "Corruption in international Business Transactions", in Portuguese language, which includes the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, the Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions, the Recommendation of the Council On Bribery and Officially Supported Export Credits, the Recommendation of the Development Assistance Committee on Anti-Corruption Proposals for Bilateral Aid Procurement, the OECD Guidelines for Multinational Enterprises - Section VI and the Portuguese Law no 20/2008, of 21 April, on the issue of foreign corruption was published and circulated to all Public Administration entities, as well as business and companies associations.

The Criminal Police, which is the law enforcement authority with exclusive competence for the investigation of corruption, also issued a guide «The Criminal Police recommends», specially devoted to the prevention of this phenomena.

It should also be pointed out the exhibition «Against corruption: integrity and transparency» organized in 2007 by the Criminal Police and the Tax and Customs Authority, aiming to prevent the phenomenon of corruption, which took place in all 18 Portuguese provinces (distritos). In this context, a brochure was also published and distributed to the public.

Other examples could be referred, such as the translation into the Portuguese language of the “OECD Bribery Awareness Handbook for Tax Examiners”, of 2009, which is the most relevant document on this matter for the tax inspectorate activities of prevention and combat of corruption and the recent National Action Plan for Responsible Business Conduct and Human Rights 2017-2020, published by the Directorate-General for Economic Activities/Ministry of Economy, where one of the strategic objectives of economic dimension is the reinforcement of the promotion of prevention and fight against corruption. The main target group of said National Action Plan is the companies, in order to show companies the signs and the harmful effects of the phenomenon of corruption.

More recently, in 2015, the new OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors (2013 edition) was also translated into Portuguese language (please refer to http://www.oecd.org/tax/crime/BRIBERY-AND-CORRUPTION-AWARENESS-HANDBOOK_Portuguese.pdf)

This new version of the handbook in Portuguese language was made available internally by the Tax and Customs Authority amongst other national authorities.

Tax and Customs Authority (AT)

In the Tax and Customs Authority (AT), the Internal Audit Department (DSAI) collaborates with the Council for Corruption Prevention (CCP) in the scope of Article 9 of Law no 54/2008.

The Management Centre of Corruption Risks (NUGRIC), which works under the supervision of the DSAI, aims to ensure an effective policy to prevent corruption in the AT. It is also responsible for the preparation of the annual report to be presented to the CCP. The audit office also implements the Prevention Plan for Corruption Risks and Related Offences (PGRCIC), according to the recommendations of the CCP.

(b) Observations on the implementation of the article

The Council for Corruption Prevention has initiated and continues to carry out numerous corruption prevention activities. One such activity is the requirement that public bodies conduct an analysis of corruption risks in their areas of competence and develop action plans and other necessary instruments to manage these risks. To date, over 1200 public bodies have complied with the requirement.

Other public bodies with relevant mandates also establish and promote anti-corruption practices, including through workshops, seminars, public awareness campaigns and publication of brochures and booklets.

It was concluded that Portugal has implemented this provision of the Convention.

Paragraph 3 of article 5

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

(a) Summary of information relevant to reviewing the implementation of the article

The Portuguese authorities periodically evaluate relevant legal instruments and administrative measures in order to determine their adequacy to prevent and fight corruption.

A reflection of this is the evaluation of the legislation defining the objectives, priorities and guidelines of the criminal policy, in accordance with Law no 17/2006, of 23 May, approving the Framework Law of Criminal Policy.

A new diploma defining the objectives, priorities and guidelines for the criminal policy for 2017-2019 was recently published - Law no 96/2017, of 20 August, replaces the former Law no 72/2015, of 20 July, on this issue for the biennium 2015-2017.

From the administrative point of view, all bodies and entities of Public Administration at central, regional and local level should review their Prevention Plans for Corruption Risks and Related Offences, which should be periodically reviewed and forwarded to the Council for Corruption Prevention (CCP).

Reference should be made to the Parliamentary ad-hoc Committee for the reinforcement of transparency in the exercise of public functions. The Committee will also evaluate the relevance of reviewing or issuing complementary legislation to the exercise of public office and functions, namely:

- a) Legal framework of the activity and prevention of conflicts of interest of private organizations that wish to participate in the definition and execution of public policies and legislation - an activity commonly known as “lobbying”;
- b) Measures to prevent and combat corruption, in the framework, inter alia, of the recommendations of the Group of States Against Corruption of the Council of Europe (GRECO);
- c) Identification of good practices in the area of public transparency, such as, among others, access to the votes of members of representative assemblies, internet publicity of the activity of public office holders or the publicity of job offers;

The Committee has in its mandate the obligation to hold hearings of experts from academia and civil society on the status of public office holders, in particular in the fields of Constitutional Law, Administrative Law and Political Science, and conduct a survey on comparative law in the European Union and in countries with similar political systems, with the final publication of a report on its activities. This committee shall stand for a period of 180 days, renewable until the end of its work.

The CCP adopted a methodology that includes a monthly visit in a public entity to evaluate the difficulties during the process of identification of concrete corruption risks and correspondent preventive and control measures, and the adoption of those measures. CCP calls them pedagogical visits. Until July 2017, the CCP realized 60 pedagogical visits in all

kinds of public institutions. The list of these public institutions can be seen in <http://www.cpc.tcontas.pt/acoef/acompanhamento.html>.

The Council for Corruption Prevention (CCP) also provides training on ethics, good administrative practices and management of corruption risks in public services.

The Parliamentary ad-hoc Committee has also discussed the following draft laws, which are currently under consideration in Parliament and going through the legislative process:

- Draft Law 157/XIII - on the Transparency of Political Office Holders and High Public Officials
<http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=402022>
- Draft Law 220/XIII - on the 6th Amendment to Law no 4/83, of 2 April (Public Control of the Wealth of Political Office Holders)
<http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=40337>
- Draft Law 225/XIII - Regulates the activity of professional representation of private interests ("Lobbying")
<http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=40347>
- Draft Law 226/XIII - Reinforces the transparency of the performance of Political Positions and High Public Positions
<http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=40348>

Specifically, regarding conflicts of interest of Members of Parliament, the following draft laws are currently under analysis and debate at this ad hoc parliamentary Committee, also regarding conflicts of interest and incompatibilities:

- Draft Law 142/XIII - Amends the Legal Framework of Incompatibilities and Impediments of Political Officers and Senior Public Officials (8th amendment to Law no 64/93, of 26 August)
<http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=40136>
- Draft Law 150/XIII - Reinforces the rules of transparency in the exercise of political positions and high public offices and control of unjustified capital increases
<http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=40171>
- Draft Law 152/XIII - Amends the Statute of Members of Parliament and the Rules on Incompatibilities and Impediments of Political Officers and Senior Public Officials.

<http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=40178>

- Draft Law 160/XIII - on combating unjustified enrichment
<http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=40213>
- Draft Law 219/XIII - 9th Amendment to the Rules of Incompatibilities and Impediments of Political Officers and Senior Public Officials, approved by Law no 64/93, of August 26
<http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=40336>
- Draft Law 221/XIII - on Unjustified Enrichment, 35th amendment to the Criminal Code
<http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=40338>

Some examples regarding specific public entities:

Portuguese Insurance and Pension Funds Supervisory Authority (ASF)

As mentioned above, regarding article 5, paragraphs 1 and 2, the ASF's management bodies are required to publish an Annual Implementation Report on the Prevention Plan for Corruption Risks and Related Offences. The aim of this report is to aggregate and organize the information collected within the implementation of the Prevention Plan, which shall encompass:

- The mitigation measures adopted;
- The identification of the new risks identified;
- The eliminated risks or those whose impact has been reduced due to the application of mitigation measures;
- The mitigation measures envisaged.

This report results from the ASF's functional divisions about the guidelines set out in the Plan for the Prevention of Risks of Corruption and Related Offences, namely the type of risks previously identified, the prevention procedures or the measures adopted or amended as a consequence. In sum, it is aimed to assess if the prevention or mitigation mechanisms applicable in the different divisions are adequate, considering the risks involved.

Please find below the website in which the Prevention Plan for Corruption Risks and Related Offences and also its Annual Implementation Report can be consulted:
<http://www.asf.com.pt/NR/exeres/02FBDB8F-6D9A-4B22-A715-41E148C73FFD.htm>

Tax and Customs Authority (AT)

To prevent corruption, the AT implemented a Prevention Plan for Corruption Risks and Related Offences (PGRCIC).

The PGRCIC contemplated a dynamic that, in addition to the identification of corruption risks and preventive measures to eliminate or reduce those risks, predicted its future revision, which was done during the year of 2016.

The internal audit department (DSAI) monitors the implementation of the plan. It should be noted that, in the beginning of 2016, about 90% of the prevention measures foreseen in the plan were implemented in the AT.

In each internal audit carried out, the adequacy of the expected risks and their degree of severity is assessed.

(b) Observations on the implementation of the article

The Portuguese authorities periodically review relevant legal and administrative measures to determine their adequacy to prevent and fight corruption. Such reviews are required either by law or prompted by the results of assessments of Portugal's anti-corruption framework under relevant international peer review mechanisms.

With regard to the periodic reviews of legal measures, it is important to highlight the activities of the ad-hoc Parliamentary committee on the reinforcement of transparency in the exercise of public functions as well as the periodic updates of the legislation defining the objectives, priorities and guidelines of the criminal policy.

With regard to the periodic reviews of administrative measures, the Council for Corruption Prevention requires all bodies and entities of the public administration at central, regional and local level to adopt and continuously review their Prevention Plans for Corruption Risks and Related Offences. Furthermore, the Council conducts monthly visits to public entities in order to evaluate any difficulties encountered in the process of identification of corruption risks and correspondent preventive measures.

It was concluded that Portugal has implemented this provision of the Convention.

Paragraph 4 of article 5

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

At internal level, the Public Prosecution Service and all the law enforcement authorities collaborate with each other, in the framework of prevention and fighting corruption as established by Article 14 of Law no 96/2017, of 20 August, in the prevention and investigation of corruption crimes, in particular through information sharing. Under the Law of the Organization of Criminal Investigation, approved by Law no 49/2008, of 27 August,

criminal police bodies perform their investigative activities under the coordination and direction of the Public Prosecution Service.

All public bodies and entities collaborate with each other and with the police and prosecution authorities, under the general principle of crime prevention. The public bodies and entities, as well as public officials, should comply with the general principle of crime prevention. For this reason, they have the duty to report to the competent authorities (police, Public Prosecutors) any crime that comes to their knowledge in the performance of their activities.

Portugal is a member of the Group of States against Corruption of the Council of Europe (GRECO), of the Working Group on Foreign Bribery (OECD), of the United Nations (party in the UNCAC) and of the FATF (Financial Action Task Force (where corruption is a predicate offence of money laundering and is discussed in the framework of the beneficial ownership and politically exposed persons)), and collaborates with other States in these fora.

It should also be pointed out the work Portugal developed in the framework of the Conference of Ministers of Justice of the Ibero-American Countries (19 Ibero-American Countries, Portugal and Spain), where recommendations for the prevention and fight of corruption have been approved; and in the framework of the Conference of Ministers of the Portuguese Speaking Countries where the Plan of Action of Lisbon Against Corruption has been approved during the XIII Conference of Ministers of Justice, in March 2013.

Inspectorate General of Finance (IGF)

The IGF actively participates in the following international organizations:

- Anti-Fraud Coordination Service - AFCOS.
- Committee for the Coordination of Fraud Prevention - COCOLAF. The IGF also contributed for the EU anti-corruption report.

Tax and Customs Authority (AT)

In the framework of bilateral cooperation, the AT has assisted several countries (Belarus, Albania, Macedonia and Greece) by sharing information on the preparation of Corruption Prevention Plans.

Portuguese Securities Market Commission (CMVM)

Since Portugal is one of the jurisdictions that integrate IOSCO, the International Organization of Securities Commissions, all the securities market regulatory and legal environment as well as the CMVM scope of action and activity should comply with IOSCO principles. The IMF did an assessment of said compliance in 2006 and the CMVM decided to undertake a self-assessment review in 2015.

(b) Observations on the implementation of the article

Portugal and its authorities participate in various international and regional anti-corruption organizations and initiatives such as the Council of Europe's Group of States against Corruption (GRECO), the Working Group on Foreign Bribery of the Organization for Economic Cooperation and Development (OECD), and the Financial Action Task Force (FATF).

In addition, Portugal and its authorities actively participate in relevant initiatives of the European Union, the Conference of Ministers of Justice of the Ibero-American Countries and the Conference of Ministers of the Portuguese Speaking Countries.

It was concluded that Portugal has implemented this provision of the Convention.

Article 6. Preventive anti-corruption body or bodies

Paragraph 1 of article 6

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

In Portugal, the bodies and entities in charge with corruption prevention are essentially the Council for Corruption Prevention (CCP) and the Public Prosecution Service.

Both the CCP and the Public Prosecution Service have competence in the field of coordination, particularly the Public Prosecution Service, regarding the law enforcement authorities.

However, in terms of overseeing, it should also be referred the inspection or oversight services in all Ministries - General Inspectorates - that, among the different competences in their field of action, also verify the compliance with the legislation in force and the execution of the Plans for the Prevention of Risks of Corruption, as well as the occurrence of any conducts that constitute an offence of corruption. General Inspectorates are able to conduct inquiries and inspections of administrative nature and report them to the Prosecution Service, whenever a suspicion of the commission of a crime.

Regarding the increase and dissemination of knowledge about the prevention of corruption, it is important to mention the different Ministries and the bodies and entities under their remit, as well as the Centre for Judicial Studies and the Criminal Police School. These

entities intervene in the awareness, training and publication of booklets, and they make available useful information in the respective websites, as mentioned above in the answers provided in Article 5, paragraphs 1 and 2.

Additionally, the CCP takes on educational projects, aiming to educate children and adolescents on the importance of corruption prevention. Raising awareness at an early age is one important step to efficiently prevent corruption. This issue will be addressed in more detail in article 13, paragraph 2 (Participation of society).

Concerning the implementation of policies on the prevention of corruption, it should be mentioned the Recommendations published by the Council for Corruption Prevention (CCP) (<http://www.cpc.tcontas.pt/recomendacoes.html>).

The Public Prosecution Service approved the «Public Prosecution against Corruption: plan of action», which is based on four main axes - Organization, Prevention, Repression and Training - and provides concrete measures and enforcement actions involving Public Prosecution in different areas of jurisdiction and external entities with competencies in this area.

(http://www.ministeriopublico.pt/sites/default/files/documentos/pdf/programa_de_acao.pdf)

Please find below some examples regarding specific public entities: Inspectorate General of Finance (IGF).

The IGF has an active role in promoting ethics and preventing fraud and corruption in the public sector. In effect, since 2015, the IGF has included a specific strategic axe in its annual activity plan “Promoting ethics in public management and preventing fraud and corruption” (for example, see http://www.igf.gov.pt/anexos-instrumentos-gestao/plano_atividades_2017errata-pdf.aspx).

The IGF, as the audit authority in Portugal, has made recommendations in its audit reports, which aim to increase effectiveness of anti-corruption plans, namely by reinforcing monitoring and updating mechanisms. For more information, please consult:

<http://www.igf.gov.pt/anexos-instrumentos-gestao/relatorio-de-atividades-para-20151.aspx>.

(b) Observations on the implementation of the article

There are several preventive bodies in Portugal. The Council for Corruption Prevention (CCP) and the Public Prosecution Service (PPS) are key bodies in terms of coordination of corruption prevention activities.

As provided in Law no 54/2008, the CCP is an independent administrative institution empowered to conduct research on the occurrence of corruption, monitor the implementation of relevant legal and administrative measures and evaluate their effectiveness. It issues recommendations to public entities, including State-owned companies, on matters such as development, implementation and periodical review of their prevention plans, provides legal opinions, drafts codes of ethics and provides training on ethics and transparency if requested.

Furthermore, the General Inspectorates in public bodies oversee compliance with applicable legislation and the execution of the Plans for the Prevention of Risks of Corruption. It also monitors the occurrence of any conduct that constitute a criminal offence. General Inspectorates may conduct inquiries and inspections of administrative nature and report results to PPS, whenever a suspicion of the commission of a crime.

The CCP, Centre for Judicial Studies, Criminal Police School and various Ministries carry out activities regarding the dissemination of knowledge about the prevention of corruption, including publication of promotional materials (brochures, booklets), educations (for different target groups), seminars and conferences.

As noted under article 5 above, Portugal is yet to develop a nationwide anti-corruption strategy. The reviewers believe that in the absence of a single policy document that would assign clear implementing responsibilities among public bodies and public functions and establish appropriate timelines and benchmarks, the overall effectiveness of the coordinating and oversight roles of CCP and General Inspectorates respectively would naturally be reduced. To address this challenge, **it was recommended that Portugal establish a body or bodies or entrust an existing body or bodies with the necessary mandate to oversee or coordinate the implementation of the nationwide anti-corruption strategy.**

Paragraph 2 of article 6

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

(a) Summary of information relevant to reviewing the implementation of the article

The Council for Corruption Prevention (CCP) is, as described before, an independent administrative body that works with the Portuguese Court of Audits and has a purpose to develop an activity nationwide, under the law, exclusively geared towards the field of prevention of corruption. The CCP issues recommendations in the areas related to the prevention of corruption and corruption related issues, namely the obligation for all public entities to have anti-corruption plans.

The CCP is chaired over by the President of the Portuguese Court of Audits and it is composed by the following members:

- General Director of the Portuguese Court of Audits, acting as Secretary General of the CCP;
- General Inspector of Finance;
- General Inspector of the Ministry of Economy;
- One Public Prosecutor, designated by the Public Prosecution's High Council for a four-year renewable term;

- One Lawyer, appointed by the Portuguese Bar Association for a four-year renewable term;
- One expert on the field, chosen by the Members for a four-year renewable term.

The Public Prosecution Service is fully autonomous regarding other bodies of the central, regional and local power, under the terms of Article 2 of the Statute of the Public Prosecution Service. The autonomy of the Public Prosecution Service is materialised in its being bound by criteria of legality and objectivity and in the exclusive submission of the Public Prosecutors to the directives, orders and instructions set out in the Statute, meaning that they are not under any political interference or other undue influence.

The CCP was created by Law 54/2008 of 4 September, which states in Article 1 that the CCP is an independent administrative entity, operating - i.e. performing its duties - at the Court of Auditors, which carries out a national activity in the field of prevention of corruption and related offences.

The CCP is not an organizational unit of the Court of Audits but is only placed in the same building of the Court. On the other hand, it should be borne in mind that under Article 203 of the Constitution of the Portuguese Republic (The courts are independent and subject only to the law) courts are organs of sovereignty and enjoy full independence from the other branches of powers. The fact that it is composed of individuals from some public bodies does not affect their independence as all members of the CCP should develop the activities of the Council according to the law in force.

(b) Observations on the implementation of the article

As stated above, the Council for Corruption Prevention (CCP) and the Public Prosecution Service (PPS) have the necessary legal independence to carry out their functions effectively and free from undue influence.

The CCP is a collegial body composed of representatives of several different public bodies who shall act independently. As explained during the country visit, the secretariat of the Council is located at the Court of Auditors and receives administrative and technical support from the Court. The budget of the Council is also included in the budget of the Court of Auditors.

The Public Prosecution Service is fully autonomous judicial body and independent of any governmental directions or other undue influence. The authorities explained that the Service has necessary financial and staff resources to carry out its mandates.

While the reviewers are satisfied that the CCP and PPS are sufficiently independent and have necessary resources to carry out their respective mandates, it is important to reiterate the observations and recommendations made under articles 5(1) and 6(1) above. **It was therefore recommended that Portugal establish a body or bodies with necessary independence and sufficient resources or entrust an existing body or bodies and provide such a body or bodies with necessary independence and sufficient resources, with the mandate to oversee and coordinate the implementation of a future nationwide anti-corruption strategy.**

Paragraph 3 of article 6

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

The following is the responsible Portuguese authority that may assist other States Parties in developing and implementing specific measures for the prevention of corruption:

International Affairs Department, Directorate General for Justice Policy, Ministry of Justice.

Address:

Avenida D. João II, n.º 1.08.01 E, Torre H, Pisos 2/3

1990-097 Lisbon, Portugal

Contact details:

Telephone: (351) 21 792 40 00

Telephone: (351) 21 792 40 030

Email: gri@dgpj.mj.pt

Website: www.dgpj.mj.pt

(b) Observations on the implementation of the article

Portugal has implemented the provision under review.

Article 7. Public sector

Paragraph 1 of article 7

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

(a) Summary of information relevant to reviewing the implementation of the article

The Portuguese legal framework includes several legal provisions that aim to enhance transparency in matters related to recruiting, evaluating and promoting civil servants and other non-elected public officials, such as:

a) Law no 35/2014, of 20 June - approves the general law on the civil service employment.

<https://dre.pt/dre/detalhe/lei/35-2014-25676932>

b) Law no 66-B/2007, of 28 December - Integrated management system of performance evaluation in public administration.

<https://dre.pt/dre/detalhe/lei/66-b-2007-227271>

c) Governmental Order no 213/2009, of 24 February - regulates the recruitment of civil servants through the Advanced Studies in Public Management Course.

Information on the Portuguese Public Administration - General Regime

a) Recruitment

Recruitment for the Portuguese Public Administration posts abides by the constitutional principle that every public employment relationship is established by way of an open public tender, based on criteria of merit, equity and aptitude.

Such procedures may be:

1. Standard (common) recruitment, whenever aiming at immediate recruitment to fill planned and vacant services workforce lists posts, or

2. Reserve lists recruitment, whenever aiming at creating reserve pools to meet future public employer or a set of public employers' staff needs.

In more detail:

1. The opening of a standard or common recruitment procedure is decided by the top manager of the public service, which takes into account the strategy, the established objectives, the organisational unit's responsibilities and available financial resources.

The top manager shall also confirm that there is not a reserve list/pool that might meet the staff needs in question. Such confirmation shall be made within the service itself or to the

central entity for the creation of recruitment reserve lists (CECRRL). Pursuant to the law in force, the Directorate-General for Qualification of Public Employees (INA) assumes the competencies of the mentioned CECRRL.

An open public tender is advertised by the entity responsible for carrying it out through:

- Publication in the National Official Journal of the recruitment procedure notice;
- Posting on the Public Employment Pool internet site (<http://www.bep.gov.pt/>);
- Posting on the entities' internet site;
- Publication of the recruitment procedure's notice summary in a national coverage newspaper.

The recruitment procedure's notice shall include reference to the number of work posts to be filled and respective characterization, in accordance with responsibility, competence or activity, career, category and, where appropriate, the corresponding academic or professional training area.

The top manager of the public service shall make the appointment and shall also set up a selection committee with competencies to conduct the recruitment procedure until the final ordering of approved applicants is disclosed.

Different selection methods are applied in order to select applicants with a suitable skills profile for the performance of the work post's functions. It is taken into consideration the employment relationship to be formed (for an indefinite duration or for a fixed or unfixed term employment contract), the applicants' characteristics and the recruitment procedure scope (without prejudice to particular selection methods provided for in specific legal text).

The compulsory selections methods applicable to procedures aiming at the formation of an indefinite duration employment contract are as follows:

In the recruitment of applicants who are not carrying out the responsibility, competence or activity of the work post in question: (i) knowledge tests, intended to appraise technical competences needed for the fulfilment of the function and (ii) psychological assessment, intended to appraise other competences required for the fulfilment of the function.

In the recruitment of applicants who are fulfilling or carrying out the responsibility, competence or activity of the work post in question: (i) Curricular appraisal, focusing particularly on the functions fulfilled in the category and in the fulfilment and carrying out of the responsibility, competence or activity in question and the performance level therein attained and (ii) competence appraisal interview required for the fulfilment of the function.

Applicants may exclude the methods referred to in the second bullet through a written declaration. In this case, the methods applicable are the ones mentioned in the first bullet.

The curricular assessment method may be the only selection method applied to the case of open competition procedures for the formation of a temporary public employment relationship. Other selection methods may be optionally or additionally adopted, namely:

- The professional internship;
- Selection occupational interview;
- Portfolio competence appraisal;
- Physical tests;
- Medical examination;

- Specific training courses.

The described recruitment procedure is the responsibility of the public entity holding the vacant position(s) to be filled and it may conduct all procedural steps or then contract the Directorate General for the Qualification of Public Employees (INA) to carry out all or some selection methods.

2. Reserve lists recruitment can be done in several ways. Whenever a standard recruitment procedure final applicants ordering, duly approved, includes a higher successful applicants number regarding the vacant posts to be filled, an internal recruitment reserve list shall be created. Such reserve list will be kept for 18 months after final approval. After this time period, the recruitment procedure shall be deemed terminated.

On the other hand, the top manager of the public service may also decide to hold and advertise a recruitment procedure exclusively aiming at the creation of a reserve list/pool of employees. Nevertheless, this option may only be chosen after the inexistence of a reserve list with suitable applicants for the work posts in question is confirmed by the central entity for reserve pools recruitment. The central entity for the creation of recruitment reserve lists may also organize and conduct recruitment procedures for the creation of reserve pools to fill work posts included in the workforce lists of more than one service.

These recruitment procedures may be decided by the Government member responsible for the Public Administration area, taken into consideration the expected staff needs. It may otherwise be the initiative of the CECRRL or by agreement with more than one service, after duly authorization of the Government member responsible for public administration, to conduct the mentioned recruitment procedures.

The holding of these recruitment procedures is advertised through:

- Publication in the National Official Journal of the recruitment procedure notice;
- Posting on the Public Employment Pool website (<http://www.bep.gov.pt/>);
- Posting on the CECRRL's internet site;
- Publication of the recruitment procedure's notice summary in a national coverage newspaper Applications for these recruitment procedures may take place at any moment, by registration on the CECRRL's internet page.

At the end of each two-month period, or when 50 or more applications have been received, the selection committee, set up for the procedure, appraises them and applies the previously defined selection methods. A single final ordering of approved applicants is set, being updated and disclosed every two months. Applicants' inclusion in such final ordering is valid for an 18-month period since its approval. The final ordering of applicants is made available on the CECRRL's internet page.

As mentioned above, top managers shall check with the CECRRL the existence of reserve pools before starting any open recruitment procedure. The CECRRL informs the service whenever the requirements for the vacant work post meet the ones of the recruitment pool applicants. In this case, the recruitment procedure terminates with a selection occupational interview held by a selection committee set up by the concerned public service. This method, by reasons of procedural promptness, may be applied to a set of three applicants, always complying with the respective ordering.

The recruitment procedure for the creation of a reserve pool terminates when the competent authority so determines, duly justifying and advertising this decision.

b) Recruitment and Appointment of Top Management Positions

The holders of top management positions are recruited by means of an open public tender from among university graduates, being a public official or not, who have skills, aptitude, professional experience and training suitable for the performance of the respective duties.

In the case of recruitment for 1st grade top management positions, the applicants must hold a university degree, for at least 10 years;

In the case of recruitment for 2nd grade top management positions, the applicants must hold a university degree, for at least 8 years.

The initiative of the procedure shall be incumbent upon the Government member with managerial or inspection and supervision powers over all service or body in which the position to be filled is integrated, being responsible for identifying the position competencies, outlining the management mandate and the main related responsibilities and functions, as well as the corresponding mission charter.

An open public tender is ensured by a specific and independent body, the Recruitment and Selection Commission for Public Administration (CRESAP), that operates and acts with the Government member responsible for Public Administration area.

In order to ensure independence, the CRESAP members and the expert pool shall not request nor receive instructions from the Government or from any other public or private entity. CRESAP is governed by the law and by the Commission's Statutes.

The Chairman's and permanent members' positions are filled after a hearing by Parliament, by resolution of the Council of Ministers, on a proposal from the member of the Government responsible for Public Administration area, on a limited executive tenure basis, for a five and four-year period, respectively. and the same person shall not fill the same position before an equal period of time has been elapsed

The CRESAP shall deliver to the Government member a competence profile proposal for the applicant selection that shall be confirmed or amended within twenty days, after which the proposal is deemed tacitly accepted.

The mission charter stating the goals to be obtain in the course of the performance of duties is advertised along with the open competition procedure notice.

The recruitment procedure is compulsorily announced through a notice to be disclosed in the National Official Journal, in the Public Employment Pool (BEP) and posted on the Government's electronic platform, as well as on two other electronic platforms, for 10 days, with indication of the legal requirements for filling the position, candidate's expected profile and selection methods to be used. Selection methods include, necessarily, a curricular appraisal and an appraisal interview to be conducted by the aforementioned Recruitment and Selection Commission.

Selection for top management positions shall be based on the following criteria:

- Leadership skills;
- Collaboration and motivation;
- Strategic orientation and results orientation;
- Citizen and public service orientation;

- Change and innovation management;
- Professional experience
- Academic and vocational qualifications

Holders of management positions immediately lower to the one for which the recruitment procedure is open are automatically included in the applicants' lists when performing their functions in the corresponding service or body at the time the procedure notice is disclosed in the National Official Journal, provided that they meet all the requirements demanded for it. Nevertheless, they may request the selection commission their exclusion from the list up to the moment of the interview.

Top management positions are filled by order of the competent Government member, on a limited executive tenure basis, for a five-year period, renewable for an equal period, within 45 days after the assignment proposal is received.

Assignments for top management positions shall not occur from the calling of elections for Parliament or the Government resignation and the new Government's investiture.

c) Recruitment and Appointment of Middle Management Positions

Holders of middle management positions are also recruited through open competition procedure, from among contracted or appointed employees performing public functions with technical skill and ability, who meet all of the following requirements:

- University Degree;
- Six or four years of professional experience in functions, positions, careers or categories to which appointment a university degree is legally required, depending on whether dealing with 1st or 2nd grade middle management;
- 3rd grade or lower middle management positions recruitment is made taking into consideration the field and the recruitment requirements expressly set in the services basic law or statutes.

The initiative of the procedure shall be incumbent upon the service's top manager in which the position to be filled is part of. Middle management positions recruitment procedures are preceded by the vacancy notice in the Public Employment Pool, for 10 days, with the identification of the position to be filled, the formal assignment requirements, the desired profile as is defined in the workforce list, the composition of the selection commission and the applicable selection methods.

The position vacancy notice in the Public Employment Pool is preceded by a notice to be advertised in a newspaper with national coverage and in the National Official Journal, with indication of the position to be filled and the day of the aforementioned notice.

Selection methods include compulsorily public interviews that are carried out at a later phase. The selection commission is composed of:

For 1st and 2nd grade middle management positions

- A 1st grade top management position holder of the service or body in whose workforce list the position to be filled is found or by another person assigned by him/her, who shall preside over;

- A holder of a management position of equal level or higher than the position to be filled performing functions in a different service or body, assigned by the respective top manager;
- A person of recognized competence in the respective functional area, assigned by an educational establishment of university level or by a representative public association of corresponding profession. For 3rd grade and lower middle management positions
- A 1st grade top management position holder of the service or body in whose workforce list the position to be filled is found or by another person assigned by him/her, who shall preside over;
- Two managers holding a position of equal level or higher than the position to be filled, one of whom performs his/her functions in the service or body in whose workforce list the position to be filled is found and the other performs his/her functions in a different service or body, both are assigned by the respective top managers.

An assignment proposal is made by the selection commission, at the end of the recruitment procedure, based on results obtained, that shall fall on the applicant showing a profile closer to the required one, stating the reasons for their choice.

However, the selection commission may also reach the conclusion that none of the applicants meets the requirements for assignment.

Holders of middle management positions are appointed by official decision from the top manager of the service or body, on a limited executive tenure basis, for a three-year period, renewable for equal periods.

d) Promotion

In the Portuguese Public Administration, the career development system no longer takes into consideration seniority. As a general rule, advancement in the corresponding career is made through the change of pay step, by means of performance appraisal (merit recognition), generally dependent upon budgetary availability.

The instrument of promotion no longer applies to the general regime career of professionals. Nevertheless, for general regime multi-category careers (administrative staff and technical support staff), access to the higher categories is made through open competition procedures. The opening of such procedures is dependent upon management decision.

Furthermore, for some special regime careers there are rules and procedures that, though with specificities, maintain the characteristics of the former promotion system. Therefore, in order to change to the following category of the corresponding career it is compulsory to go through a specific internal open competition procedure along with the fulfilment of time span requirements and performance assessment.

e) Retirement

In order to be entitled to a full pension, a civil servant must be 66 years and three months old (in 2017), according to the sustainability factor that shall depend upon the variation of the average life expectancy, and 40 years of length of service.

The maximum period of service to be taken into account for the retirement pension calculation is 40 years only the years of service in relation to which the respective contributions to the Civil Servants General Pension Scheme (CGA) have been paid are taken into consideration.

In order to apply for early retirement, a civil servant must be 55 years of age, and have, at least, 30 years of length of service countable for the retirement (deductions). However, there is a penalty, corresponding to 0,5% for each month of anticipation in relation to the normal age (66 years and three months), and as the legal age for retirement increases, the penalty is aggravated as more months for retirement are missing.

The amount of retirement pay in relation to the civil servants' pay corresponds to 80% of the last remuneration received up to 31.08.1993. After this date, the percentage shall correspond to the average of the civil servant's contribution period, according to social security general scheme rules.

Regarding the recruitment of Magistrates (Judges and Public Prosecutors):

In Portugal, the prerequisites for a judge are Portuguese citizenship, enjoyment of all political and civil rights, holding a law degree from a Portuguese university or validated in Portugal, completion of a training course and internships, as well as compliance with other requirements for appointment to civil service.

Admission to the compulsory initial training for both ordinary and administrative/tax court judges is via an open competition. In order to qualify, the above requirements as well supplementary ones are to be met, depending on whether admittance is based on academic qualifications or on professional experience (a specific quota being reserved for each of the two ways of admittance). The competition consists of:

- 1) for applicants seeking "admission based on academic qualifications", aptitude tests, i.e. written exams on law, oral exams and a psychological recruitment test; and
- 2) for those seeking "admission based on professional experience", an assessment of the curriculum, which includes a discussion of the applicant's professional experience, legal topics related thereto, and a psychological recruitment test.

Successful candidates are ranked according to their final mark and admitted to the first stage of the initial training course based on the existing number of vacancies. The Centre for Judicial Studies (CEJ) manages the initial (three-year) training.

District court judges are appointed by the Judiciary High Council (CSM) based on the grades obtained in the initial training course. District court presidents are selected by the CSM from among judges who perform effectively duties a) at an appellate court and have previously received a service evaluation of Very Good; or b) at a district court, have a 15-year service record and a recent evaluation of Very Good. Court presidents are appointed only on a three-year secondment by the CSM, which may be terminated at any time by a reasoned decision by the CSM.

The secondment may be renewed for the same term upon a favourable assessment, taking into account the exercise of management duties and the results obtained in the district. For appointment to a specialised court, candidates are required to: 1) have attended specialised training, 2) hold a relevant Master's or PhD degree, or 3) have worked in a specialised court

for at least three years.

Appellate judges are appointed by way of promotion from among district court judges who succeed in a competition based on an assessment of their curriculum, merit and the results of periodic evaluation. A selection panel is composed of the President of the Supreme Court of Justice, an CSM member who is, at least, an appellate judge, two CSM members who are not judges selected by the CSM, and a university law professor chosen by the CSM. The final decision is made by the CSM. Appellate court judges elect the appellate court presidents from among their peers by secret ballot for a non-renewable five-year term. Judges of the Supreme Court of Justice are selected from among judges, prosecutors and other meritorious jurists via a competitive assessment of their curriculum. Ranking is done separately for each category in accordance with the applicant's merit, for which account is taken of prior service evaluations, ranking in previous judicial competitions, university and post-university curriculum, written academic publications, forensic or public education activities and other competence enhancing factors. The applicants are to publicly present their curricula in front of a panel, composed of the President of the Supreme Court (chair), the most senior judge who is an CSM member, a member of the Public Prosecution's High Council elected by that body, an CSM member who is not a judge elected by the CSM, and a university law professor chosen by the CSM. A final decision is made by the CSM, and the General Prosecutor and the "battonier" of the Bar Association may cast an advisory vote. The President of the Supreme Court is elected from among judges of that Court by secret ballot for a non-renewable five-year term.

The selection of administrative and tax court judges is broadly identical; the appointments are made by the CSTAF (Administrative and Tax Courts High Council).

Judges are appointed for life. Besides the aforementioned requirements, placement preferences in the initial and promotion proceedings are determined, as a rule, by judges' evaluation and seniority, in that order. A seniority list that ranks judges according to their service time, date of birth, post of duty, date of placement and jurisdiction of origin, is established by the judicial councils and published annually. The ranking is subject to appeal.

Overall, the recruitment and promotion of judges is founded on objective and transparent criteria, with specific prerequisites for each career stage, such as completion of initial training, merit, seniority and other factors.

APPEAL MECHANISMS:

The Portuguese legal system has appeal mechanisms to react against employment and recruitment decisions (administrative and judicial).

Article 3 of Order no 83A/2009, of 22 January, establishes the administrative challenge in cases of applicants' exclusion of the open competition procedure. However, applicants may lodge a hierarchical or supervisory appeal. Whenever the appeal's decision is favourable to the appellant, this one maintains the right to complete the procedure. A hierarchical or supervisory appeal may be lodged in relation to the approval of the final ordering list.

When the jurisdictional challenge shall occur as to the procedure act that has prevented the immediate formation of the public employment legal relationship in a public service responsible for carrying out the procedure, the applicant who objects is entitled to fill identical work post, not filled or to be created in the work force list.

INTERNAL TRANSFER/MOBILITY:

Mobility is deemed as the legal mechanism that allows for the public employee to temporarily perform the same or different functions within the same service, or between different bodies or services, without the need for a recruitment procedure. It is grounded on public interest, with a view to increasing the services efficiency and effectiveness by way of a rational use and valorization of Public Administration human resources. It applies to all public employees with a permanent public employment relationship performing their functional duties in a service covered by the General Labour Law in public functions scope.

Presuppositions - When there is public interest, namely for reason of the bodies and services' economy, efficacy and efficiency; Needs are duly justified; Appropriate qualifications are required for cross-category and cross-career mobility and the change in the original pay step may not be substantial. It may occur within the same service or between two bodies or different services; The same public employment relationship form for undetermined period of time or among both modes. It is applied without distinction to active public employees, performing functions on a full time or partial time basis; public employees under a requalification situation.

Mobility modalities – Mobility within the same category; within the same activity; to different activity if holding the adequate academic qualifications; to a higher category or to a lower category. In the case of cross-careers mobility: to a career with equal complexity degree; to a career with higher complexity degree and to a career with lower complexity degree.

Term - internal mobility has as maximum term of 18 months, except when dealing with a service, in particular temporary, that may not form public employment relationships for an undetermined period of time. There is the possibility to extend the maximum term for another maximum period of six months when an open competition procedure is running that targets the recruitment of a public employee for the work post filled under the mobility regime.

Temporary transfer due to public interest is applied when a public employee of a public employer entity covered by the scope of application of the General Labour Law in Public Functions (LTFP - Law no. 35/2014, of the 20th of June of 2014 - amended version <https://dre.pt/web/guest/legislacao-consolidada/-/lc/57466875/view?q=35%2F2014>) is to perform subordinated activity in an employer entity excluded from the LTFP scope of application, and conversely, when a public employee of one of those entities fulfils subordinated activity in a public employer.

The temporary transfer due to public interest requires: authorization of the member of the Government who has management or supervision powers over the public employer; authorization of the members of the Government in charge of finance and public administration areas in the case of dealing with a public employee with employment relationship to an employer outside the scope of application of the General Labour Law in Public Functions (LTFP); authorization of the public employee; besides the temporary transfer agreement, when the recipient's entity is a public employer the transfer shall presuppose the formation of a public employment relationship and the functions to be fulfilled shall correspond to a position or to a career/category. When the functions correspond to a management position, the transferee agreement shall be preceded by the observance of the recruitment legal requirements and procedures.

The temporary transfer due to public interest shall determine the suspension of the

respective employment relationship, save where otherwise provided by legal provision. The public employee temporarily transferred shall be subject to the juridical system applicable to the recipient's employer and to provisions set out in Article 242 of the General Labour Law in Public Functions (LTFP), save when there has not been suspension of the employment relationship, case in which the situation shall be regulated by the juridical system of origin, including in relation to compensation

In the case of suspension of the employment relationship, the termination of the agreement of temporary transfer due to public interest produces the effects of the suspension for prolonged impediment provided for in the LTFP or in the Labour Code, as the case may be.

The agreement of temporary transfer due to public interest may terminate at any time, at the initiative of any of the parties including the public employee, with 30 days prior notice. The temporary transfer has not a maximum duration time limit in case of mobility of public employees to employer entities outside the scope of application of the General Labour Law in Public Functions (LTFP). The temporary transfer has a maximum term of one year in case of mobility of public employees to public employer's entities, except if: it deals with temporary services that may not form public employment relationships for an indefinite period of time; the functions to perform correspond to a management position.

As an example, the Tax and Customs Authority (AT) applies, whenever possible, the transfer and rotation of the workers. For example, managers can only serve 9 years in a Tax Local Service (Serviço de Finanças) and the Directors and Heads of Division are appointed for periods of 3 years.

Some examples regarding specific public entities:

Directorate General for Qualification of Public Employees (INA) and CCP

In 2015 and 2016, the INA undertook several training sessions for the Public Administration in the areas of good governance, ethics and the prevention of corruption risks, comprising 146 participants and a total of 1218 training hours.

The CCP provides training programs in public services in the field of ethics in public administration and prevention of risks of corruption. It is possible to have information about entities that asked the CCP for training programs in <http://www.cpc.tcontas.pt/acoef/formacao.html>.

Tax and Customs Authority (AT)

Recruitment and initial training include specific programs to develop competences in the prevention of corruption matters. There is a code of conduct applicable to the AT workers. The AT develops training programs and awareness raising on this subject and the audit workers have special training in detecting evidence of corruption in this area.

The AT workers are evaluated specifically by their commitment to ethical values and exclusive subordination to the public interest.

Portuguese Insurance and Pension Funds Supervisory Authority (ASF)

Pursuant to Article 12(2) of the ASF Statutes, approved by Decree-Law no 1/2015, of 6 January, the members of the ASF management board are chosen from among individuals with recognized qualifications, technical skill, aptitude, professional experience, and training suited to the exercise of the related duties, nominated by the member of Government in charge of finances. Furthermore, the members of the ASF management board are appointed under the terms provided for in Article 17(3) to (8) of the framework law of regulatory authorities, approved by Law no 67/2013, of 28 August.

Article 17(2) of the framework law of regulatory authorities also states that the members of the management board are chosen from among individuals with recognized qualifications, technical competence, professional competence, professional experience and training appropriate to the performance of their duties. It also establishes that the responsibility for their nomination falls with the member of Government responsible for the main area of economic activity where the regulatory body acts, which is, in the case of the ASF, as previously stated, the member of Government in charge of finances. The management board members are appointed by Resolution of the Council of Ministers, taken into account the reasoned opinion of the competent committee of the Parliament [Article 17(3)]. Also, this opinion shall be preceded by a hearing before the competent parliamentary committee at the request of the Government, which shall be accompanied by an opinion from the Recruitment and Selection Committee for the Public Administration (CRESAP) (<http://www.cresap.pt/>) on the adequacy of the individual's profile to the duties to be performed, including compliance with the rules of incompatibility and impediment [Article 17(4)]. The Resolution of the Council of Ministers with the designation, duly substantiated, is published in the National Official Journal, together with a note on the academic and professional curricula of the designees and the conclusions of the opinion of Parliament [Article 17(5)].

According to Article 17(8), the designation of the president of the management board must ensure gender alternation and the provision of the other management board members must ensure a minimum representation of 33% of each gender.

Article 15 of the ASF Statutes establishes the rules concerning the incompatibilities and impediments of the members of the ASF management board. Pursuant to this, the members of the ASF management board perform their duties in a regime of exclusivity, and specifically, they may not:

- ☐ be heads of sovereign bodies of the autonomous regions or local government, nor perform any other public or professional duties, except for teaching or research positions, as long as they are pro bono;
- ☐ maintain, directly or indirectly, any tie or contractual relationship, remunerated or not, with companies, groups of companies or other entities under the supervisory activity of the ASF, or hold any shares or interests in said entities;
- ☐ maintain, directly or indirectly, any tie or contractual relationship, remunerated or not, with other entities with activities that may interfere with their own duties and competencies.

Furthermore, article 15(2) establishes that, after cessation of their mandate and for a two-year period, the members of the ASF management board may not establish any tie or contractual relationship with companies, groups of companies or any other entities under the supervisory activity of the ASF, for which they have the right to receive, during this

timeframe, a pay equivalent to ½ of the monthly salary. However, this payment is not due in the following situations [Article 15(3)]:

- ☐ if and when the member of the board exercises any other paid function or activity;
- ☐ when the member of the board has the right to retirement pension and opts for it; or
- ☐ in the event that the term of office of the board of directors' member occurs for a reason other than the expiry of the corresponding term of office.

In case of noncompliance with this regime, the non-compliant member of the ASF management board shall reimburse the amount equivalent to all net remunerations earned during the period in which duties were fulfilled, as well as all net compensation received, with the application of the coefficient of adjustment resulting from the corresponding annual average variation rates for the consumer price index determined by the National Institute for Statistics [Article 15(4)].

The rules concerning the remuneration of the members of the ASF management board is established in article 14(2) to (7) of the ASF Statutes. The remuneration is paid monthly and, for representation expenses, a monthly allowance is also paid, twelve times a year, which cannot exceed 40% of the corresponding monthly income. The monthly salary and monthly allowance for representation expenses for members will be set by the remunerations committee that will function in conjunction with the ASF.

The remuneration committee will be composed of three members, one appointed by the member of the Government responsible for the area of finance, one indicated by the member of the Government responsible for the main area of activity of the regulatory entity and a third member is appointed by the regulatory authority, who has preferably exercised functions in one of its obligatory bodies, or, in the absence of such indication, co-opted by the two other members.

In determining the remuneration, the salary fee must meet several criteria, which include [Article 26(3) of the framework law of regulatory authorities, approved by Law no 67/2013, of 28 August]:

- the size, complexity, requirements and responsibility inherent to the functions;
- the impact on the regulated market of the regime of fees, charges or contributions which the regulatory entity establishes or receives;
- the usual market practices in the regulatory entity's sector of activity;
- the economic situation, the need for adjustment and containment in which the country is located and the monthly salary of the Prime Minister as a reference value;
- the remuneration earned by the employees of the regulatory entity;
- the development of the economic activities on which the regulator acts;
- opinions on the activity and functioning of the regulatory entity;
- other criteria that shall be considered appropriate, taken into account the specificities of the regulatory entity's sector of activity.

Furthermore, situations of inherent duties or roles by members of the board at entities or other structures related to regulatory authorities do not confer the right to any additional remuneration nor other benefits or privileges [Article 14(6)].

In addition to the criteria for setting the remunerations provided by article 26(3) of the framework law of regulatory authorities, the remuneration committee takes into consideration the routine market practices in the financial sector, specifically for heads of other financial supervision authorities and the participation of the ASF in the National Council of Financial Supervisors.

The remuneration of the members of the ASF management board is disclosed in the ASF's internet site:

<http://www.asf.com.pt/NR/rdonlyres/E3B2ED31-ED24-441C-A70B-A5ABD21F81F1/0/RemuneraçõesCA.pdf>

In addition to this, and as a general principle, the Code of Conduct for employees and members of the management board of the ASF establishes that employees and members of the management board of the ASF are exclusively assigned to the public interest service that the ASF is responsible for pursuing. They shall observe, in the performance of their duties, the fundamental values and principles of administrative activity enshrined in the Constitution of the Portuguese Republic and in the law, in particular those of legality, justice and impartiality, competence, responsibility, proportionality, transparency and good faith, in order to guarantee integrity, independence, credibility and efficiency in the exercise of the responsibilities that have been entrusted to them.

(b) Observations on the implementation of the article

The main law governing Portuguese civil service is Law no 35/2014. There is a comprehensive legal framework addressing promotion, pay and retirement of public officials.

Persons may be recruited to public sector posts through open competitions that are based on merit, equity and aptitude. Vacant positions are advertised beforehand either online or in a newspaper of national coverage.

There are separate procedures for the recruitment to management positions as provided in Law no 2/2004. The Recruitment and Selection Commission for Public Administration (CRESAP) ensures the recruitment procedure is followed correctly and makes final recommendations on applicants to relevant Government members. Recruitment to special regime career positions is regulated by Law no 35/2004.

There is a mobility policy in the public administration that allows for transfers of civil servants to different positions when they are required by public interest. Such transfers are limited in duration (18 months which can be extended for further 6 months) and may require the agreement of civil servants. Specific public interests that are to be considered and duly justified for a transfer to take place are economy, efficacy and efficiency. It is also noted that there is no specific procedure to identify positions especially vulnerable to corruption either in the context of temporary transfers or generally.

Training courses in good governance, ethics and prevention of corruption for civil servants and other categories of public officials are provided by the Directorate-General for Qualification of Public Employees (INA) and CCP.

Based on the foregoing, it was recommended that Portugal consider developing procedures to determine positions vulnerable to corruption and establish appropriate

systems to periodically rotate staff on such positions.

Paragraph 2 of article 7

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

(a) Summary of information relevant to reviewing the implementation of the article

Appropriate legislative measures are in force, prescribing criteria for candidature to public office.

Among the different legal instruments that prescribe criteria concerning candidature and election for public office, it is important to highlight the following:

a) Law no 2/2004, of 15 January - approves the statute of the management personnel of central, regional and local administration bodies:

<https://dre.pt/dre/detalhe/lei/2-2004-603476>

b) Decree-Law no 71/2007, of 27 March - approves the statute of the public managers

<https://dre.pt/dre/legislacao-consolidada/decreto-lei/2007-67390970>

c) Law no 27/1996, of 1 August - Administrative Tutelage (article 13 - Ineligibility)

<https://dre.pt/dre/detalhe/lei/27-1996-407284>

<https://dre.pt/web/guest/legislacao-consolidada/->

As examples of implementation of the measures, the following can be highlighted:

- Commission for the Recruitment and Selection in Public Administration
<http://www.cresap.pt/>.
- Public Employment Pool (BEP) - <https://www.bep.gov.pt/>.
- Advanced Studies on Public Management Course (CEAGP) -
https://www.ina.pt/index.php/component/docman/cat_view/42-biblioteca-editora/48-legislacao-ina/53-curso-de-estudos-avancados-em-gestao-publica-ceagp?Itemid=

(b) Observations on the implementation of the article

In Portugal, criteria concerning candidature and election for public office are mainly prescribed in the Constitution. The eligibility requirement for presidential candidates (article 122) and eligibility and incompatibility requirements for candidates for the Assembly of the Republic (articles 150 and 154) are established.

Eligibility criteria for other categories of elected public officials are provided in Law 2/2004, which approves the Statute of the management personnel of central, regional and local administration bodies, Decree-Law no 71/2007, which approves the Statute of the public managers. Article 13 of Law no 27/1996 on Administrative Tutelage provides that persons convicted of crimes provided in Law no 34/87 are disqualified from being elected to local authorities.

It was concluded that Portugal has implemented the provision under review.

Paragraph 3 of article 7

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

(a) Summary of information relevant to reviewing the implementation of the article

There are several legal provisions regulating funding of candidatures and political parties, aiming to enhance transparency, namely:

- Law no 19/2003, of 20 June - Funding of political parties and electing campaigns
<https://dre.pt/dre/detalhe/lei/19-2003-692850>
- Law no 64/1993, of 26 August - Incompatibilities and impediments of public office holders
<https://dre.pt/dre/detalhe/lei/64-1993-632407>

Please see the III Cycle evaluation report and follow-up reports of Portugal in the framework of GRECO (Theme II: transparency of Party Funding with reference to the Recommendation of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns), which are available in: <http://www.coe.int/en/web/greco/evaluations/round-3>

Please see the III Cycle evaluation report and follow-up reports of Portugal in the framework of GRECO (Theme II: transparency of Party Funding with reference to the Recommendation of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns) which are available

in: <http://www.coe.int/en/web/greco/evaluations/round-3>

(b) Observations on the implementation of the article

Regulations on the transparency of electoral funding are provided under Law 19/2003.

Article 20 of Law 19/2003 defines the limits on election campaign expenses and article 23 requires that the annual accounts of political parties and accounts of electoral campaigns are examined by the Constitutional Court. Article 8 prohibits, with some exceptions, anonymous donations, gifts or loans of a monetary nature or in kind from national or foreign legal persons to political parties. The latter is noted as a good practice by the reviewers.

In addition, Portugal has been found to have addressed all recommendations of the third evaluation cycle under GRECO regarding transparency of funding of political parties. Moreover, serious efforts have been made by the Constitutional Court to reduce the timeframe for the final validation of political accounts. These positive developments are to be added to the actions already acknowledged at the stage of the Compliance and Interim Compliance Reports, which lead GRECO to assess all recommendations under this theme as satisfactorily implemented or dealt with in a satisfactory manner.

It was concluded that Portugal has implemented the provision under review.

(c) Successes and good practices

Anonymous donations, gifts or loans of a monetary nature or in kind from national or foreign legal persons to political parties are prohibited.

Paragraph 4 of article 7

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

(a) Summary of information relevant to reviewing the implementation of the article

In Portugal, the legal framework includes several specific provisions that promote transparency and prevent conflicts of interest and revolving doors, such as Law no 64/93, of 23 August (last amended by Organic Law no 1/2011, of 30 November), approving the legal regime of incompatibilities and impediments of the holders of positions of political nature and high public positions.

Besides Article 4 (Incompatibilities), Article 5 (Regime applicable after termination of service) states:

1 - Holders of organs of sovereignty and holders of political offices may not exercise, for a

three-year period from the date of termination of their respective functions, positions in private companies that develop activities in the sector directly supervised by them, provided that, in the period of his/her functions the companies have been privatized or have benefited from financial incentives or incentive and tax benefit systems of a contractual nature.

2 - The preceding paragraph is not applicable when the person returns to the company or activity carried out at the time of his/her investiture in the position.

All public and high office holders and equivalent positions must submit, within sixty days after starting functions, to the Constitutional Court a detailed declaration of their income and property positions (real estate, national and foreign bank accounts, shares, portfolio bonds and any other kind of participation in national and foreign companies, rights over assets) as well as information on positions held in private or public company's governing bodies.

An update of such declarations is compulsory when the office tenure expires or a new appointment occurs. This update may also take place during the performance of duties whenever property increases over the amount of 50 guaranteed minimum monthly wages.

Failure to comply with these obligations or submission of false statements shall entail the termination of the appointment or assignment. Law 4/83, of the 2nd April – amended version:

<https://dre.pt/web/guest/legislacao-consolidada/-/lc/75066596/view?q=4%2F83>

It is also important to state that several changes in legislation are ongoing, such as:

- Law no 4/83, of 2 April - Public control of the wealth of public office holders, i.e. President of the Republic, Prime Minister, Ministers, Members of the Parliament, Mayors, General Directors, members of the board of directors of State-owned companies, etc.) <https://dre.pt/dre/detalhe/lei/4-1983-312432>
- Articles 69 to 76 of the Code of Administrative Procedure - guarantees of impartiality and prevention of situations of conflict of interests:
https://dre.pt/web/guest/legislacao-consolidada/-/lc/106918375/201707041643/exportPdf/normal/1/cacheLevelPage?_LegislacaConsolidada_WAR_drefrontofficeportlet_rp=indice
https://dre.pt/web/guest/legislacao-consolidada/-/lc/106918375/201707041643/exportPdf/normal/1/cacheLevelPage?_Legislaca%20Consolidada_WAR_drefrontofficeportlet_rp=indice
- Article 8 of Decree-Law no 170/2009, of 3 August - establishes specific rules on incompatibilities and prevention of situations of conflict of interests applicable to public auditors <https://dre.pt/application/file/a/492872>,
- On 8 April 2016 an ad-hoc Commission for strengthening transparency in the performance of public functions has been created in the Parliament (AR Resolution 62/2016 <https://dre.pt/application/file/a/74164387>).
- Ongoing revision of the Code of Public Procurement - measures for the prevention and elimination of conflicts of interest - mandatory prior signature of a declaration of absence of conflicts of interest by the various stakeholders.

Some examples regarding specific public entities:

Portuguese Insurance and Pension Funds Supervisory Authority (ASF)

As explained above, Article 15 of the ASF Statutes establishes the rules concerning the incompatibilities and impediments of the members of the ASF management board. Furthermore, in all that is not specifically regulated in the framework law of regulatory authorities and the ASF Statutes, the members of the board of directors are subject to the regime of incompatibilities and impediments established for those in high public office, i.e., the Regime of incompatibilities and impediments of holders of political positions and senior public positions, approved by Law no 64/93, of 26 August, and subsequent amendments.

ASF employees are subject to a regime of incompatibilities and impediments [see Article 32 of the ASF Statutes], which include the principles set forth in Article 15(1) (b) and (c) of the ASF Statutes, the rules regarding the accumulation and incompatibilities established in the law for public service workers, and the impediment of exercising, directly or through an intermediary, any activity supervised by the ASF.

Similar to the regime established for the members of the ASF management board, in the situations of cessation of duties related to positions of management or the equivalent thereof, and for a period of two years, the corresponding office holders may not establish any tie or contractual relationship with the companies, groups of companies or other entities subject to the ASF's activity, and in the event of breach, they are obligated to reimburse all the net remuneration earned, up to a maximum of three years, with the application of the coefficient of adjustment resulting from the corresponding average annual rates of variation of the consumer price index calculated by the National Institute of Statistics (INE).

In addition to this, part b) of section IV of the Code of Conduct for employees and members of the management board of the ASF also has some rules regarding conflicts of interest. As said before, those subject to the Code of Conduct must avoid incur in any situation of conflict of interest that may reasonably lead a third party to presume that a risk exists for the objectivity and impartiality of their actions, even if this does not actually happen.

Regardless of the situations that according to the Administrative Procedure Code form grounds for cases of impediment, excuse or suspicion, conflicts of interest may specifically result from the following:

- A non-insignificant financial interest held directly or indirectly by the addressee or respective spouse or person in a condition equivalent to a spouse, relative or related by marriage in a direct line or up to a 3rd degree of a collateral line, in an entity that is subject to supervision or an entity that supplies or may supply goods or services to the ASF;
- Exercise of functions by a spouse or person in a condition equivalent to a spouse, relative or related by marriage in a direct line or up to a 3rd degree of a collateral line, as a member of the board of directors, management board, administrative direction or management of an entity that is subject to supervision or that supplies or may supply goods or services to the ASF;
- Commercial relations with an entity that is subject to supervision or an entity that supplies or may supply goods or services to the ASF, in particular when there is any

preferential treatment or a situation of conflict;

- Prior exercise of duties, regardless of the type of legal relationship, in an entity subject to supervision or an entity that supplies or may supply goods or services to the ASF, or negotiations in relation to job prospects or acceptance of a position in one of these entities;
- Any other personal situation from which in a specific case may result an advantage to the addressee or the respective spouse or person in a condition equivalent to a spouse, relative or related by marriage in a direct line or up to a 3rd degree of a collateral line, that stands in conflict with the addressee's professional duties.

In the event that someone subject to the Code is found in any of the situations described above, it is mandatory to report the situation to the respective superior officer within the ASF hierarchy, or to the management board, in the case of board members or senior managers that report directly to the management board. This information is provided on a confidential basis and may only be used in the event that this is required for the management of a potential or actual conflict of interest or for the purposes of possible disciplinary proceedings.

Whenever the situation is considered materially relevant by the respective superior officer in the ASF's hierarchy, or by the management board, as appropriate for the case in question, the person found in a situation of potential or actual conflict of interest shall be impeded from taking part in the process of drawing up the respective proceedings. He/she shall also be impeded from taking part in the decision or respective execution that affects the entity involved, without prejudice to general impediments resulting from the Administrative Procedure Code [Articles 69 to 76 of the Administrative Procedure Code, specifically Article 69, which establishes cases of impediment, under which the board members ASF staff are forbidden from intervening in administrative procedures in which they have a direct or indirect interest; and Article 73, that sets forth the situations of recusal and suspicion, where the management board members and ASF staff can excuse themselves from intervening in administrative procedures whenever they understand that there are circumstances that may give rise to suspicions as to their impartiality or integrity].

In addition, the ASF's service providers that may be affected by a conflict of interest are subject to the provisions of Article 15(1) (b) and (c) of the ASF Statutes, being the management board responsible for ascertaining and safeguarding against the existence of such conflict.

Budget General Directorate (DGO)

DGO has been pushing for the adoption of measures to promote transparency in the management of public finances, both in terms of control of financial and budgetary information (adoption of methodologies and information systems which allow a more appropriate understanding of the financial situation of the State, as well as the cooperation with internal and external control entities) or in terms of publicizing budget and financial aggregates (Budget Execution Summary, State General Account and preparation of the State Budget and of the program "Knowing the Budget Process").

In terms of methodologies, it should be noted that the DGO provides to public administration entities an information system (SOL/SIGO) for the communication of financial and budgetary information, which is subsequently analysed and validated for the

preparation of management tools of public finances (BIOrc), as well as the budgetary and financial control actions, as a relevant instrument for safeguarding transparency.

Tax and Customs Authority (AT)

Measures to promote transparency and prevention of conflicts of interest have been incorporated into the AT's corruption prevention plans.

The AT's corruption prevention plans define, clarify and give visibility to the AT policy towards corruption, namely through self-regulation and the assumption of recognized practices of good public governance.

(b) Observations on the implementation of the article

The legal framework of Portugal to promote transparency and prevent conflicts of interest includes several specific provisions, such as Law no 64/93, approving the legal regime of incompatibilities and impediments of the holders of positions of political nature and high public positions.

Law no 64/93 provides that specified office-holders shall not have any other professional functions, remunerated or not, as well as any membership in the governing bodies of any for-profit legal persons. Mayors and municipal councillors may exercise other professional activities provided that they communicate the nature and details of such activities to the Constitutional Court and the municipal assembly. Finally, Law no 64/93 creates a public register of interests at the Parliament which contains all public and private activities of Parliament and Government members that may lead to conflicts of interest (impediments and incompatibilities).

In addition, Law no 4/83 on Public control of the wealth of public office holders requires certain categories of public officials to disclose information on their assets and income to the Constitutional Court. Articles 69 to 76 of the Code of Administrative Procedure provide for a general framework to guarantee impartiality of public officials by prescribing specific procedures to disclose and manage conflicts of interest.

It is also noted that an ad-hoc Parliamentary Committee for the reinforcement of transparency in the exercise of public functions has been created in the Parliament with a view to identifying and strengthening transparency in the public sector through legislative action. There are several draft amendments to relevant laws, including the above-mentioned laws, that the Committee is currently considering.

Based on the foregoing, it was recommended that Portugal continue efforts to revise, adopt and implement the amendments to the legislation currently under consideration before the Parliamentary ad hoc committee and ensure that they are in line with the requirements of the Convention.

Article 8. Codes of conduct for public officials

Paragraph 1 of article 8

1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

(a) Summary of information relevant to reviewing the implementation of the article

As stated before, the Council of Ministers' Resolution no 53/2016, of 21 September, approved the Governments' Code of Conduct.

<https://dre.pt/application/file/a/75381061>

The XXI Government programme includes actions that aim to approve a Code for Public Transparency

<http://www.portugal.gov.pt/media/18268168/programa-do-xxi-governo.pdf> - Pages 44/45
<http://www.portugal.gov.pt/media/18268168/programa-do-xxi-governo.pdf%20-%20Pages%2044/45>.

The general duties of public officials are contained in the respective Disciplinary Statute (Law no 58/2008, of 9 September), which could be seen as insufficient regarding the promotion of, inter alia, integrity, honesty and responsibility. Article 3 of this Law refers, as general duties of public officials, the following:

- a) The duty to pursue the public interest;
- b) The duty of exemption;
- c) The duty of impartiality;
- d) The duty of information;
- e) The duty of care;
- f) The duty of obedience;
- g) The duty of loyalty;
- h) The duty of politeness;
- i) The duty of assiduity;
- j) The duty of punctuality.

Regarding corruption prevention, the duty of exemption consists in not taking advantages, directly or indirectly, pecuniary or other, for him/her or for third parties, from the functions performed, which refers, generally speaking, to the concepts of integrity, honesty and responsibility.

However, it should be referred the "Ethical Chart of Public Administration - Ten Ethical Principles of Public Administration", an old document still in force, which includes:

1. The Principle of Public Service - Public servants must dedicate themselves exclusively to service for the 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 because 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 based on good faith, having regard for the interests of the community and enhancing 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

A number of bodies and entities in the central and local administration approved Codes of Conduct and Codes of Ethics (please see the answer to the next question), for instance:

- Code of Ethics and Conduct of the Directorate-General for Justice Administration (DGAJ)
http://www.dgaj.mj.pt/sections/files/dgaj/gai/sections/files/dgaj/gai/codigo-de-etica-e-de/downloadFile/file/03-Cod_Etica_Conduta_DGAJ.pdf?nocache=1429891417.17
- Code of Ethics of the National Institute for Medical Emergency (INEM)
<http://www.inem.pt/2017/05/22/codigo-de-etica-dos-profissionais-do-inem/>
- Code of Conduct and Ethics of the Authority for Working Conditions (ACT)
[https://www.act.gov.pt/\(pt-PT\)/SobreACT/DocumentosOrientadores/codigodecondutaeetica/Documents/C%C3%B3digo%20de%20Conduta%20e%20C%C3%89tica%20da%20Autoridade%20para%20as%20Condi%C3%A7%C3%B5es%20do%20Trabalho.pdf](https://www.act.gov.pt/(pt-PT)/SobreACT/DocumentosOrientadores/codigodecondutaeetica/Documents/C%C3%B3digo%20de%20Conduta%20e%20C%C3%89tica%20da%20Autoridade%20para%20as%20Condi%C3%A7%C3%B5es%20do%20Trabalho.pdf)
- Code of Conduct of the Secretary General of the Ministry of Education
<http://www.sec-geral.mec.pt/pagina/codigo-de-conduta>
- Code of Ethics of the Directorate-General for Justice Policy (DGPJ)
<http://www.dgpj.mj.pt/sections/informacao-e-eventos/2015/codigo-de-etica-da/>

In addition, as said before, the CCP and the INA both promote advanced training on ethics,

integrity, transparency and prevention on corruption risks in public departments.

According to the CCP, until December 2016, 24 public entities asked for those courses.

IGF publishes its ethics code on its website. It is common for other entities to adopt the same practice.

(b) Observations on the implementation of the article

Portugal promotes integrity, honesty and responsibility in several ways. First, the Governments' Code of Conduct, which is applicable to all members of the XXI Constitutional Government, members of their Cabinets and to other specified categories of public officials. Second, all public servants remain bound by general duties of public officials listed in Article 3 of the Disciplinary Statute (Law no 58/2008) and in the Ethical Chart of Public Administration - Ten Ethical Principles of Public Administration and the Governments' Code of Conduct. Third, many public entities have adopted codes of conduct or codes of ethics. In addition, Portugal is also considering the adoption of a Code for Public Transparency specifically for, inter alia, political office holders and managers of state-owned companies.

However, the reviewers note that not all categories of public officials as understood in article 2 of the Convention are covered by existing codes of conduct. Furthermore, despite specific training courses on ethics conducted or promoted by CCP and INA, dedicated training and guidance on the above-mentioned codes are lacking. Therefore, **it was recommended that Portugal endeavour to adopt codes of conduct and other appropriate measures, including trainings, to provide ethical guidance to all categories of public officials.**

Paragraph 2 and 3 of article 8

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

(a) Summary of information relevant to reviewing the implementation of the article

Please see the previous answer to Article 8 paragraph 1. The relevant initiatives of international organizations have been taken into account in the preparation and elaboration of the legal principles for ethics and conduct in Public Administration.

Some other examples regarding specific public entities:

Inspectorate General of Finance (IGF)

The IGF has a Code of Ethics and in 2015 introduced a new model of declaration of non-existence of incompatibilities and conflicts of interests for each audit.

Portuguese Insurance and Pension Funds Supervisory Authority (ASF)

In order to establish guidelines in the field of professional ethics for all persons with a binding employment contract, either of a permanent or temporary nature, with the ASF, or persons who exercise duties as members of its management board, the ASF adopted the respective code of conduct (as mentioned regarding paragraph 1), which provides for requirements regarding internal relations and relations with the exterior and it compiles, in an annex, all the duties applicable to ASF employees.

Concerning internal relations, the Code of Conduct establishes that those subject to it must perform their duties with diligence, efficiency and responsibility, guaranteeing compliance with the instructions and respect for the appropriate hierarchical channels and transparency, courtesy and respect in relations with all intervening parties. Failure to communicate information that may affect the results and effectiveness of the actions of the ASF, or the supply of false, inexact or exaggerated information, or refusal to collaborate and demonstration of an obstructive attitude are contrary to the expected loyalty towards the ASF.

Those subject to the Code of Conduct shall respect, protect and not make use or permit the abusive use by third parties of the ASF's assets, and must adopt all suitable and justified measures in order to limit the authority's costs and expenses, in order to permit greater efficiency in the management of available resources.

Regarding contacts with other entities, those subject to the Code of Conduct must contribute towards strengthening the principle of independence of the ASF. Moreover, the employees of the ASF, in the exercise of a professional activity, shall not intervene, unless there is express authorization from the management board, in any case or in any capacity, in proceedings in which the interested parties are companies or entities subject to the ASF's supervision.

Finally, all contacts with other entities must respect the principles of efficiency, technical correction and courtesy. No one may take or appear to take personal advantage by stating his or her duties or position in the ASF.

Budget General Directorate (DGO)

The DGO's Code of Conduct incorporates the set of rules that establish the guidelines for professional ethics, as well as the values with which the organization is recognized, which must be adopted daily by DGO employees, as a reference to the public concerning the

standard of conduct required of the DGO in its relationship with third parties.

The prevention of potential conflicts of interest (Article 10), abstention from misuse of inside information (Article 7) and safeguarding professional secrecy (Article 6) should be particularly highlighted.

Tax and Customs Authority (AT)

Measures to promote transparency and prevention of conflicts of interest have been incorporated into the AT's corruption prevention plans that include codes and standards of conduct for the correct, honourable and proper performance of public functions.

Given the particular activity of the AT, besides the normative of conduct applicable to all Portuguese Public Administration, three documents were created relating to ethics: Code of Conduct, User Letter of Tax Administration Services and Standards of Good Practice, in order to contribute to the development and maintenance of a transparent and ethical culture.

The AT corruption prevention plan includes measures to promote integrity, honesty and responsibility, such as:

- To encourage a culture of integrity, not tolerant with corruption;
- To promote transparency of operations;
- To reduce opportunities for corruption;
- To decrease discretion;
- To encourage social control;
- To strengthen mechanisms to prevent corrupt behaviour;
- To facilitate report of corrupt actions;
- To reinforce confidence of taxpayers and citizens in the AT.
- To adopt practices that eliminate paperwork and contribute to simplification, security and assurance in procedures;
- To improve internal control systems and management information, in order to reduce the occurrence of errors and irregularities;
- To strengthen the role of the board of control, undertaking regular audits to ensure effectiveness of risk management measures of corruption;
- To provide public access and timely information as a way to encourage the monitoring role of society in the activities of the AT;
- To ensure the existence of mechanisms to facilitate communication and to ensure the safety of workers and citizens who, in good faith and justifiably, report acts of corruption;
- To define, clarify and give visibility to the AT policy towards corruption, namely through self-regulation and the assumption of recognized practices of good public governance.

Portuguese Securities Market Commission (CMVM)

The CMVM staff is required to observe a Code of Conduct and Ethics, available on the CMVM website:

<http://www.cmvm.pt/pt/CMVM/Apresentacao/Código%20de%20conduta%20e%20ética/Pages/Código-de-conduta-e-ética-dos-trabalhadores-da-CMVM.aspx>

The Code of Conduct and Ethics contains dispositions on:

- Independency (article 5);
- Confidentiality (article 7);
- Conflicts of interests (articles 9 and 10)

Besides being committed to comply with the Code of Conduct and Ethics (and the CMVM Code of Good Administrative Practices, also available in the CMVM website <http://www.cmvm.pt/pt/CMVM/Apresentacao/Código-de-Boas-Práticas-Administrativas/Pages/Codigo-boas-praticas-administrativas.aspx>), the CMVM staff is bounded by several legal mechanisms and rules in place, that aim to avoid conflicts of interest:

Principle of Legality

- Article 266 (1) of the Constitution of the Portuguese Republic and Articles 3 (1) and 4 of the Code of Administrative Procedure (CPA) determine that the CMVM can only act in pursuit of legality and the public interest.
- Article 266 (2) of the Constitution of the Portuguese Republic and Articles 6 to 9 of the CPA stipulate that the CMVM must act with respect for the principles of justice, impartiality and proportionality. Duties of Secrecy
- Article 354 of the Securities Code: duty of professional secrecy, this remains applicable even after cessation of office; violation is a criminal offence. Articles 195 and 383 of the Criminal Code (CP) imply a jailing sentence for this criminal offence (up to 3 years of imprisonment).
- Article 371 (1) (2) (a) of the Criminal Code: legal confidentiality regarding matters under criminal investigation and administrative infraction proceedings; violation is a criminal offence.

Duties of Impartiality and Neutrality

- As a guarantee of impartiality and for the prevention of situations of conflict of interests, Article 69 of the Code of Administrative Procedure establishes cases of inhibition, under which board members and CMVM staff are forbidden from intervening in administrative procedures in which they have a direct or indirect interest.
- The situations provided for in the article are explicit, but they are defined with enough latitude to offset their explicit character. The inhibited persons themselves must

communicate inhibitions. Any affected person who declared his/her inhibition may request the respective declaration (Article 70 of the CPA) to the CMVM services. Administrative acts carried out with the involvement of inhibited persons can be annulled (Article 76 of the CPA).

- Article 73 of the CPA: situations of excuse and suspicion - CMVM Board members and CMVM staff can excuse themselves from intervening in administrative procedures whenever they understand that there are circumstances that may give rise to suspicions as to their impartiality or integrity. Based on the same justification, if board members or CMVM staff do not excuse themselves, the persons affected may invoke suspicion.

Exercise of other functions

- Article 16 (2) (a) of the CMVM Statute states that during their mandate, CMVM board members may not exercise any other public function or professional activity, except for professorship (non-remunerated), if authorised by the Minister of Finance and provided this activity does not impair the exercise of their main functions.

- Furthermore, pursuant to article 11 (1) of Law no 64/93, of 26 August, (with the amendments introduced by several Laws (the latest ones are Law no 12/98 and the Organic Law no 1/2011 - Law on the inhibitions of high public administration jobs)), CMVM board members shall submit to the Prosecutor's General Office (PGR) a declaration of the inexistence of impediments and incompatibilities. - Article 36 (2) of the CMVM Statutes states that CMVM employees are prohibited from exercising another professional activity (with the exception of professorship - cf. Service Order 5/2001/RH on the activity of professorship - or temporary collaboration with a public entity, if authorised by the CMVM Board), nor render services which will result in conflicts of interests with their functions at the CMVM. Duties of Loyalty and Obedience

- Article 35 (1) of the CMVM Statute states that CMVM employees are subject to the legal regime of the individual labour contract. They are, therefore, subject to duties of:

Loyalty (Article 128 (1) (f) of the Labour Code);

Obedience (Article 128 (2) of the Labour Code).

Office for Economic Policy and International Affairs (GPEARI)

The GPEARI staff is required to observe a Code of Conduct, adopted in 2010, which is available on the GPEARI website: <http://www.gpeari.min-financas.pt/arquivo-interno-de-ficheiros/Q-Codigo-conduta-GPEARI-MFAP-15-de-Marco-de-2010.pdf>

GPEARI's Code of Conduct incorporates a set of rules that establish the guidelines for professional ethics, as well as the values that this body upholds.

The prevention of potential conflicts of interest, abstention from misuse of inside information, safeguarding professional secrecy, the respect for the principle of independence and its incompatibility with the request or acceptance of gifts or benefits should be particularly highlighted.

These documents are available online (in Portuguese):

- Code of Conduct

http://info.portaldasfinancas.gov.pt/nr/rdonlyres/11efd90f-1b8a-487b-a83f-5dcfa209918c/0/codigo_de_conduta_at.pdf

- User Letter of Tax Administration Services:

http://info.portaldasfinancas.gov.pt/pt/apoio_contribuinte/carta_do_utente.htm

Citizens and civil servants can complaint through the complaints book, available in all public services and online, as well as to the Ombudsman. Disciplinary sanctions are laid down in Law no. 35/2014, in chapter “Exercising of disciplinary power”.

Regarding specific examples:

(a) Concerning the the specific mechanism for implementation and monitoring, it is important to refer that after having answered the questionnaire, the Portuguese Insurance and Pension Funds Supervisory Authority (ASF) has approved a new internal regulation. Specific rules concerning independence and conflict of interests are now also governed by the ASF internal regulation. Furthermore, it is of the utmost importance to stress that the principles and duties establish in the Code of Conduct as well as in the internal regulation arise also from several legal principles and regulations (which are annexed in the ASF Code of Conduct, for example, or mentioned and applicable through the ASF internal regulation) for which there are general implementation and monitoring mechanisms and, also, labour, civil and criminal liability.

(b) Furthermore, Inspectorate General of Finance (IGF)’s ethical code (<http://www.igf.gov.pt/institucional1/etica-e-normas-de-conduta.aspx>) includes an Ethics Consultant (no. 9 of the referred Code). It is also established that non-abiding or infringement by any worker of the Code’s rules should be reported to the superiors and may incur in disciplinary responsibility or other kinds of responsibility (no. 10.2. of the Code).

(b) Observations on the implementation of the article

With reference to the recommendations under articles 7(4) and 8(1) above, the reviewers note that public authorities in Portugal have adopted and apply relevant codes and standards of ethical conduct among public officials. It was concluded that Portugal has implemented this provision of the Convention.

Paragraph 4 of article 8

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

(a) Summary of information relevant to reviewing the implementation of the article

The Code of Criminal Procedure (CPP) foresees in Article 242 (1) (b) the mandatory duty to report:

1 - The reporting is mandatory, even if the offenders are unknown:

- a) For law enforcement officers, for all crimes that come to their knowledge;
- b) For public officials, within the meaning of article 386 of the Criminal Code, regarding crimes of which they become aware of in the performance of their duties and because of them.

Provisions are in force for the protection of whistle-blowers, both in public and private sectors. Article 4 of Law no 19/2008, of 21 April (Approving measures to fight corruption) states:

Guarantees for whistle-blowers

1 - Public officials and workers of the State owner's companies sector, as well as workers of the private sector, who denounce the commission of offences of which they are aware in the exercise of their functions or because of them cannot, in any way, including non-voluntary transfer or dismissal, be adversely affected.

2. The application of a disciplinary sanction to the workers referred to in the previous number when it takes place up to one year after the respective report, shall be presumed abusive, until the opposite is proven.

3 - The workers referred to in the previous numbers are entitled to:

- a) Anonymity, except for investigators, until criminal charges are not brought;
- b) Transfer at their request, without the possibility of refusal, after criminal charges are brought;
- c) Benefit, with appropriate adaptations, of the measures provided for in Law no 93/99, of 14 July, which regulates the application of measures for the protection of witnesses in criminal proceedings.

As stated before (please see Article 5), there are various platforms available online or in person to report a crime or file a complaint, such as:

- Prosecutors' General Office (PGR) <https://simp.pgr.pt/dciap/denuncias/index2.php>
- Criminal Police (PJ)

<https://www.policiajudiciaria.pt/PortalWeb/page/%7B5BFC28DE-D200-4BCC-9422-F495EE8EE82A%7D>

- Inspectorate General of Finance (IGF) <http://www.igf.gov.pt/deveres-de-comunicacao/denuncia-eletronica.aspx>
- Council for Corruption Prevention (CCP) <http://www.cpc.tcontas.pt/denuncia.html>

Tax and Customs Authority (AT)

AT employees are subject to a mandatory reporting regime provided for in the Code of Criminal Procedure (Article 242), for crimes that they were made aware of in the exercise of their duties, even if the agents of crime are not known. If suspicion falls to another employee, the report is compulsorily reported to the head of service and should be reported to NUGRIC (internal audit department).

The AT has a central system for receiving and analysing all types of reports of internal corruption - well defined, credible and properly promoted. This aims to evaluate all types of corruption and gives a considerable source of information that allows managing the risks of their occurrence.

Inspectorate General of Finance (IGF)

IGF publicizes on its website, in the specific area for collecting complaints, a whistle-blowers' protection policy that includes, among other, confidentiality and anonymity. These practices are also adopted by other entities that receive complaints.

Moreover, the General Tax Law (Lei Geral Tributária, approved by Decree-Law no. 398/98) establishes the possibility of starting a tax procedure based on a complaint issued by a whistle-blower - Article 70 (1). The denounced taxpayer has however the right to know the content and authorship (whistle-blower identity) of the non-confirmed complaint in case of willful misconduct by the whistle-blower.

(b) Observations on the implementation of the article

Currently, there is no comprehensive legal framework to regulate the reporting of acts of corruption by public officials. Instead, several different legal measures exist to require reporting in certain cases and provide legal protections to the reporters.

There is a general duty in the Code of Criminal Procedure for law enforcement officers and public officials to report crimes. Furthermore, Law no 19/2008, of 21 April (Approving measures to fight corruption) contains general provisions for the protection of reporting persons, both in public and private sectors and various platforms are available to report a crime or file a complaint online, by e-mail, telephone or in person.

Some public bodies have taken additional measures to facilitate reporting of acts of corruption by, inter alia, establishing a centralized system to receive and analyse reports or publishing confidentiality and anonymity policies applicable to reporting persons.

However, Law no 19/2008 is too general and does not establish any system of reporting and protection of public officials who report alleged acts of corruption, when those acts come to their notice in the performance of their functions. Furthermore, it is not clear if reports of any wrongdoing that does not rise to the level of a crime would also be protected under the law. Therefore, **it was recommended that Portugal consider adopting comprehensive legislation establishing measures and systems to facilitate reporting of acts of corruption to appropriate authorities by public officials, including by strengthening measures to protect reporting persons.**

Paragraph 5 of article 8

5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

(a) Summary of information relevant to reviewing the implementation of the article

Concerning measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials, the following legislation should be referred:

a) Law no 4/83, of 2 April - Public control of the wealth of public office holders, i.e. President of the Republic, Prime Minister, Ministers, Members of the Parliament, Mayors, General Directors, members of the board of directors of State owned companies, etc)

<https://dre.pt/dre/detalhe/lei/4-1983-312432>

b) Council of Ministers' Resolution no 53/2016, of 21 September - approves the Governments' Code of Conduct

<https://dre.pt/application/file/a/75381061>.

c) Law no 35/2014, of 20 June - approves the general law on the civil service employment Articles 19 to 24 (specifically related to conflicts of interest)

<https://dre.pt/dre/detalhe/lei/35-2014-25676932>

d) Code of Administrative Procedure - Articles 69 to 76 (guarantees of impartiality and prevention of situations of conflict of interests)

<https://dre.pt/web/guest/legislacao-consolidada/-/lc/106918375/201707041643/exportPdf/normal/1/cacheLevelPage?Legislaca>

Please refer to the comment regarding declarations of assets on page 56.

There are several laws that include rules on the conflicts of interests. Some examples are:

- Decree-Law no. 111-B/2017, of 31st August 2017 - amends the Public Procurement Code - <https://dre.pt/web/guest/pesquisa/-/search/108086621/details/normal?q=111-B%2F2017>
- Law no. 12/2017, of 2 of May 2017 – first amendment of the framework law of regulatory bodies –
<https://dre.pt/web/guest/pesquisa/-/search/106955049/details/normal?q=lei+12%2F2017>
- Law no. 40-A/2016, of 22 December of 2016 – first amendment of the organization of the judicial system –
<https://dre.pt/web/guest/pesquisa/-/search/105599333/details/normal?q=lei+40-A%2F2016>
- Law no. 148/2015, of 9 of September of 2015 – approves the Rules on Audit Supervision -
<https://dre.pt/web/guest/pesquisa/-/search/70237676/details/normal?q=Lei+n.%C2%BA%20148%2F2015>
- Decree-Law no. 137/2014, of 12 September of 2014 – Governance model for European structural and investment funds - <https://dre.pt/web/guest/pesquisa/-/search/56747378/details/normal?q=137%2F2014>
- Decree-Law no. 11/2012 of 20 of January of 2012 – Establishes the general rules on cabinet members –
<https://dre.pt/web/guest/legislacao-consolidada/-/lc/107753351/view?q=11%2F2012>
- Law no. 52/2008, of 28th August of 2008 – Organization and functioning of Judicial Courts -
<https://dre.pt/web/guest/pesquisa/-/search/453251/details/normal?q=lei+52%2F2008>
- Law no. 7/93, of 1 of March of 1993 – Statute of Members of Parliament
<https://dre.pt/web/guest/pesquisa/-/search/626808/details/normal?q=lei+7%2F93>
- Law no. 51/2005 of 30 August of 2005 – rules on the appointment of high public officials in public administration - <https://dre.pt/web/guest/pesquisa/-/search/245335/details/normal?q=lei+51%2F2005>
- Law no. 2/2004, of 15 January of 2004 - approves the statute of the management personnel of central, regional and local administration bodies
<https://dre.pt/web/guest/legislacao-consolidada/-/lc/34547575/view?q=lei+2%2F2004>

Some examples regarding specific public entities:

Portuguese Insurance and Pension Funds Supervisory Authority (ASF)

The Code of Conduct for employees and members of the management board establishes that in all contacts with parties outside the ASF, those subject to the Code of Conduct must contribute towards strengthening the principle of independence of ASF.

According to the Code of Conduct, the respect for the principle of independence is incompatible with the acceptance of any remuneration, of a pecuniary or other nature, for exercise of an external activity performed on behalf of the ASF or as an employee of the ASF, except for gifts that represent a normal demonstration of courtesy and of a mere symbolic value or when expressly agreed between the ASF and the organizing body.

Also, the respect for the principle of independence is incompatible with the request or acceptance of gifts or benefits that exceed a mere symbolic value or invitations to take part in social, cultural or sporting event by an entity subject to the supervision of or by an entity that supplies or may supply goods or services to the ASF, that due to their cost, may lead the involved parties or a third party to reasonably presume that the principle of independence is at risk in this instance.

Under the respective Statutes, the ASF is obliged to issue internal regulations, published on the respective website, on the matter of mechanisms set up to check for the existence of conflict of interest. Therefore, those subject to the Code of Conduct must avoid incur in any situation of conflict of interest that may reasonably lead a third party to presume that a risk exists for the objectivity and impartiality of their actions, even if this does not actually happen. In the event that someone subject to the Code is found in a situation of conflicts of interests, he/she must report the situation to the respective superior officer within the ASF's hierarchy, or to the management board, in case of board members or senior managers that report directly to the management board.

The information reported is provided on a confidential basis and may only be used in the event that this is required for the management of a potential or actual conflict of interest or for the purposes of possible disciplinary action.

Tax and Customs Authority (AT)

The AT promoted a declaration of impartiality with its employees. Workers are alerted to the legal regime of incompatibilities and conflicts of interest.

Currently, a manual of incompatibilities is in final discussion to be published.

(b) Observations on the implementation of the article

In addition to the specific measures that promote transparency and prevent conflicts of interest mentioned under article 7(4) above, Portugal has also introduced disclosure requirements for certain categories of public officials in relation to their income and assets in Law no 4/83. The law requires relevant public officials to declare their income and assets to the Constitutional Court. The declarations are paper-based and must be submitted when

public officials assume their office, when there is a change in their assets beyond a certain threshold, and when they leave office. Sanctions are available for non-compliance. Although the Law contains a list of officials who should submit the declarations, in practice, there is some ambiguity in who exactly should submit declarations.

Furthermore, Law no 64/93 creates a public register of interests at the Parliament which contains all public and private activities of Parliament and Government members that may lead to conflicts of interest (impediments and incompatibilities).

Some of the codes of conduct referred under article 8(1) above also deal with the disclosure and management of circumstances, including gifts, from which a conflict of interest may arise. However, they vary in detail and do not always contain detailed and effective provisions on these matters.

Based on the above, **it was recommended that Portugal endeavour to develop comprehensive regulations applicable to all public officials on disclosure and management of conflicts of interests and acceptance of gifts, in particular to those in top executive positions.** Also, the reviewers reiterate the recommendation made under article 7(4) above.

Paragraph 6 of article 8

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

Usually the violation of the provisions of the Codes of Conduct and/or Ethics can lead to disciplinary action.

The violation of the general duties of public officials foreseen in Article 3 of Law no 58/2008, of 9 September (Disciplinary Statute) also gives rise to disciplinary liability.

If the public official's conduct or actions also constitute an unlawful conduct, as foreseen by the Portuguese criminal legislation, he/she also incurs in criminal liability. This means that when conducts that may constitute situations of corruption and related offences are detected, there is a place for disciplinary proceedings and criminal prosecution, the last one promoted by the Public Prosecution Service.

Law no 35/2014, of 20 June - approves the general law on the civil service employment (Articles 176 to 240)

<https://dre.pt/dre/detalhe/lei/35-2014-25676932>

Usually the investigation of alleged disciplinary offences is performed by the General Inspectorates within the Ministries, at the central administration level.

Tax and Customs Authority (AT)

A special department within the AT is competent to investigate disciplinary proceedings.

On the regulation of conflicts of interest, the following examples could be provided:

- (a) CMVM Statutes, http://www.cmvm.pt/en/The_CMVM/Overview/Pages/CMVM-Statutes_new.aspx (English version), namely Articles 7 and 29 on the competence, composition and operation of CMVM Ethics Committee. In addition, Article 36 of CMVM statutes' foresees preventing conflicts of interest regarding the CMVM staff is also relevant.
- (b) IGF's Ethical Code (<http://www.igf.gov.pt/institucional1/etica-e-normas-de-conduta.aspx>) includes an Ethics Consultant (no 9 of the referred Code). It is also established that non-abiding or infringement by any worker of the Code's rules should be reported to the superiors and may incur in disciplinary responsibility or other kinds of responsibility (no 10.2. of the Code).

(b) Observations on the implementation of the article

Violations of the codes and of the general duties of public officials provided in Law no 58/2008 may result in disciplinary actions (articles 176-240, Law no 35/2014, General labour law in public functions). At the central administration level, the investigation of alleged disciplinary offences is performed by the General Inspectorates within the Ministries.

If the public official's conduct or actions also constitute an unlawful conduct in violation of the Portuguese criminal legislation, he/she may also incur criminal liability. This means that when conducts that may constitute corruption and related offences are detected, there is a place for disciplinary proceedings and criminal prosecution.

It was concluded that Portugal has implemented the provision under review.

Article 9. Public procurement and management of public finances

Paragraph 1 of article 9

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

- (a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;*

- (b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;*
- (c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;*
- (d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;*
- (e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.*

(a) Summary of information relevant to reviewing the implementation of the article

Portugal approved in 2008 the new Public Procurement Code - Decree-Law no 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 September, and Directive 2005/75/CE from the Council, of 16 November.

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

Amendments to the Public Procurement Code were adopted in July 2012 and in October 2015, aiming to improve 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 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.

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.

Since January 2012, and because of a set of measures adopted under the Adjustment Programme, BASE must advertise all contracts resulting from all types of procedures subject to the Public Procurement Code. It also publishes information on contract performance. The publication of contracts in both BASE and in the National Official Journal 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.

There is a general obligation for public office holders to declare situations that may give rise to conflicts of interest before the Constitutional Court. On what relates to public procurement, this obligation is casuistic. It is already mandatory that anyone in a situation of conflict of interests does not participate in an administrative procedure according to the Administrative Procedure Code. This restriction has recently been reinforced through the

amendment of the Procurement Contracts Code, through the introduction of numerous rules on conflicts of interest.

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

Regarding public procurement, it should be particularly highlighted that:

- Portugal has a system of procurement based on transparency, fair competition and objective criteria in the decision-making procedure. These areas are being enhanced by the ongoing revision of the Code of Public Procurement. In the new version of the Public Procurement Code, the only criteria that can be used to award a contract is the economically most advantageous tender.

<https://dre.pt/dre/legislacao-consolidada/decreto-lei/2008-34455475>

- The Portal BASE for Public Procurement is widely appointed as a good practice in public procurement as a relevant transparency tool.

<http://www.base.gov.pt/Base/pt/Homepage>.

- Portugal is one of the leading countries in e-procurement.

<http://www.base.gov.pt/Base/pt/PlataformasEletronicas/OQueSao>

The EU 2014 Anti-corruption report (document COM(2014) 38 final, of 3 February 2014) identifies as good practice the transparency in public procurement:

https://ec.europa.eu/home-affairs/sites/homeaffairs/files/elibrary/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf

«National web portal to centralise information on public contracts - BASE - Portugal (page 30 of the Report)

Since 2008, after the entry into force of the Public Contracts Code, Portugal has put in place a national web portal, BASE (<http://www.base.gov.pt>) that centralises information on public contracts. The Institute of Construction and Real Estate (IMPIC) is responsible for the management of this portal. BASE receives data from the electronic edition of the National 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 themselves and record information on their performance. From 2008 to 2011, BASE only publicised contracts regarding direct awards. Since January 2012, BASE must publicise 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 the National Official Journal is now mandatory for direct adjustments, increases of 15 % in the price of already concluded contracts and potential penalties».

Use of E-procurement

Good practices in the implementation of e-procurement (page 32 of the Report)

The Portuguese e-Procurement Programme was launched in June 2003 as a centralised and high-quality platform that promotes efficiency and fair competition through increased transparency and savings in the public procurement process.

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

In conclusion, the public procurement system in Portugal is totally electronic, by using the Platform BASE, which provides transparency, fair competition and objective criteria in decision-making procedure, which the Portuguese authorities consider effective, inter alia, in preventing corruption.

Some examples regarding specific public entities:

Public Prosecution Service

In the areas of intervention identified in the Action Plan against Corruption, the access by Prosecutors to information in the areas/activities that generate a higher corruption risk, namely the public procurement data bases, have been identified as one of the preventive measures to be implemented

Budget General Directorate (DGO)

Concerning corruption and related offences, the DGO has identified the size of public procurement as a major contracting risk. To minimize this risk, the DGO inscribed a procedure for Public Contracts in the Risk Management Plan for Corruption Prevention and Related Offences, identifying preventive measures. The DGO also adopted the referred Code of Conduct, Standardization of Procedures and Document Management System, based on procedures and activities described in the Procedures Manuals.

It should also be noted that the DGO is subject to the internal control system of the Portuguese State and to the Court of Audits, in terms of external control.

Tax and Customs Authority (AT)

The AT's corruption prevention plans defines, clarifies and gives visibility to the prevention of corruption in the acquisition of goods and services (contracts of this nature).

There is a specific department, subject to audit by internal and external bodies, to control

the AT's expenses. This control includes the draft of a corruption prevention plan.

(b) Observations on the implementation of the article

Decree-Law no 18/2008, approving the Public Procurement Code is the main legal framework for public procurement. The law has transposed relevant legislation of the European Union in public procurement areas (e.g. EU Directives 2004/17/CE and 2004/18/CE) and has therefore follows uniform rules established by the European Union where appropriate.

The Ministry of Economy oversees the development and definition of procurement policy. There is central procurement agency responsible for the management of BASE, the InCI, and a purchasing body for certain categories of goods and services, eSPAP. Any public body may join the National System of Public Procurement to use ESPAP services.

Under the Public Procurement Code, the conditions for participation, selection and awarding a contract shall be established and published sufficiently in advance. The only criteria to award a contract is the economically most advantageous offer.

Decree-Law no 18/2008 also includes rules for BASE: an online platform that advertises all contracts resulting from all types of procurement procedures and publishes information on contract performance. The publication of contracts in both BASE and in the Official Gazette is mandatory for certain categories of contracts such as direct awards. Failure to publish direct award contracts renders them null and void.

In regard to supervising compliance with the procurement rules, all information on public procurements is accessible to the auditing authorities and prosecuting authorities. The Court of Auditors conducts external ex ante and ex post control. Internal controls are performed by the General Inspectorates.

Complaints may be raised at different stages of procurement directly with the contracting authority or by way of a judicial process.

Staff involved in procurement processes must declare the absence of conflicts of interest prior to participating. Similarly, all individuals and legal entities previously convicted for money laundering or corruption cannot apply for public tenders.

Finally, the Public Procurement Code has established the necessary framework to enable greater transparency in public procurement by mandating many purchasing processes to be carried out electronically. The example of BASE Portal should be positively noted in this regard.

Based on the above, it was concluded that Portugal has implemented the provision under review.

(c) Successes and good practices

The creation of the Portal BASE (public procurements exclusively done through an electronic platform) which is a tool allowing for transparency and prevention of corruption.

Paragraph 2 of article 9

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

- (a) Procedures for the adoption of the national budget;*
- (b) Timely reporting on revenue and expenditure;*
- (c) A system of accounting and auditing standards and related oversight;*
- (d) Effective and efficient systems of risk management and internal control; and*
- (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.*

(a) Summary of information relevant to reviewing the implementation of the article

Regarding the transparency and accountability in the management of public finances, namely the existence of procedures for the adoption of the national budget, it should be pointed out that the national budget is approved by Parliament and all the documents and proposals are publicly available on its website. Discussions on these matters are also public.

(<http://www.en.parlamento.pt/StateBudgetPublicAccounts/index.html>).

The Portuguese Public Administration is subject to the principles of “open administration” and transparency, namely regarding its organization, functioning and decision-making processes.

In the last ten-fifteen years, Portugal has progressively adopted simplified administrative procedures, in order to facilitate public access to the competent decision-making authorities. SIMPLEX is the most emblematic of these procedures.

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 the Public Administration (and the public bodies and institutions themselves) are subordinate to the Constitution and the Law.

The national budget process, as well as the accounting systems, is built based on generally accepted international standards. There is scrutiny by external entities (OECD, EU and IMF, among others). Currently, Portugal is implementing a new legal framework for the budget process based on program budgeting and performance (after the publication of Law no 151/2015, of 11 September), as well as an accounting standardization system for Administrations, based on International Public Sector Accounting Standards.

Applicable legislation:

- Law no 151/2015, of 11 September - Budgetary Framework Law (includes rules on the adoption of the national budget, system of accounting, internal control, etc.)

<https://dre.pt/dre/detalhe/lei/151-2015-70262477>

- Decree-Law no 183/96, of 27 September - States the principles that must be observed in the preparation of the annual Work Plan and Activities Reports <https://dre.pt/application/file/a/213763>.
- Court of Auditors' instructions on the preparation of management accounts <http://www.tcontas.pt/pt/actos/instrucoes.shtm>.
- Decree-Law no 232/97, of 3 September - approves the Official Plan on Public Accounting (POCP) <https://dre.pt/application/file/a/641028>.
- Decree-Law no 54-A/1999, of 22 February - approves the Official Plan on Local Authorities Accounting (POCAL) - includes mandatory dispositions on internal control systems for local authorities <https://dre.pt/application/file/a/514115>.
- Decree-Law no 158/2009, of 13 July - approves the Accounting Normalization System (SNC) <https://dre.pt/application/file/a/492366>.
- Decree-Law no 192/2015, of 11 September - approves the Accounting Normalization System for Public Administrations (SNC-AP) - in force after 1 January 2018 <https://dre.pt/application/file/a/70262678>.
- Decree-Law no 166/98, of 25 June - creates the National Internal Control System of Financial Administration <https://dre.pt/application/file/a/478292>.
- Law no 98/97, of 26 August - Law on Organization and Procedure of the Court of Auditors (includes provisions on the consequences of non-compliance with budgetary and public accounting legal framework, notwithstanding the occurrence of criminal and or civil offences)
<https://dre.pt/dre/detalhe/lei/98-1997-193663>

Some examples regarding specific public entities:

Portuguese Insurance and Pension Funds Supervisory Authority (ASF)

Chapter IV of the ASF Statutes sets forth the rules governing financial and asset management. The financial and asset management of the ASF is governed by the provisions of the framework law of regulatory authorities, these statutes and, additionally, by the legal regime applicable to public corporations.

The ASF applies the Standardised Accounting System [Article 40 (1) of the ASF Statutes]. The accountability is governed, fundamentally, by the provisions of the Law for the Organisation and Process of the Court of Auditors and corresponding regulatory provisions (Law on the Organization and Process of the Court of Auditors, approved by Law no 98/97, with several further amendments). The Court of Auditors oversees the legality and regularity of its income and costs, assesses the soundness of its financial management and attributes responsibilities for financial infringements.

The ASF is not bound by the rules of public accounting and the regime of autonomous funds and services, specifically the provisions related to the authorisation of expenditures, to the transition and use of net results and the blocking of funds. However, Article 37 (2) of the ASF Statutes establishes that the amounts originating from the use of assets of the public

domain or that depend on appropriations from the State Budget are subject to the budgetary and financial regime of autonomous funds and services, specifically concerning the authorisation of expenditures, the transition and use of net results and the blocking of funds.

According to Article 35(3), the ASF respects the principles of prior funding approval and the programming of expenditures underlying the assumption of commitments and the late payments of public entities.

Concerning the ASF's own assets, they are made up of the totality of its goods, rights and obligations with economic content, which are governed by private law, except for the moveable assets of the State and the fleet of State vehicles regarding the assets allocated to it by the State, which are governed by the legal regime of State-owned real estate [Article 36(1)]. The obligations of the ASF are covered only by its assets, but if the totality of its assets has been executed or the ASF has been extinguished, the creditors may demand satisfaction for their credits from the State [Article 36(2)]. Furthermore, the ASF shall prepare and update on a yearly basis the inventory of its real estate assets, pursuant to the terms of the legal regime of State-owned real estate [Article 36(3)].

Concerning the ASF's revenues, according to Article 37 of ASF Statutes, they consist of:

- The contributions and fees set forth in the article 38 of the ASF Statutes;
- The proceeds from the sale of goods and services, as well as the constitution of rights over them;
- The income from own assets and those resulting from its activity;
- The income from financial investments;
- The subsidies, donations, or contributions granted by any domestic or foreign entities;
- The amounts of fines that the ASF imposes for administrative infractions, under the terms of the applicable sanction regime, as well as the costs of procedures of administrative infractions, without prejudice to the provisions of Article 41(3);
- Any other income or revenues that are allocated to it by law, contract, or other means.

The amounts originating from the use of assets of the public domain or that depend on appropriations from the State Budget are subject to the budgetary and financial regime of autonomous funds and services, specifically regarding authorisation of expenditures, transition and use of net results and the blocking of funds [Article 37(2) of the ASF Statutes]. In addition, the ASF shall establish, through regulatory norms, the means and time periods for the settlement and collection of the contributions and fees [Article 38(3)].

The ASF is also subject to the State treasury regime and, particularly, the principle and rules of treasury single account [Article 40(3) of ASF Statutes]. Furthermore, the board of directors may order the audit of ASF accounts by an independent entity [Article 40(4) of the ASF Statutes].

In the management of funds that are entrusted to the ASF, Articles 35(1) to (3). 36, 40 and 41 are applicable, without prejudice to specific instruments that reinforce the mechanisms

of management and risk control specific to the corresponding activities (Article 42 of the ASF Statutes)

Additionally, as stated in Article 43 of its Statutes, the ASF uses a coherent system of performance indicators that reflects the specific nature of its assigned duties, the set of activities undertaken and the results achieved, in order to demonstrate efficiency, effectiveness and quality.

Within its structure, the ASF has a supervisory body in charge of the control of the legality, regularity and proper financial and asset management, as well as an advisory body for the management board in these areas (Articles 25 to 29 of the ASF Statutes).

The supervisory committee has the responsibility to assess the quality of the above mentioned system of performance indicators and to evaluate on a yearly basis the results achieved by the ASF in line with its available means. The conclusions of this committee are reported to the member of the Government in charge of finances [Article 43(3) of the ASF Statutes].

Portuguese Securities Market Commission (CMVM)

Each year, the CMVM budget and accounts are presented to Parliament, within the scope of the Draft Law for the State Budget, which includes the CMVM budget (Articles 2, 19, 50 and 65 of the framework law on the state budget, approved by the Law no 151/2015) and statutes:

(http://www.cmvm.pt/en/The_CMVM/Overview/Pages/CMVM-Statutes_new.aspx)

article 40, namely the following paragraphs:

- §1 - During the first quarter of each year, the CMVM shall present its activity plan and programming before the competent parliament committee;
- §2 - Every year, the CMVM prepares and sends a detailed report on the previous year activity to Parliament and the Government. Said report is disclosed on the CMVM's website;
- §3 - Whenever requested, members of the CMVM's bodies should present themselves before the parliamentary committee to provide information or clarification on their activities.

Note that this last disposition mirrors the Parliament Rule 102 (2b), which states that Parliament committees may “(...) summon any staff or agents of the Public Administration, and any managers or employees of state-owned businesses”.

The CMVM is also subject to the jurisdiction of the Court of Auditors (Law on the Organization and Process of the Court of Auditors, approved by Law no 98/97 and amended by several diplomas, the last of which Law no 20/2015 - Law on the Organization and Process of the Court of Auditors, LOPTC -article 2), which superintends the legality and regularity of its income and costs, assesses the soundness of its financial management and attributes responsibilities for financial infringements (article 1 (1) LOPTC).

Each year, after the Budget's approval, the Government approves a Law with instructions for the budget execution. This Law contains provisions regarding information to be provided by the CMVM to the Directorate-General for Budget (DGO):

- Monthly - budget execution accounts;
- Quarterly - budget execution accounts with a report drawn up by the supervising body (supervisory committee);
- Annually - financial statements for the year;

Besides, the CMVM statutes determine the presentation of budget and budget execution, as well as an activity report to the Ministry of Finance (article 12). The CMVM also sends its accounts to the Court of Auditors, according to its Instruction 1/2004, of 14 February, for accounts assessing by the court. Auditing of the use of resources by CMVM is done:

- by the CMVM supervisory committee (Article 21 of CMVM Statutes);
- by an external auditor;
- by the Court of Auditors.

It should also be pointed out that the settlement and collection of the CMVM's income, particularly fees, is subject to the jurisdictional control of the Administrative and Tax Courts, pursuant to the Code of Tax Procedure, approved by Decree-Law no 433/99 and amended by several diplomas, the last of which Law no 82-E/2014, whereby any debtor of a fee may contest the respective judgement.

(b) Observations on the implementation of the article

The legal framework regulating the national budget process consists of the Constitution, the Public Accounting Principles Law (Law no 8/90), the Budget Framework Law (Law no 151/2015), and local and regional finance laws. The budget process and the accounting systems are based on the International Public Sector Accounting Standards.

The Constitution prescribes the procedures for the adoption of the national budget. The budget consists of a summary report with explanations of major policy initiatives, the provisions of the draft budget act, and detailed budget maps defining expenditure ceilings for ministries and individual departments. The discussions on draft budget and the draft budget execution law at the Budget and Finance Committee of the Parliament are open to public. There are no off-budget funds in Portugal.

As regards to the institutional framework to promote transparency and responsibility in the management of public finances, it is important to highlight the roles the Budget General Directorate (DGO) within the Ministry of Finance and Public Administration which monitors the legality, regularity and economy of the financial administration of the state, the Public Finance Council which assesses fiscal projections and compliance with fiscal rules as well as financial controllers in each ministry, charged with overseeing expenditure within that ministry.

Information on the budget execution process is published in a clear and accessible language through "Knowing the Budget Process" project run by the Budget General Directorate.

Audit functions are divided between the Inspectorate General of Finance within the Ministry

of Finance and Public Administration, which is responsible for internal financial and performance audits, and the Court of Audit, an independent body that oversees the legality and regularity of public expenditure.

It was concluded that Portugal has implemented the provision under review.

Paragraph 3 of article 9

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

(a) Summary of information relevant to reviewing the implementation of the article

Regarding the preservation of the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and the prevention of the falsification of such documents, the following applies:

- ☐ Legal account certification by a Certified Public Accountant / Statutory Auditor / Fiscal Council
- ☐ Judgement of public accounts by the Court of Auditors

The forgery of documents is a crime, foreseen in Article 256 of the Criminal Code:

Article 256

Forgery or counterfeiting of documents

1 - Whoever, with intent to cause loss to another person or to the State, to obtain for himself or for another person an unlawful benefit or to prepare, facilitate, execute or cover up another criminal offence:

- a) Makes or draws up a false document or any of the components that are to be embodied therein;
 - b) Forges or alters a document or any of the components that are a part thereof;
 - c) Abusively uses the signature of another person to forge or to produce a counterfeit document;
 - d) Falsely inserts in a document or in any of its components a legally relevant fact;
 - e) Uses a document to which reference is made in the preceding sub-paragraphs; or
 - f) By any means whatsoever, grants or possesses a forged or a counterfeit document;
- is punished with imprisonment for up to three years or with a fine.

2 - An attempt is punishable.

3 - If the facts referred to in paragraph 1 relate to an authentic document or to a document of equal value, to a sealed will, a postal money order, a bill of exchange, a cheque or other commercial document transferable by endorsement, or to any other credit note not covered by article 267, the offender is punished with imprisonment from six months to five years or with a fine from 60 to 600 days.

4 - If the facts mentioned in paragraphs 1 and 3 are committed by a public official, in the performance of his/her duties, the offender is punished with imprisonment from one to five years.

Tax and Customs Authority (AT)

The AT has developed a set of measures to improve the integrity of the electronic records used for tax collection.

(b) Observations on the implementation of the article

Portugal has several measures to ensure the integrity of records related to public finances, including records related to public procurement processes. They include the requirement to provide legal certification by a certified accountant/auditor/fiscal council of all accounts, judgement of public accounts by the Court of Auditors, and criminalization of forgery of documents, including of accounting books, records and financial statements, in Article 256 of the Criminal Code.

Portugal has implemented the provision under review.

Article 10. Public reporting

Subparagraph (a) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

(a) Summary of information relevant to reviewing the implementation of the article

The Portuguese Public Administration is subject to the principles of “open administration” and transparency, namely concerning its organization, functioning and decision-making processes.

The constitutional right of access to information in the public sector is granted to all citizens (Article 37, paragraph 1). This includes archives and administrative records, along with any cases and procedures in which they are personally involved (Article 268, paragraph 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, quality of life, consumer protection in goods and services, the nation’s cultural heritage and everything in public domain.

Protection of family privacy and private life is a constitutional right, foreseen in Article 26 of the Constitution of the Portuguese Republic under Title II “Rights, freedoms and guarantees” of Part I “Fundamental rights and duties“:

(1) Everyone is granted the right to personal identity, to personality development, to civil capacity, to citizenship, to a good name and reputation, to their image, to speak out, to protect the privacy of their personal and family life, and to legal protection against any form of discrimination.

(2) The law shall lay down effective guarantees against the improper procurement and misuse of information concerning persons and families and its procurement or use contrary to human dignity).

The right to privacy of family and private life is one of the rights, freedoms and guarantees enshrined in the Constitution and receives protection in several international instruments. In Portuguese criminal law, there is a set of "crimes against the reservation of private life", which include crimes of violation of domicile or disturbance of privacy, introduction in a place prohibited to the public, deprived of privacy, computerization, breach of correspondence or telecommunications and breach or improper use of secrecy.

Each person can freely dispose of the information about their private life, revealing and hiding what they want. Therefore, in most cases, the initiation of criminal proceedings for a crime against privacy depends on the presentation filing of a complaint or participation by an individual (usually the offended). Once the procedure has been initiated - and without prejudice to the possibility of the complainant withdrawing the complaint under certain conditions - the Public Prosecution Service is responsible for bringing charges against the offender or dismissing the case.

Law no 26/2016, of 22 August (the former Law no 46/2007, of 24 August, more commonly known as LADA - Access to Administrative Documents Law was revoked), regulates access to administrative documents.

From a substantive point of view, LADA lays out the right to access administrative documents, regardless 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. It also sets out the rules regarding the exercise of this right. Improving Public Administration includes more measures aimed to bringing Government closer to the people, who should be treated as customers. One way of

creating a 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”.

Article 5 of Law no 26/2016, of 22 August, establishes the right to access administrative documents:

"1 - Every person, without the need to state any particular interest, has the right to access administrative documents, which comprehends the right to consult them, the right to reproduce (copy) them and the right to know about their existence and content.

2 - The right to access is accomplished regardless of the status of the administrative documents in the archive (current, intermediate or final archive)."

Generally, public entities have specific departments that receive and that decide on request for access to information.

The Data Protection Authority (Comissão Nacional de Proteção de Dados) supervises issues of privacy and personal data in the disclosure of such information. There are also internal rules and regulations that cover these issues.

Law no 65/93, of 26 August, also created the **Committee for Access to Administrative Documents**, usually referred to as CADA, which has the responsibility to monitor compliance with all Access to Administrative Documents Law provisions. The CADA (Article 18) is an independent public entity with its own technical and administrative support services. When in doubt, citizens, private companies or public entities may question and request CADA to issue a legal recommendation on a particular case. Nonetheless, these legal recommendations are not binding, although people usually accept and comply with them.

Any individual or legal person has the right to have recourse to the procedures provided in the Code of Procedure in the Administrative Courts (approved by Law no. 15/2002 of 22 February). According to Articles 104 to 108 (Intimation for the provision of information, consultation of procedures or issuing of certificates) when it is not given full satisfaction to requests formulated in the exercise of the right to procedural information or the right of access to the archives and administrative records, the interested person can request the corresponding intimation, in the terms and with the effects foreseen in this section [of the Code]. The request for intimation is also applicable in the situations provided for in Article 60(2) and may be used by the Public Prosecution Service for the purpose of the public action.

If the judge decides to accept the request for intimation, he/she judge determines the period within which the intimation must be served and which cannot exceed 10 days. If there is a breach of the summons without an acceptable justification, the judge shall determine the application of periodic penalty payments, in accordance with Article 169, without prejudice to the determination of civil, disciplinary and criminal liability, according to Article 159.

With regard to the scope of information that can be accessed by members of the public, the above listed laws include specific rules that state what type of information could be published. For example, in accordance with Article 4 of Law no. 64/2013, of 27 of August 2013, an annual publication of a list of grants transferred by public entities is included in the entities websites and on IGF's website, containing information regarding the donor entity, names of beneficiaries, taxpayer's number, amount transferred or benefit approved,

date of approval, purpose and legal basis. These lists are available on <http://www.igf.gov.pt/deveres-de-comunicacao/subvencoes-publicas7.aspx>.

Finally, there is an online platform to raise public awareness with regard to the information available and how it can be accessed online: Simplex measures; Citizens' Portal (Public Administration in a single website) <https://www.portaldocidadao.pt/>

Some examples about information on the organization, functioning and decision-making procedures in Public Administration are:

- a) Register of Government officials and members of Parliament's financial interests <https://www.parlamento.pt/RegistoInteresses/Paginas/default.aspx>
- b) Portal BASE for Public Procurement <http://www.base.gov.pt/Base/pt/Homepage>
- c) Transparency portal for the health sector <https://www.sns.gov.pt/transparencia/>.
- d) Public procurement in the health sector <https://transparencia.sns.gov.pt/explore/dataset/portal-base/?sort=datacelebracaocontrato>.
- e) Transparency and publicity notifications to INFARMED, I.P. (according to article 159(5) and (6) of Decree-Law no 176/2006) <https://placotrans.infarmed.pt/>
- f) Public grants <http://www.igf.gov.pt/deveres-de-comunicacao/subvencoes-publicas7.aspx>
- g) Budget of the Citizen and other information <https://www.dgo.pt/Paginas/default.aspx/highlights>
- h) Portuguese participative budget and Portuguese youth participative budget (since 2017) - Law 42/2016, of 29th December (article 3) <https://dre.pt/application/file/a/105630354>.
- i) Transparency portal for municipalities <https://www.portalmunicipal.pt/home?locale=pt>

Regarding personal data protection legislation, it should be pointed out

- Law no 67/98, of 26 October, on Personal Data Protection (transposing into the Portuguese legal system Directive 95/46/EC of the European Parliament and of the Council, of 24 October 1995, on the protection of individuals with regard to the processing of personal data and on the free movement of such data is in force in Portugal, and
- The new Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), which will be applicable in the Portuguese legal order as of 25 May 2018.

In the last ten-fifteen years, Portugal has progressively adopted simplified administrative procedures, in order to facilitate public access to the competent decision-making procedures of public authorities, to enhance transparency and, at the same time, prevent corruption.

SIMPLEX is the most emblematic of these procedures.

Examples of municipal participative budgets:

Alfândega da Fé:

youth participative budget <http://www.cm-alfandegadafe.pt/pages/1009> senior participative budget <http://www.cm-alfandegadafe.pt/pages/1016>.

Almada: youth participative budget:

http://www.malmada.pt/xportal/xmain?xpid=cmav2&xpgid=agenda_detalhe&agenda_detalhe_qry=BOUI=442215515 &agenda_titulo_qry=BOUI=442215515.

Cascais: <http://www.cascais.pt/area/orcamento-participativo-0>

Braga: <https://participe.cm-braga.pt/sobre-o-op/3/calendario-do-op>.

Leiria: <http://op.cm-leiria.pt/>.

Lisboa: <http://www.lisboaparticipa.pt/>.

Some examples regarding specific public entities:

Budget General Directorate (DGO)

The DGO has been developing a project to promote the transparency and accessibility of information on public accounts, which seems to be a good practice, under the name of “Knowing the Budget Process”, which comprises the following by-products:

- Public Accounts for the Citizen;
- Knowing the State Budget;
- Knowing the Budget Execution;
- Knowing the State General Account;
- Knowing the State Budget Drawing Up Process.

This project is a solution that promotes transparency by disseminating the budget process and information online in a clear, rigorous, synthetic language that is easily accessible to all citizens and to those who deal daily with the management of public finances.

It should be pointed out that the State Budget drawing up process, its execution and proper accountability (through the General State Account) is, in itself, one of the most representative elements of the exercise of democracy.

Portuguese Insurance and Pension Funds Supervisory Authority (ASF)

Without prejudice to the legal framework applicable to professional secrecy and protection

of personal data, and regarding the institutional transparency, the ASF guarantees the disclosure of the relevant information on its website, namely the composition of the governing bodies, including biographic information on the members and the value of the components of the pay statute applied, the plans, including multiannual plans, and the reports on the activities and the budgets and accounts, the Prevention Plan for Corruption Risks and Related Offences, the personnel chart and the corresponding pay statute and career system (Article 46 of the ASF Statutes).

On the other hand, concerning the market, the ASF discloses on a regular basis statistical information, as well as other documents (for instance, the Market Conduct Regulation and Supervision Report) that are relevant to the supervised entities, policyholders, insured parties, underwriters, participants, beneficiaries and injured parties or the general public. In addition, it shall also be mentioned the possibility to verify online the registration of the market players before the ASF.

Considering the “transparency of the regulation”, the ASF guarantees the disclosure of relevant information on its website, namely legislation, including the framework law of regulatory authorities, and regulations applicable to the ASF, the legal, regulatory and administrative provisions and the general guidelines that govern the insurance and reinsurance business, insurance brokerage and pension fund management.

Additionally, the ASF carries out public consultations prior to the issuing of the corresponding regulatory standards, granting access to interested parties to the draft project for the regulatory standards, making it available online, and in accordance with its extent and complexity, granting a reasonable period of time for comment and suggestion submission (Article 47 of the ASF Statutes).

Following a recommendation from the Council for Corruption Prevention (CCP), the ASF’s management bodies are required to publish a Prevention Plan for Corruption Risks and Related Offences and an Annual Implementation Report on the Prevention Plan for Corruption Risks and Related Offences. Under the mentioned recommendation, these plans shall comprise:

- Identification, concerning each area or department, of corruption risks and related offences;
- Indication of the measures to prevent the verification of said corruption risks and related offences;
- Identification of the person(s) involved in the plan management, under the direction of the management body.

Tax and Customs Authority (AT)

The AT’s corruption prevention plan includes measures of data protection and the disclosure of information as determined in the Convention, measures to simplify administrative procedures and periodic (annual) monitoring reports of the corruption prevention plan.

There is a policy of access control to taxpayer information by AT employees, implemented since 2015. Documental dematerialization and direct interaction with the taxpayer using electronic platforms is in place. Electronic platforms to submit requests or complaints are also available and its use has been growing substantially.

(b) Observations on the implementation of the article

The Constitution provides for a universal right of access to information (Article 37(1)). According to Article 268 (1), citizens also have the right to be informed by the administration of decisions that are taken in relation to them.

Law no 26/2016 establishes the right of citizens and procedure to access administrative documents. The law specifies the bodies that are covered, their duties with regard to requests for information, and the relevant mandate of the Committee for Access to Administrative Documents (CADA).

The Committee for Access to Administrative Documents monitors compliance with Law 26/2016 and can issue non-binding recommendations if requested. Individuals and legal entities also have the right to seek redress in the Administrative Courts (Code of Administrative Procedure, approved by Law no 15/2002).

However, it appears that the above legal framework on access to information is not sufficiently clear on applicable timelines to deal with requests for information. It is also the view of the reviewers that the existing mechanism to appeal against a public body's decision on a request of information - through proceedings in CADA and administrative courts – may not be conducive to an effective and efficient exercise of a citizen's right to access information.

Therefore, it was recommended that Portugal strengthen the existing measures on access to information, including by establishing effective internal appeal mechanisms and clear timelines.

Subparagraph (b) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

...

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(a) Summary of information relevant to reviewing the implementation of the article

In the last ten-fifteen years, Portugal has progressively adopted simplified administrative procedures, in order to facilitate public access to the competent decision-making procedures of public authorities and to enhance transparency and, at the same time, prevent transparency. SIMPLEX is the most emblematic of these procedures.

Some examples of simplification that enhances transparency by promoting the use of information and communications technologies are the following:

Regarding the use of information and communications technologies in order to facilitate

transparency, in the last two decades Portugal has focused on the use of information technology (IT) and e-Government (e-Gov) in the framework of electronic Public Administration policies, of simplification and of transparency of the public sector which, in a broader perspective, allows the provision of better services to citizens and also prevents corruption.

It is worth noting that, according to the information provided by the European Union, Portugal was one of the top States on the provision of online public services in the EU, based on the results of the European eGovernment Benchmark 2013. The assessment of the performance of European countries led by the European Commission continues to place Portugal among the leading countries in online services provided to citizens and businesses.

The European eGovernment Benchmark is a yearly reference study on the assessment of the performance of European countries concerning the provision of online public services, based on the life event concept, i.e., a set of services provided by various public administration bodies and which are presented to citizens in an integrated manner (e.g. starting a business, registering and driving a vehicle, to lose and to look for a new job, change of residence).

<https://ec.europa.eu/digital-single-market/en/news/eu-egovernment-report-2016-shows-online-public-services-improved-unevenly>

The AMA - Agency for Administrative Modernisation - plays a key role in this area.

The AMA is a public institute that pursues the powers of the Presidency of the Council of Ministers in the areas of modernization and administrative simplification and electronic administration. Its mission is identifying, developing and evaluating programs, projects and actions of modernization and administrative simplification and to promote, coordinate, manage and evaluate the system for distribution of public services, within the framework of the policies defined by the Portuguese Government.

Examples

Dematerialization of the Prescription of Medicines and Users Electronic Identification of the National Health System and Health Professionals (DRM-IEUP)

This project's main objectives are to eliminate the need for paper, to increase the convenience of access to medication by patients, to increase the safety of prescription by prescribers, to promote the fight against fraud, corruption and waste through better control at the time of medicine dispensing and to promote better environmental practices. This project also contributes to the widespread use of the Citizen's Card as a means of electronic authentication.

E-invoice system

The e-invoice system is an ambitious program to fight fraud and tax evasion in Portugal, in

order to ensure a fair distribution of the tax effort by all taxpayers. This system implemented a mandatory electronic communication of the elements of the invoices to the Tax and Customs Authority by economic agents, reinforcing the fight against fraud and tax evasion and supporting taxpayers in voluntary compliance with their tax obligations.

CITIUS platform

In the field of Justice, the CITIUS platform enables electronic submission of documents for use in court cases.

Lawyers are able to present evidence and documents to the courts, check their distribution, look up cases and keep track of fees electronically.

For civil cases and injunctions, most of the correspondence is conducted electronically. Sets of copies and duplicates are no longer needed.

The system is secure because the use of personal, non-transferable electronic certificates is required.

SIMPLEX

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 decreased significantly structural problems of regulation and context costs (as in the field of business creation). The progress made in electronic services, not only in the number of those services, but also in its functionality and usability, puts Portugal in 1st place of the e-Government Benchmarking in 2009 and 2011. Citizens and businesses giving a positive evaluation, both on online services and on the single counters [balcão único] created demonstrate the added value of this instrument and its importance, 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 companies and business associations, thus contributing not only to greater transparency but also for the involvement of stakeholders in matters that directly related to its activities.

Citizen's Portal

The Citizen's Portal aims to facilitate the relationship between the citizens and the State, establishing itself as a privileged access channel to the services provided by the Public Administration. From the Citizen's Portal, citizens can perform various tasks online (changing their address, setting a medical appointment, etc.), as well as consult a wide range

of information.

At the same time, the Portal forwards the users to other websites where they can interact directly with the provider of the service. The Citizen's Portal features over 905 services available for a total of 161 public agencies and entities. Joining the Citizen's Portal proves the success of this way of service, with a total of about 2 million monthly visits and a volume of active users registered around 300 000.

The portal integrates services such as Online Certificates (about 20,000 requests for certificates of civil registration and property registration), the Change of Address and the Directory of State (SIOE), promoting efficiency, transparency and trust in the Public Administration.

Electronic reporting of crimes of corruption

Although of a different nature and with different objectives, the possibility of reporting of alleged corruption crimes using information technologies should be highlighted.

Effectively, it is available on the website of the Prosecutor General's Office the possibility of electronic reporting of corruption cases. The complaint can remain anonymous. In addition, the complaint will receive a number by which it will be identified and a passkey shall be assigned to the complainant that later will allow him/her to access the communication and take notice and track the status of the investigation and other data that may be of his/her interest

(<https://simp.pgr.pt/dciap/denuncias/index2.php>).

The examples shown are only a few of the many examples of the use of information technologies, not only to modernize Public Administration, provide training to civil servants, improve the functioning and the provision of services by the public sectors services, but also to promote transparency.

These policies are consolidated policy options which have already been applied for many years and continue to be part of public policies and Government programs, such as the Program of the XXI Government of the Portuguese Republic, which devotes an entire chapter to the strengthening, simplification and digitization of Public Administration at central, regional and local level, in order to provide better services to citizens and businesses, reduce bureaucratic costs and promote transparency -this way, preventing and fighting corruption.

Also, as mentioned under article 10(a) above, there are public consultation procedures in which citizens and enterprises can participate – e.g. 9th amendment to the Public Procurement Code.

(b) Observations on the implementation of the article

In Portugal, necessary legal and administrative frameworks exist that are aimed at

simplifying administrative procedures to facilitate public access to decision-making processes. There is a specialized body – the Agency for Administrative Modernization – that leads the Government's efforts in these areas.

Portugal has provided examples of various online platforms to promote citizen and stakeholder involvement in decision-making processes such as the Citizens' Portal (Public Administration in a single website). The BASE Portal referred to under article 9(1) shall also be highlighted here.

It was concluded that Portugal has implemented the provision under review.

Subparagraph (c) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

...

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

(a) Summary of information relevant to reviewing the implementation of the article

The Ministries and public bodies and entities, including State owned companies, make available in their respective websites information about corruption prevention, as well as their Prevention Plans for Corruption Risks and Related Offences. The CCP publishes, on its website, reports about the identification and evaluation of corruption risks. http://www.cpc.tcontas.pt/documentos/outros/relatorio-sintese_avaliacao_gestao_riscos_corrupcao.pdf

The CCP produces annual reports about the content of criminal information reported from Courts and from general inspectorate services, in order to have information about concrete occurrences of corruption and other related crimes. Those annual reports may be consulted on the CCP's website: <http://www.cpc.tcontas.pt/documentos/analises.html>.

These reports provide the CCP very useful information about the areas and types of public entities that seem to be most exposed to corruption risks.

The CCP also conducted a study about the content of the same elements received in the first five years of existence. This comprehensive study, called One balance (2008-2013), may be consulted on the CCP's website:

http://www.cpc.tcontas.pt/documentos/outros/balanco_2008-2013.pdf

In 2015, the CCP realized a study (an inquiry) with 643 public entities, representing almost 356.000 public workers. This study, called Preventing corruption in public sector - an experience of 5 years, revealed important informative elements about the difficulties in the

production and adoption of the recommended plans for the prevention of corruption in public sector.

Because of this study, the CCP issued a recommendation on July 2015, about the actualization of plans for the prevention of risks of corruption.

The report may be consulted on the CCP's website –

http://www.cpc.tcontas.pt/documentos/outros/prevenir_corrupcao_sector_publico.pdf

As an example, information about corruption is available in:

Directorate-General for Justice Policy (DGPJ)

<http://www.dgpj.mj.pt/sections/informacao-e-eventos/prevenir-e-combater-a>
http://www.dgpj.mj.pt/sections/sobre-dgpj/anexos/plano-de-prevencao-da/downloadFile/file/PLANO_DE_GESTAO_DE_RISCOS_DGPJ.pdf?nocache=1478182296.87

Institute for the Support for Small and Medium Companies (IAPMEI)

<https://www.iapmei.pt/SOBRE-O-IAPMEI/Instrumentos-de-Gestao/Iniciativas-anti-corrupcao.aspx>

Portugal Global (AICEP)

<http://www.portugalglobal.pt/PT/InvestirPortugal/AcordosInternacionais/Paginas/AcordosInternacionais.aspx>

(b) Observations on the implementation of the article

In Portugal, the Council on Corruption Prevention publishes relevant reports on the risks of corruption in the Portuguese public administration periodically. Similar publications prepared by the prosecuting authorities are also available to members of the public.

Many other public bodies make public individual corruption prevention plans on their websites as required by the Council. Relevant information is also published by the Directorate-General for Justice Policy at the Ministry of Justice, Institute for the Support for Small and Medium Companies (IAPMEI) And Portugal Global (AICEP).

Portugal has implemented the provision under review.

Article 11. Measures relating to the judiciary and prosecution services

Paragraph 1 of article 11

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity

and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

(a) Summary of information relevant to reviewing the implementation of the article

The principle of independence of judges is enshrined in Article 203 of the Constitution of the Portuguese Republic and in Article 4 (1) of the Statute of Judicial Magistrates (EMJ), which states:

“1. The court of law only judges according to the Constitution [of the Portuguese Republic] and the law and is not subject to orders or instructions, except for the obligation of lower courts to respect decisions of superior courts after the latter have been judged on appeal.”

Judges are appointed for life (Article 6 of the EMJ) and their appointment ceases only by retirement, due to age or incapacity, or due to suspension of duties (Article 71 of the EMJ):

- a) On the day on which they are notified of the criminal charges or of an order that sets a date for the trial of an intentional crime practiced during the performance of their duties;
- b) On the day on which they are notified of a preventive suspension arising from a disciplinary proceeding or application of a sentence implying their removal from office.

According to Article 206 of the Constitution of the Portuguese Republic (CRP), the rule is the publicity of trials and the public attendance to procedural acts. However, some exceptions are foreseen in Article 87 of the Code of Criminal Procedure. Pursuant to this provision, the judge may at his/her own initiative or upon request of the Public Prosecution Service, of the defendant or of the “private prosecutor” (assistente), decide, by judicial order, to restrict the free attendance by the public or that the act, or part of it, runs with exclusion of publicity.

The mentioned order must be based on factual circumstances which make presumable that the publicity would cause a serious damage to the persons’ dignity, to the public morality or to the normal course of the act and must be revoked whenever there are no longer reasons that caused it. In the case of proceedings on trafficking of human beings or sexual crimes, the rule is the exclusion of publicity.

The ethical principles or core values of the judicial system are regulated in the Constitution of the Portuguese Republic (CRP) and in the Statute of Judicial Magistrates (EMJ).

The Code of Criminal Procedure (CPP) has in its Chapter VI, from articles 39 to 47, rules on impediments, refusals and exemptions.

Article 39, on impediments, states:

“1- No judge may perform his/her duty in a criminal proceeding:

- a) When he/she is, or has been, spouse or legal representative of the defendant, of the offended party or of the person with capacity to constitute himself as “private prosecutor” (assistente) or civil party or when he/she lives or has lived with any of such persons in equal conditions as those of spouses;
- b) When he/she, or his/her spouse, or the person who lives with him/her in equal conditions

as those of spouses, is ascendant, descendant, relative until the 3rd degree, tutor or curator, adopting person or adopted of the defendant, of the offended party or of the person with capacity to constitute himself as private prosecutor or civil party or is an in-law of these until the said degree;

c) When he/she has intervened in the proceeding as a representative of the Public Prosecution, criminal police body, defence counsel, attorney of the private prosecutor or of the civil party or expert; or

d) When, in the proceeding, has been or should be heard as witness.

(...)

3 - Judges who are spouses, relatives or in-laws until the 3rd degree or who live in equal conditions as those of spouses may not perform duties, at any title, in the same proceeding.”

“Article 40

Impediment due to participation in proceeding

No judge may intervene in a trial, appeal or request for revision regarding proceedings in which:

a) He/she has applied a measure of constraint foreseen in articles 200 to 292;

b) He/she has intervened in the inquiry debate;

c) He/she has participated in a former trial;

d) He/she has issued or participated in a former appeal decision or request for revision;

e) He/she has refused to close the proceeding in the event of discharge without punishment, the provisional suspension or the simplest procedure due to disagreement of the penalty suggested.”

“Article 41

Declaration of impediment and its effect

1 - The judge who has any impediment under the previous articles immediately declares it by order in the records.

2 - The declaration of impediment may be requested by the Public Prosecution or by the defendant, by the private prosecutor or by the civil parties as soon as they are accepted to intervene in the proceeding, at any stage of the same; to the request are attached the confirming elements. The judge in question issues the order within a maximum term of five days.

3 - Acts performed by an impeded judge are null and void, unless they cannot be usefully repeated and upon verification that from such acts does not arise any damage for the justice of the decision of the proceeding.”

“Article 42

Appeal

1 - The order in which the judge considers himself impeded is not subject to appeal. The order, in which he does not recognise the impediment opposed to him, is subject to appeal to the immediate superior court.

2 - If the impediment is opposed to a judge of the Supreme Court of Justice, the appeal is decided by the criminal section of such Court without the judge's participation.

3 - The appeal has suspensive effect, without prejudice of the urgent procedural acts being carried out, even by the judge in question, if such is indispensable."

"Article 43

Refusals and exemptions

1 - The intervention of a judge in a proceeding may be refused when there is the risk of being considered suspicious, due to a serious and grievous reason, adequate to cause suspicion over his/her impartiality.

2 - The intervention of a judge in another proceeding or in previous stages of the same proceeding outside the cases of article 40 may constitute a ground for refusal, pursuant to nr 1.

3 - Refusal may be requested by the Public Prosecution, by the defendant, by the private prosecutor or by the civil parties."

In addition to article 43 of the Code of Criminal Procedure, the Code of Civil Procedure - also applicable to criminal proceedings as a default rule - establishes the following rules:

"Article 122

Cases of impediment or inhibition of the judge

1 - No judge may perform his or her duties, in contentious or voluntary jurisdiction:

a) Where he/she is party to the process, directly or in representation of another person, or where he/she has an interest that would allow him/her to be main party;

b) Where the spouse, or any relative or related in a straight line or second degree of collateral, is party to the process, directly or in representation of another person, or when any of these people have an interest in the cause that allows to figure it as the main party;

c) Where he/she has intervened in the process as agent or expert or when there is to be decided an issue on which he/she has given his/her opinion or vote, even if only orally;

d) Where the spouse or relative or related in the direct line or in the second degree of collateral has intervened in the process as legal representative;

e) In the case of an appeal in a process in which he/she had intervention as judge in another court;

f) In the case of an appeal of a decision taken by a relative or related in the direct line or second degree of collateral, or a decision that has ruled on the decision given by some relative or related;

g) When a party to the process has lodged an civil action seeking compensation for damage,

or presented a criminal complaint against him/her as a result of facts in the exercise of his/her duties or because of them, or when the spouse of such person, or relative or related in the direct line or second degree of collateral, is a party to the proceeding, provided that the civil action or the indictment has been admitted;

h) Where he/she has or is to testify as a witness;

i) Where a person living with the judge as an unmarried couple is in a situation referred to in subparagraphs previous person living with the judge.”

“Article 127

Grounds of suspicion

1 - A party may only raise a suspicion on the judge in the following cases:

a) Where there are any ties of kinship, not included in Article 122, in straight line or up to the fourth degree of the collateral line, between the judge or his/her spouse and any party or person who has any interest in the cause;

b) Where in a process the judge or his spouse or any relative direct line and is one of the parties;

c) Where there is or has been in the previous three years, any cause, not included in g) of paragraph 1 of Article 122, between any of the parties or their spouse and the judge or his/her spouse or any relative of any of them in a direct line;

d) Where the judge or his spouse or any relative in direct line, is creditor or debtor of any of the parties, or has a legal interest in that the decision is favourable to one of parties;

e) Where the judge is legal guardian, presumed heir, done or employer of any of the parties, or member of the board or management of any legal person, party in the proceedings;

f) Where the judge has received gifts before or after initiating the process and because of it, or where he/she has provided the means to pay the costs;

g) If there is serious animosity or intimacy between the judge and one of the parties.”

Parties to a case may oppose suspicion to the judge when there is a serious reason, suitable to generate distrust about his/her impartiality, in particular the situation foresee in Article 127 (f) if the judge has received donations before or after the case and because of it.

Furthermore, according to Article 22 of the EMJ:

“1. Judicial magistrates shall have a salary comprising of the following:

a) Base remuneration;

b) Supplements.

2. Judicial magistrates cannot receive any type of benefits not covered by the remuneration components indicated.”

Finally, regarding incompatibilities, and according to Article 13 of the EMJ:

“1. Except for judicial magistrates who are retired and those on a long term leave of absence without salary, judicial magistrates cannot perform any other public or private duty of a professional nature, except for non-remunerated teaching or scientific research of a juridical nature and also administration duties at judicial magistracy union organisations.

2. Teaching or scientific research of a judicial nature shall be subject to authorisation by the Judiciary High Council (CSM) and cannot be detrimental to their service.”

(b) Observations on the implementation of the article

Measures to prevent corruption in Portugal’s judiciary include relevant provisions of the Constitution, the Criminal Procedure Code, the Code of Civil Procedure, the Statute of Judicial Magistrates (Law no 21/85), the Law on Organization of the Judicial System (Law no 62/2013) and other legislation. These provisions provide for independence, ethical principles and core values of the judicial system and regulate the recruitment, pay, disciplinary measures and conflicts of interest among members of the judiciary.

The Centre for Judicial Studies (CEJ) manages the initial and ongoing training of judges and prosecutors which includes topics on professional ethics and deontology. Portugal has also introduced an electronic system (CITIUS) to, inter alia, enable filing of submissions of documents by parties, look up cases and exchange correspondence.

However, the reviewers note that there is no code of conduct or regulations applicable to the Portuguese judiciary on disclosure and management of conflicts of interest and acceptance of gifts in accordance with the legislation referred to in article 8(5) above. Therefore, **it was recommended that Portugal endeavour to develop comprehensive regulations applicable to members of the judiciary on disclosure and management of conflicts of interest and acceptance of gifts.**

Paragraph 2 of article 11

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

(a) Summary of information relevant to reviewing the implementation of the article

The Constitution of the Portuguese Republic (CRP) includes the Public Prosecution Service in its HEADING V relating to the Courts, specifically Chapter IV - Articles 219 and 220.

The Public Prosecution Service is a constitutional body of the State, invested with the powers to represent the State (and also minors and people of diminished capacity) and defend the interests determined by law, to participate in the enforcement of the criminal policy as defined by the organs of sovereignty, to carry out prosecution guided by the principle of legality, and to defend the democratic legality pursuant to the Constitution, the Statute and the Law.

It is autonomous as regards to the judicial power, as well as towards the other bodies of the central, regional and local power (Article 2 of the Statute of the Public Prosecution Service in the wording given by Law no. 60/98 dated 27 August).

Although the Public Prosecution Service is incorporated in the part of the CRP devoted to the courts and to the judicial organization, it is independent therefrom. Furthermore, it is a magistracy parallel to, and independent from, the Judiciary Magistracy (Article 75(1) of the Statute of the Public Prosecution Service).

It has its own organisational rules, statute and governance system.

The autonomy of the Public Prosecution Service is characterized by its being bound by criteria of legality and objectivity, impartiality, equality and justice, and by the exclusive submission of Public Prosecutors to the directives, orders and instructions set out in its Statute (Article 2 of the Statute). Its action is oriented towards the community interest under a unity-of-action perspective.

This means that the Public Prosecution Service operates autonomously from the executive branch, and that it has its own governance system, in which the Prosecutor General's Office (PGR) is the highest body; furthermore, it operates without the interference of other branches, being strictly bound by the law and the directives, orders and instructions received from its bodies.

As stated before, the Public Prosecution Service is an autonomous magistracy from other State bodies.

It is a magistracy parallel to that of the Judiciary magistracy though independent thereof and it is bound by strict criteria of legality and objectivity. Additionally, the Public Prosecutors are subject only to the directives, orders and instructions provided for by the law (Article 219 of the CRP, Articles 2 and 75(1) of the Statute of the Public Prosecution Service, Article 3 of Law no 62/2013, of 26 September - Law on the Organization of the Judicial System and Article 53 of the Code of Criminal Procedure).

Public Prosecutors are accountable and subordinated to a hierarchy. They must answer for the fulfilment of their duties and for the compliance with directives, orders and instructions they receive from the hierarchic superiors with powers to do so (Article 76 of the Statute).

Public Prosecutors may demand that their hierarchic superior give the orders in writing, mainly if the orders are to produce effects in a specific case. Furthermore, Public Prosecutors must refuse to comply with unlawful orders, duly grounded, on a gross violation of their legal conscience.

Although no autonomous Ethics and Deontological Code has been adopted, which is to be applied autonomously towards legal and statutory provisions governing the Magistracy of the Public Prosecution Service, and notwithstanding its relevance, the system in place provides enough safeguards as to the adequacy of the Public Prosecutors acts to the ethical and deontological principles governing them.

From the abovementioned characteristics - autonomy (including operational autonomy of the Public Prosecutors); hierarchy; submission to criteria of legality and objectivity (one could also say impartiality); accountability; compliance with laws and directives, orders and instructions; limitation of the hierarchic powers -, results already an intervention guarantee moulded by ethical and deontological principles that govern the Public Prosecutors activities pursuant to the various international instruments on this matter.

Another aspect that must be underlined is that Public Prosecutors are subject to a set of

duties, interdictions, incompatibilities and impediments set out in the Statute, which are capable of guaranteeing the compliance with ethical and deontological principles. Procedural, hierarchical and inspective mechanisms, adequate to detect any situation likely to violate these principles, together with the respective sanctioning are already in place.

These duties, incompatibilities and impediments need to be stated in the proceedings (at procedural level) and in the competition application.

In the scope of the criminal procedure, the rules on impediments, excuses and refusals concerning judges (Title I, Chapter VI) are applicable, with due adaptations, to the Public Prosecution Service (Article 54 of the Code of Criminal Procedure).

The Public Prosecutor must state the impediment in the proceedings or ask for a recusal regarding his intervention in case there is a serious reason likely to cause lack of confidence as to his/her impartiality. The statement/request is addressed to the immediate hierarchic superior, who shall decide upon (Article 54 of the Code of Criminal Procedure).

A Public Prosecutor cannot intervene in a criminal case when:

- (i) he/she is or was the spouse or the legal representative of the defendant, of the victim or of any other person having the right to become a party assisting the Public Prosecutor or a party claiming compensation, or when he/she lives or have lived with any of these persons in the same household as a couple;
- (ii) he/she, or his/her spouse or person living with him/her in the same household as spouse, is an ascendant, descendent, relative in 3rd degree, guardian or tutor, adopting parent or adopted person as regards to the defendant, the victim or any person likely to become a party assisting the public prosecutor, or kin up to that degree;
- (iii) he/she has intervened in the case as a criminal police body, legal counsellor for the party assisting the Public Prosecutor or expert;
- (iv) he/she has been heard or is to be heard as witness in the case.

The intervention in the same case is interdicted to Public Prosecutors who have a relationship of spouses, relatives or kin up to the 3rd degree between them, or who live in the same household as a couple.

In the scope of the civil procedure (and, supplementary, of the administrative procedure), some of the reasons for impediment applied to judges also apply to Public Prosecutors, as listed in Article 115(a), (b), (g),(i) of the Civil Code):

- (i) when a Public Prosecutor is a party in the case, himself or as representative of another person, or when he/she has an interest that would allow him/her to become a main party;
- (ii) when he/she is a party in the case, himself or in representation of another person, or his spouse or a relative or a kin, in direct line or at 2nd degree of the collateral line, or when some of these persons has an interest in the cause allowing him/her to become a main party;
- (iii) when any person, who has filed a lawsuit against him/her for compensation or a criminal case due to acts carried out while holding office or due to his/her office, is a party in the cause; or when that person's spouse, a kin either in direct line or at the 2nd degree of the collateral line, provided the lawsuit or the charges have already been declared admissible;
- (iv) when any person living with the Public Prosecutor in the same household as a spouse fits any of the above mentioned situations.

Public Prosecutors are also barred to intervene when they have intervened in the same case

as attorneys or experts, either appointed or designated by the party against which they would have to exert their power of attorney or which they would have to assist.

A Public Prosecutor needs to state immediately his/her impediment in relation to the case; if not, the judge shall be informed of the impediment, when the person subject to impediment has to intervene in the case, ex-officio or upon request of the parties (Article 118 of the Code of Civil Procedure).

On the other hand, Public Prosecutors cannot hold office at any court or chamber in case they have a relationship of marriage, cohabitation, family or affinity of any degree or up to the 2nd degree of collateral line with any judge, Public Prosecutor or court officer holding office at the same court or chamber. Furthermore, Public Prosecutors cannot hold office at any court or county department in which they have had a lawyer's office for the past five years (Article 83 of the Statute of the Public Prosecution Service).

The legal and statutory settlement of incompatibilities and impediments, as well as the express definition of their material contents, operate as a preventive element against conflicts of interest, which is strengthened by the control mechanisms translated into:

- (i) the compulsory statement, in the scope of a case, of the precise impediments;
- (ii) the submission of the request for excuse by the Public Prosecutor;
- (iii) the possibility of the parties requesting the Public Prosecutor's statement of impediment or refusal ; and
- (iv) in case of incompatibilities, the request for authorization, decided upon by a collegial body, to carry out certain activities expressly provided for by the Statute.

On the other hand, the violation of the duty to state the impediment, as well as the violation of the request for authorisation to carry out certain activities (which may be allowed upon prior authorisation) and the violation of the incompatibilities and impediments, subject the Public Prosecutor to disciplinary and (potentially) criminal action - which has the effect of prevention therefrom.

The governing rules applied to the competition for admission as Public Prosecutors expressly provides that impediments set out in Article 83 of the Statute of Public Prosecution (as above listed) must be ticked on the competition application (Article 18 of the Competition rules of procedure).

In addition, the Statute of the Public Prosecution Service provides for a regime relating to:

- Incompatibilities (Article 81) - Public Prosecutors may not hold any other public or private function of a professional nature, other than (i) teaching, scientific research of a legal nature which may be authorised by the CSMP provided they are not remunerated and are not detrimental to the service), (ii) managerial functions in organisations that represent the Public Prosecution Service, clearly set out by the law.

- Party and political activities (Article 82) - Public Prosecutors in tenure of office are barred from taking part in party and political activities of a public nature. They are barred from holding political office, with the exception of that of President of the Republic, member of Government or of the Council of State.

Public Prosecutors who retire with full honours remain bound by statutory duties (Article 148 of the Statute).

Public Prosecutors are accountable, from a disciplinary point of view, as regards to acts

carried out in violation of the professional duties and acts or omissions relating to their public life or reflected therein, which are incompatible with the decorum and dignity necessary for carrying out their functions.

Public Prosecutors are subject to criteria and duties of objectivity, exemption, attainment of the public interest, care and loyalty. The violation of these duties triggers disciplinary action.

There are no express rules interdicting acceptance of gifts, though this is not a regular or tolerated practice. Acceptance of offers/gifts, regardless of their type/value, may cause disciplinary or criminal action.

According to Article 108 of the Statute, the regime applicable to Public Administration as regards incompatibilities, duties and rights, is applicable to Public Prosecutors.

The Prosecutor General's Office has an Internet page (<http://www.pgr.pt>) in which legislation and regulations concerning the Prosecutor General's Office and the Public Prosecution Service are made available to the public, namely the Statute of the Public Prosecution Service.

Besides, the same website contains information on the Magistracy of the Public Prosecution Service, incompatibilities, impediments, and duties of prosecutors, as well as consequences of their violation. (http://www.pgr.pt/grupo_pgr/mp_estatuto.html).

Every year the Prosecutor General's Office produces an Annual Report on the activities of the Public Prosecution Service, in particular activities of the CSMP, which contains data on the disciplinary proceedings initiated and decided upon in the concerned year. The Report is available on the Prosecutor General's Office website.

The CSMP publishes an Information Bulletin of the plenary session, which can be consulted in <http://csmp.pgr.pt/>.

(b) Observations on the implementation of the article

The Constitution RP, the Statute of the Public Prosecution Service (Law no 60/98), the Criminal Procedure Code, the Civil Procedure Code and other laws and regulations contain ethical principles and core values for and measures to ensure integrity and prevent conflicts of interests among the staff of Public Prosecution Service.

According to the Criminal Procedure Code and the Civil Procedure Code, prosecutors must disclose impediments and incompatibilities in any civil or criminal case where they intervene. Violations of this duty lead to disciplinary actions.

However, there are no express rules on acceptance of gifts or a code of conduct applicable to the Public Prosecution Service that would require specific steps to disclose and manage conflicts of interest when they arise. Therefore, **it was recommended that Portugal endeavour to develop comprehensive regulations applicable to members of the Public Prosecution Service on disclosure and management of conflicts of interest and acceptance of gifts.**

Article 12. Private sector

Paragraphs 1 and 2 of article 12

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

- (a) Promoting cooperation between law enforcement agencies and relevant private entities;*
- (b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;*
- (c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;*
- (d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;*
- (e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;*
- (f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.*

(a) Summary of information relevant to reviewing the implementation of the article

Regarding subparagraph a), cooperation between law enforcement agencies and private entities exists, particularly in the field of prevention and combat of corruption and money laundering, as predicate offences. In a regularly basis, the Portuguese Financial Intelligence unit (FIU) organizes workshops for the reporting entities (the Public Prosecution Service also attends) and the issues of transparency, beneficial ownership, reporting and feedback are discussed.

At the same time, in the framework of seminars and workshops organized by public entities, as is the case of the Criminal Police, the Public Prosecution Service and the DGPI/Ministry of Justice, representatives of the private sector and of companies and business associations are invited to attend, in order to raise awareness, share experiences, promote good practices and strengthen the cooperation between public and private sectors.

The promotion of the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions, as referred to in subparagraph b) is an issue that should be developed by the private sector entities themselves. The same applies to the promotion of the use of good commercial practices among businesses.

In this field, the State has an important role in the dissemination of good practices, including good practices at international level.

Some work has been done, particularly by the Ministry of Economy, and a good example is the already referred «National Action Plan for a Responsible Business Conduct and Human Rights 2017-2020», which is seen as a public policy tool for companies and which is aligned with relevant European and international directives, including the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises, which can be a driving force for stimulating the economy based on socially responsible behaviour.

It is therefore intended that conditions be created that sensitize and encourage companies to implement in their models of strategic management the dimensions of economic, social, cultural and environmentally responsible behaviour, based on respect for human rights, which could lead to benefits in risk management, including the risk of corruption, cost reduction, human resource management, access to capital, customer relations and innovation capacity.

Standards and procedures are developed by business associations and, for instance by the Portuguese Association for Business Ethics (APEE), which refers to the 10 Principles of the Global compact Network Portugal to its associates, particularly Principle 10: “Businesses must combat corruption in all its forms, including extortion and bribery” (www.apee.pt <http://www.apee.pt>).

Public entities as Portugal Global (AICEP) and IAPMEI cooperate with companies and provide information and guidance in the promotion of anti-corruption and transparency in the business activity. COSEC, the leading Insurer in Portugal for credit and insurance, offering the best management support and credit control solutions both for internal and external markets, also supports companies in the prevention of corruption.

Regarding contractual relations of businesses with the State, it should be referred again the public procurement procedures, where all information and requirements are published in Portal BASE.

Regarding the promoting of transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities, as referred to in subparagraph c), all legal persons should be registered in the National Registry for Legal Persons and in the Commercial Registry, where the names of the management board and shareholders is kept, except the name of the persons having bearer shares.

Law no. 15/2017 (May 2017), regulated by Decree-Law no. 123/2017 (September 2017), prohibits the issuance of bearer shares and determines that all the existing bearer shares must be converted in nominative shares until the beginning of November 2017. As such, the issuers may know the identification of all their holders. Moreover, Law no. 89/2017 (August 2017) created the central register of beneficial owners. These legal instruments are already in force.

Please see previous answers on conflicts of interests and revolving doors in what concerns subparagraph e). Regarding Article 158 (f) of Decree-Law no 224/2008, of 20 November (New Audit Statute), that approves the OROC Statutes it is stated that all statutory auditors (ROCs) must report to the Prosecutors' General Office, through OROC, the facts that come to their knowledge while performing the respective duties that may constitute a public offence, namely corruption. The duty to report such crimes is also stated in the anti-money laundering legislation.

False accounting offences are foreseen in Articles 103 and 104 of the Legal Regime of Tax Offences (RGIT):

Article 103 Fraud

1 - The unlawful conducts described in this Article that aim at the non-assessment, delivery or payment of tax due or at the undue granting of tax reliefs, reimbursements or other capital advantages that may cause a reduction of the tax revenues shall be deemed as tax fraud, punished with imprisonment of up to 3 years or a fine of up to 360 days. Tax fraud may occur by:

- a) The concealing or change of facts or values that shall be stated in accounting and bookkeeping records, or in declarations submitted or provided for the specific inspection, determination, assessment or control of the tax base by the tax administration;
- b) The concealing of facts and values not declared and which shall be disclosed to the tax administration;
- c) The conclusion of a simulated agreement, both on the amount and on the nature, by interposition, concealing or replacement of people.

2 - The events provided for in the previous paragraphs shall not be punishable where the illegitimate capital advantage shall not exceed € 15,000.

3 - For the purposes of the provisions of the previous paragraphs, the amounts to be considered shall be those that, under the applicable laws, shall be stated in each tax return to be submitted to the tax administration.

Article 104 Aggravated fraud

1 - The events provided for in the previous paragraphs shall be punished with imprisonment between 1 and 5 years for individuals and a fine between 240 and 1,200 days for legal persons, where in the presence of more than one of the following circumstances:

- a) The offender colluded with a third party subject to ancillary obligations for the purposes of tax inspection;
- b) The offender is a public official and has seriously abused of his duties;
- c) The offender used the help of a public official with severe abuse of his duties;
- d) The offender falsifies or taints, conceals, destroys, renders unusable or refuses to deliver,

display or present books, computer programs or files and any other documents or evidence required by the tax law.

e) The offender uses the books or any other document mentioned in the previous paragraph knowing they were falsified or tainted by a third party;

f) Where it was used the interposition of individuals or legal persons resident outside the Portuguese territory and there subject to a clearly more favourable tax scheme;

g) The offender colluded with a third party with whom he is in a situation of special relations.

2 - The same penalty shall be applied where:

a) The fraud shall take place by the use of invoices or equivalent documents for non-existing operations or for different values or even for the intervention of people or entities other than those of the underlying operation; or

b) The capital advantage shall exceed € 50,000.

3 - Where the capital advantage shall exceed € 200,000, the penalty shall be of imprisonment between 2 and 8 years for individuals and a fine between 480 and 1,920 days for legal persons.

4 - The events provided for in paragraph 1 (d) and (e) of this Article, with the purpose described in Article 103 (1) shall not be autonomously punishable, unless a more serious penalty applies.

Tax authorities have the power foreseen in law to request financial institutions information related to tax, in the framework of tax fraud and tax evasion investigations (Article 63-B).

The ability of Tax authorities to ask financial institutions for information is based on a decision taken by the Tax Authority Directorate according to certain requirements, one of which is the failure of those financial institutions to comply with its obligations.

Decree-Law no 398/98, of 12 December
General Tax Law

Article 63-A Information on financial transactions

1 - The credit institutions and the financial companies shall be subject to the same mechanisms for automatic information regarding the opening and operations of accounts by taxpayers which tax situation shall not be regularised, under Article 64 (5) and (6), or included in risk sectors, as well as for cross-border transfers that shall not regard payments subject to any communication regime for tax purposes already provided by law, commercial transactions or carried out by public entities, in accordance with the rules to be determined by Order of the Minister of Finance, after hearing the Bank of Portugal.

2 - The credit institutions and the financial companies shall be required to communicate to the Directorate-General for taxation, by the end of July of each year, in a declaration of official model, approved by an Order issued by the Minister of Finance, the financial transfers that shall have as recipient an entity located in a country, territory or region that benefit from a more favourable taxation regime and that shall not regard income payments

subject to any communication regime for tax purposes already provided by law or transactions carried out by corporate persons governed by public law.

3 - The credit institutions and the financial companies are required to provide the tax administration, by the end of July of each year, in a declaration of official model approved by an Order issued by the Minister of Finance and after hearing the bank of Portugal, with the amount of payment flows of credit and debit cards, effected through them, to taxable persons receiving category B income in IRS and in IRC, without identifying by any form, the mentioned cardholders.

4 - The Director General for Taxation or the Director General of Customs and Excise, their legal substitutes, or the governing board of the Instituto de Gestão Financeira da Segurança Social. I. P. (Institute of Financial Management of Social Security) shall be competent to request the information to which the previous paragraph refers, without possibility of delegation.

5 - The information to be submitted under paragraph 1 shall include the account identification, the tax identification number of the account holders, the amount of the deposits of the year, the balance on December 31st, as well as other elements that may be part of the declaration of official model.

6 - The IRS taxable persons are required to mention in the corresponding tax return the existence and the identification of the deposit or securities accounts open in a financial institution non-resident in the Portuguese territory.

Article 63-B

Access to bank information and documents

1 - The tax administration shall have the power to access to all bank information or documents, without the need for consent of the holder of the protected data:

- a) Where there is evidence of crime on tax matters;
- b) Where there is evidence of lack of accuracy of what has been declared or in the absence of any tax return required by law;
- c) Where there is evidence of non-justified increments in property, according to the provisions of Article 87 (1) f);
- d) Where it concerns the verification of the compliance of the supporting documents for the accounting records of IRS and IRC taxpayers who shall be subject to organised accounting;
- e) Where there is a need to monitor the conditions of the preferential tax schemes of which the taxpayer shall take advantage;
- f) Where it becomes impossible to certify and quantify, directly and accurately, the taxable amount, under Article 88 and, in general, where the requirements to undertake an indirect measurement are met.
- g) Where there are proven debts to the tax administration and social security.

2 - The tax administration shall also be entitled to access directly to the bank documents, in case of refusal to exhibit or authorize the consult of such documents, regarding relatives or third persons having a special relation with the taxpayer.

3 - (Repealed)

4 - The tax administration's decisions referred to in the preceding paragraphs shall be substantiated and expressly state the specific reasons justifying them and, except as provided for in the following paragraph, they shall be notified to the concerning parties within 30 days after their issuing by the Director-General for Taxation or the Director General for Customs and Excise, or their legal substitutes, with no possibility of delegation.

5 - Actions taken under the powers defined in paragraph 1 may be judicially reviewed in an appeal with a merely devolutive effect, and those provided for in paragraph 2 shall be subject to a prior hearing of the relative or third person and may be judicially reviewed in an appeal with suspensive effect, on their part.

6 - Whenever an appeal under the preceding paragraph is accepted, any evidence obtained so far cannot be used for any purpose to the detriment of the taxpayer.

7 - Entities in a controlling relation regarding the taxpayer shall be subject to the rules concerning access to bank information referred to in paragraphs 1, 2 and 3.

8 - (Repealed)

9 - The rules provided for in the preceding paragraphs shall not affect the laws applicable to criminal investigation cases and may only take into account banking operations and transactions carried out after the entry into force of this regulation, without prejudice to the present regulation applicable to the previous situations.

10 - For the purposes of the present law, any document or record, regardless of its medium, which identifies, certifies or records transactions performed by credit institutions or financial companies within the scope of their business, including those regarding operations carried out using credit cards, shall be deemed as bank document.

11 - The tax administration shall annually provide information of statistical nature to the competent Ministry about the processes that involved the lifting of banking secrecy, which shall be sent to the Portuguese Parliament with the presentation of the draft budget bill.

Article 63-C

Bank account exclusively allocated to the business activity

1 - IRC taxable persons, as well as IRS taxable persons having or that shall have organised accounting, are required to hold, at least, one bank account through which the payments and receipts regarding the business activity shall be exclusively operated.

2 - All operations regarding shareholders' loans, other forms of shareholders' loans and advances, as well as any other operation from or in favour of the taxable persons shall be also carried out through the account or accounts mentioned in paragraph 1.

3 - Payments regarding invoices or similar documents of an amount equal or exceeding 1000 € shall be made by a payment method that shall allow the identification of the respective recipient, namely by bank transfer, order cheque or direct debit.

4 - The tax administration may have access to all bank information and documents regarding the account or accounts mentioned in paragraph 1 regardless their holders consent.

5 - The possibility provided for in the previous paragraph shall be set forth under the terms

and circumstances of Article 63-B.

The CCP is part of the Project “Gestão Transparente.org” (Transparent Management - <http://en.gestaotransparente.org/>), which is an internet tool produced in Portugal to help private companies that are undertaking projects abroad, in order to evaluate the potential risks of corruption in the country or countries where those companies are trying to establish commercial projects.

The Gestão Transparente.org tool may be accessed in http://en.gestaotransparente.org/?page_id=46.

Portuguese Insurance and Pension Funds Supervisory Authority (ASF)

As far as the insurance activity is concerned the legislation regarding the taking-up and pursuit of the business of insurance and reinsurance establishes some rules which take into account the need of the private sector to defend itself from fraud.

In specific, article 72 of the Legal Regime for Insurance and Reassurance Access and Activity (RJASR) establishes the obligation for the insurance undertakings to have a system for the management of risks which should include policies for the prevention, detection and reporting of fraudulent activities. Note that according to the ASF regulatory standard 10/2009-R, of 25 June, on market conduct, fraud on the insurance sector includes all actions or omissions intended to obtain an illicit advantage for the agent or for a third party through an insurance contract, notably the achievement of any undue payment.

Furthermore, the legislation regarding the taking-up and pursuit of the business of insurance and reinsurance establishes a specific assessment of the fitness and propriety of the people who effectively run the undertaking, oversee it, have key functions or perform key functions, with the goal to ensure the sound and prudent management of insurance and reinsurance undertakings (please refer to articles 65 to 67 of RJASR).

In general, the ASF has broad powers to ask its supervised entities for any information it deems relevant [Article 27 (1) (b) of RJASR]. In situations of fraud, insurance undertakings are specifically obliged to report this to ASF, thus ensuring a swift cooperation and flow of information between the private sector and the supervisory authority.

According to Article 79 of RJASR, insurance and reinsurance undertakings shall establish and monitor compliance with codes of conduct that set out guidelines on professional ethics, including principles for the management of conflicts of interest applicable to members of the management and supervisory bodies, to those responsible for key functions in the organisation and to other workers and employees. These codes of conduct are available online.

Members of management or auditing bodies in the insurance company shall also comply with independence requirements set out in article 70 of RJASR to ensure they perform their duties on an impartial basis and in avoidance of any potential conflict of interest.

In the insurance sector, for the sake of transparency, the shares representative of the share capital of insurance and reinsurance public limited undertakings, as well as of pension fund managing companies, are compulsory registered shares. Insurance companies must also have as their sole object the pursuit of the business of insurance and operations arising

directly therefrom, therefore avoiding the contamination of the insurance activity by any other interest beyond the insurance business [please refer, respectively, to Articles 61 and 47 (1) of RJASR].

Furthermore, ASF is responsible for the registry of persons who effectively run an insurance undertaking, oversee it or have other key functions. This registry is mandatory for the pursuit of the insurance activity and depends from the satisfactory assessment by ASF of the suitable adequacy of those persons for the designed posts.

ASF's statutes establish in Article 32 (2) that after term of office, and for a period of two years, previous members of the board of directors may not establish any tie or contractual relationship with companies, groups of companies or any other entities under the supervisory activity of the ASF.

Besides all the audit obligations that every corporation need to undergo due to the general corporate regime, insurance and reinsurance undertakings shall provide for an effective internal control system and internal audit function in order to verify the compliance with administrative and accounting procedures and the adequacy and effectiveness of the system of governance (please refer to article 74 and 75 of RJASR).

(b) Observations on the implementation of the article

Portugal has taken a number of measures to prevent corruption involving the private sector.

In regard to cooperation between the authorities and private sector representatives, the Criminal Police, Public Prosecution Service and the Directorate General for Justice Policy organize workshops for private sector representatives to raise awareness, share experiences, promote good practices and strengthen cooperation. The Financial Intelligence Unit regularly organizes workshops for reporting entities to discuss the issues of, inter alia, beneficial ownership and reporting obligations under the anti-money laundering and countering financing of terrorism regime.

In regard to ways to promote appropriate governance standards among private sector entities, it is worth noting the "National Action Plan for a Responsible Business Conduct and Human Rights 2017-2020" developed by the Ministry of Economy to promote socially responsible behaviour. Relevant measures in contractual relations of businesses with the State in procurement procedures is addressed in the Code of Public Procurement.

In regard to measures to ensure transparency among private sector entities, Portugal requires all legal persons to register in the National Registry for Legal Persons and in the Commercial Registry and to disclose the names of the management board and shareholders. The Parliament has passed legislation that creates a central register of beneficial owners (Law no 89/2017) and abolishes bearer shares (Law no 15/2017). The creation of the register should be highlighted as a good practice.

In regard to appropriate accounting and auditing standards, all companies are required to follow appropriate accounting and auditing standards and maintain books and records. Companies falling under the General Regime of the Accounting Normalization System must have a Chartered Accountant who ensures compliance with these obligations and tax obligations and signs all company tax returns.

Finally, there are restrictions on certain categories of former public officials (e.g. auditors)

seeking employment with private sector entities as described under article 7(4) above. In this respect, it is also important to reiterate the recommendation made under article 7(4) above.

It was concluded that Portugal has implemented the provision under review.

(c) Successes and good practices

The creation of a Central Register for Beneficial Owners.

Paragraph 3 of article 12

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

- (a) The establishment of off-the-books accounts;*
- (b) The making of off-the-books or inadequately identified transactions;*
- (c) The recording of non-existent expenditure;*
- (d) The entry of liabilities with incorrect identification of their objects;*
- (e) The use of false documents;*
- (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.*

(a) Summary of information relevant to reviewing the implementation of the article

All Portuguese companies are required to have and maintain books and records, financial statement disclosures and accounting and auditing standards.

Almost all companies are subject to the organized accounting system and, consequently, must have a Chartered Accountant who must ensure compliance with these obligations and tax obligations, in accordance with the Accounting Normalization System.

The Chartered Accountant must sign all company tax returns, including declarations of commencement, change and cessation of commercial, industrial or agricultural activity.

In organizing accounting, all companies should ensure that:

- ☐ all records are supported by documents.
- ☐ all supporting documents are properly organized, so that they can be consulted when necessary.
- ☐ the records must be made in chronological order and the inaccuracies must be immediately regularized in the accounts by means of a new record.

The accounting books, ancillary records, supporting documents and the procedure for

computerized handling of the accounts of the company shall be kept in good conditions for the 10 years following the end of each fiscal year.

All the information related to tax obligations is available in the AT's website (http://info.portaldasfinancas.gov.pt/pt/apoio_contribuinte/) and it can be stated that the legislation in force - tax and criminal legislation - is comprehensive and allows for the prevention of the commission of acts of corruption through the use in companies of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditure, the entry of liabilities with incorrect identification of their objects, the use of false documents and the intentional destruction of bookkeeping documents earlier than foreseen by the law.

Portuguese Insurance and Pension Funds Supervisory Authority (ASF)

Since 2007, the ASF has an accounting plan for insurance undertakings fully aligned with the International Accounting Standards. This plan was last reviewed in 2016, by ASF Regulatory Standard no. 10/2016-R, of 25 September. The effective enforcement of accounting standards by insurance undertakings is then ensured by the ASF, by means of its supervision activity in accordance to its statutes [please refer to article 16 (4) (f)].

(b) Observations on the implementation of the article

Measures to prohibit the accounting practices listed in this provision include relevant accounting rules and tax legislation. False accounting offences are foreseen in Articles 103 and 104 of the Legal Regime of Tax Offences.

Under Decree-Law no 224/2008 which approves the Statute of the Portuguese Order of Statutory Auditors (OROC), all statutory auditors shall report corruption offences to the Public Prosecution Service through OROC.

Portugal has implemented the provision under review.

Paragraph 4 of article 12

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

(a) Summary of information relevant to reviewing the implementation of the article

The Portuguese tax law expressly prohibits the deductibility, as tax expenses, of illicit expenditures, even when they have occurred outside the Portuguese territory, thus making any illicit nature expenditure (such as bribes, money laundering or other) inadmissible for tax purposes.

Therefore, the deductibility of bribes for tax purposes is totally inadmissible in any

circumstances.

If taxpayers try to disguise them as lawful business expenses, expenses from illicit operations, a tax crime is considered to be committed notwithstanding the common crime that can be associated with that tax offence.

In this field, tax inspectors are obliged to communicate to the competent authorities all crimes of corruption, money laundering and other types of crimes that came to their knowledge when performing their duties and because of those duties.

The organic law of the Tax administration incorporates the principle of inter-administrative coordination aiming at the institutional coordination with other public services, among which are the Criminal Police and the Tax Department of the National Republican Guard.

In order to improve the fight against tax fraud and tax evasion, the Tax Inspectorate was reinforced with an organic unit: the Division for Fraud Investigation and Special Actions (DSIFAE). This unit aims at coordinating the rendering of technical support to the courts as well as to the Criminal Police, the Borders Division and to the VAT Division, both providing and processing the tax related information.

Personal Income Tax Code (CIRS)

“Article 33

Non-deductible expenses for tax purposes

(...)

7 - The illegal expenses shall not be deductible, namely those resulting from behaviours that reasonably indicate the breach of the Portuguese criminal law, even where they occur beyond the territorial scope of its application.”

Corporate Income Tax Code (CIRC)

“Article 23 Expenses

(...)

2 - The illegal expenses shall not be accepted as expenses, namely those resulting from behaviours that reasonably indicate the breach of the Portuguese criminal law, even where they occur beyond the territorial scope of its application.”

Regarding confidential expenses, Law no 67-A/2007, of 31 December, has eliminated from the Tax Codes all the rules in which “confidential expenses” were included. Thus,

- According to Article 43 of the mentioned Law, Article 73 (1) of the Personal Income Tax Code (IRS) was modified, deleting the reference to “confidential expenses”;
- According to Article 48 of the mentioned Law, Article 42 (1) g) [presently, Article 45 (1) g)] and Article 81 [presently, Article 88] of the Corporate Income Tax Code (IRC) were modified, deleting the reference “to confidential expenses”.

The above set of measures has amended the Personal Income Tax and Companies Tax Codes in order to disallow and forbid confidential expenses.

It should be outlined that the tax authority's officials are public officials and are subject to a general duty to report all crimes that come to their knowledge when performing their professional duties, and sanctions are applicable for the breach of mentioned legal obligation foreseen in Article 242 of the Code of Criminal Procedure.

Tax information could be shared between competent tax authorities in another country upon request under bilateral tax agreements concluded by Portugal. Tax information could also be shared with tax authorities and/or law enforcement authorities in another country upon request and according to the principle of reciprocity, as foreseen in Article 64 (2) c) of General Tax Law (Decree-Law 398/81, of 17 December, several times amended):

Article 64 Confidentiality

1- Managers, officials and agents of the tax administration are required to maintain the confidentiality of data collected on the tax situation of the taxpayers and of the items of a personal nature that they learn in the proceedings, including data covered by professional secrecy or any other legally regulated duty of secrecy.

2 - The duty of confidentiality shall cease where:

- a) The taxpayer authorises the disclosure of his tax situation;
- b) Legal cooperation between the tax administration and other public entities, acting within their powers;
- c) Mutual assistance and cooperation between the tax administration and tax administrations of other countries resulting from international conventions to which the Portuguese State is bound, whenever reciprocity is provided;
- d) Collaboration with justice in accordance with the Code of Civil Procedure and the Code of Criminal Procedure.

(b) Observations on the implementation of the article

Portuguese tax legislation prohibits deductions of illicit expenditures from taxable income, including expenditures that occurred outside of Portugal. Misrepresenting illicit expenditures as lawful expenses is a tax offence.

Portugal has implemented the provision under review.

Article 13. Participation of society

Paragraph 1 of article 13

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption

and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;*
- (b) Ensuring that the public has effective access to information*
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;*
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:*
 - (i) For respect of the rights or reputations of others;*
 - (ii) For the protection of national security or ordre public or of public health or morals.*

(a) Summary of information relevant to reviewing the implementation of the article

Please see previous answers regarding paragraph (a) and (b).

Regarding paragraph (c), despite the awareness raising process already identified - publication of booklets, exhibitions, seminars and workshops - the Ministry of Justice participated as a speaker in the framework of project for the elaboration of a TV spot by students of a Portuguese University, in a contest organized by the Council of Europe Group of States against Corruption (GRECO).

Since 2012, the CCP, in cooperation with Ministry of Education, is developing an educational project on the field of citizenship and of ethics in public life, involving young generations. The project Images against Corruption consists in a contest in Portuguese basic and secondary schools to stimulate students, professors and all scholar community, including family, in a reflection process on the topic of ethics and prevention of corruption in society. The project consists in the production, in classroom, of a reflection about the prevention of corruption and then the production of an artistic piece, as follows:

- National Plastic Arts contest http://www.cpc.tcontas.pt/projetos/concurso_artes-plasticas.html
- Video contest http://www.cpc.tcontas.pt/projetos/concurso_videos.html

“AGAINST CORRUPTION, BE A CITIZEN”

Bearing in mind that educational processes are key factors for the development and deepening of citizenship in any society, and that through them social cohesion is established and that these processes are particularly important the Council for Corruption Prevention (CCP), in cooperation with the Ministry of Education, has developed strategies that contribute to improving the prevention of corruption in society.

With the objective of facilitating reflection and stimulating the approach to the theme of

prevention of corruption by schools and by the educational community, the Council for Corruption Prevention (CCP) published online a set of manuals called "Against corruption, be a citizen": a Glossary and three manuals, attending to different levels of education, and a notebook to support teachers. http://www.cpc.tcontas.pt/projetos/cadernos_apoio.html

Society participation in law making processes is included in Decree-Law no 274/2009, of 2 October -Regulates the Government's consultation procedure of public and private entities during the phase of creation and instruction of laws and acts that are to be approved by the Council of Ministers or by the Government members.

The National Plan for Financial Education was prepared by a Working Group, appointed by the National Council of Financial Supervisors, which included representatives of the three Portuguese financial regulators. This instrument aims at establishing a framework for the stimulation and dissemination of financial education projects, thus contributing to increase the level of financial knowledge of the population and to promote the adoption of appropriate financial behaviours.

Regarding the insurance sector, in particular, there is a specific explanation on fraud and recommended behaviours to avoid fraud on insurance, such as, for instance, not to sign any blank insurance policy proposal or not to pay invoices with generic services descriptions only. Customers may have access to this information through the portal "Todos Contam" available online.

Society participation in law making processes: <http://www.portugal.gov.pt/pt/consultas-publicas.aspx>

Please check the following links for the access to the information detailed above on the National Plan for Financial Education:

<http://www.todoscontam.pt/pt-PT/Principal/PrevenirFraude/Seguros/Paginas/Seguros.aspx>
<http://www.todoscontam.pt/SiteCollectionDocuments/NationalPlanforFinancialEducation.pdf>

(b) Observations on the implementation of the article

Reference should be made to the relevant observations under article 10 above.

Overall, in Portugal, Law no 83/95 defines the terms of participation of citizens in administrative procedures and the right to popular action to prevent and repress offences caused by diffuse interests.

Interested parties, including civil society organizations and citizens, may participate in the parliamentary legislative procedure as provided in article 167 of the Constitution. The Parliament may also solicit public input on draft legislation under consideration where appropriate. The Government allows for public consultation on policy matters as regulated in Decree-Law no 274/2009.

In regard to raising public awareness and education programmes on corruption risks, it is worth highlighting the mentioned activities and projects of the Council on Corruption Prevention, the Centre of Judicial Studies and Criminal Police School and other public bodies.

It was concluded that Portugal has implemented the provision under review.

Paragraph 2 of article 13

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

On several public entities' websites, it is possible for citizens to report crimes/submit complaints, ensuring protection for whistle-blowers:

- ☐ Prosecutors' General Office (PGR) <https://simp.pgr.pt/dciap/denuncias/index2.php>
- ☐ Criminal Police (PJ) <https://www.policiajudiciaria.pt/PortalWeb/page/%7B5BFC28DE-D200-4BCC-9422-F495EE8EE82A%7D>
- ☐ Inspectorate General of Finance (IGF) <http://www.igf.gov.pt/deveres-de-comunicacao/denuncia-eletronica.aspx>
- ☐ Council for Corruption Prevention (CCP) <http://www.cpc.tcontas.pt/denuncia.html>

(b) Observations on the implementation of the article

Reporting of alleged corruption crimes to dedicated anti-corruption bodies, including anonymously, is possible.

Portugal has implemented the provision under review.

Article 14. Measures to prevent money-laundering

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;

(a) Summary of information relevant to reviewing the implementation of the article

Law no 25/2008, of 5 June (AML/CFT Law), established a set of ML/TF preventive duties that have to be fulfilled by financial and non-financial entities obliged to the prevention of ML/TF. Under said law Banks and non-banking financial institutions were specifically required to comply with the provisions laid down in Sections I and II of Chapter II of the said law.

Recently Law no 83/2017, of 18 August (which transposes the EU Directive 849/2015, of 26 May) revoked Law no 25/2008 and generally follows the prior EU AML/CFT regime. The new law entered into force on 19 September 2017.

Banco de Portugal is established, by its organic law, as the Central Bank of the Portuguese Republic. Its mandate comprises the maintenance price stability and to promote the stability of the financial system. Related to this mission, Banco de Portugal carries out different functions, including monetary policy, management of reserves and actives, prudential supervision, macro prudential policy, behavioural supervision, regulating and supervision of the exchange market, among others.

Within its function as an AML/CFT supervisor Banco de Portugal operates as a regulator and supervisor. It conducts the preventive supervision of ML/TF of credit institutions, financial companies, payment institutions, electronic money institutions, branches established in Portugal and entities providing postal services as well as financial services. Supervised entities are required to comply with several duties, such as, (a) customer identification and due diligence, (b) duty to keep documents and records on customers and operations, (c) scrutiny and reporting of suspicious operations and, (d) adoption and implementation of internal control systems that are adequate to the AML/CFT risk inherent to each institution.

In addition to ensuring compliance with these duties, Banco de Portugal has regulatory functions and actively participates in the preparation of the legal framework governing the prevention of AML/CFT.

Banco de Portugal is also represented in national and international bodies dealing with these issues, among which the AML/CFT Coordination Commission and the Financial Action Task Force.

As regards AML/CFT supervision, Banco de Portugal's competences are further defined in Article 94 of Law no. 83/2017 and includes the making and issuing of specific regulation or guidance, and the assistance and supervision of obliged entities with regard to their compliance with AML/CFT obligations.

Banco de Portugal (the Portuguese Central Bank (BP)) has been issuing, particularly since 2012, a thoroughly detailed set of regulatory standards, among which the framework of duties that are binding for supervised financial institutions is clearly stated. Regulatory standards regarding AML/CFT, here comprising 'Notices' and 'Instructions' of Banco de Portugal, are legally binding documents for all concerned obliged entities.

These instruments are normally complements to primary legislation (e.g. Law no 83/2017), which financial institutions should consider and apply. They consist of associated legal instruments which may be mentioned in the Law itself or, alternatively, be issued by Banco de Portugal within its communications (letters, recommendations, additional guidance) to the sector (within the context of the applicable Law). The failure to comply with regulation

issued by Banco de Portugal is subject to administrative sanctions.

This is the case of the following regulatory rules:

- BP Instruction no 46/2012, of 17 December: approved the Self-Assessment Questionnaire (QAA) on ML/TF prevention, establishing its annual mandatory filling in and submission to the BP through the BPnet system (BPnet is an electronic and secure communication system whose purpose is to link the BP with other entities, within the scope of its legal duties);
- BP Notice no 9/2012, of 17 May: approved the Report on Anti-Money Laundering and Terrorist Financing (RPB), establishing its annual mandatory filling in and submission to BP through the BPnet system;
- BP Notice no 5/2013, of 18 December: establishes the conditions, mechanisms and procedures deemed adequate and necessary to put in place controls that allow or help monitor compliance with the legal duties for the combat to ML/TF, including, among others, customer due diligence, identification of beneficial owners, record-keeping and the reporting of suspicious transactions.

More specifically, Chapters I and II of Title II of the BP Notice no 5/2013 provide for a robust regulatory framework on the adoption of customer due diligence measures towards customers, their representatives and beneficial owners, further detailing the provisions laid down in Articles 7 to 13 of AML/CFT Law.

Where financial institutions detect unusually complex or abnormal transactions, they shall further scrutiny those transactions pursuant to Article 15 of AML/CFT Law and article 50 of the BP Notice no 5/2013, with a view to report potentially suspicious transactions to the FIU and to Public Prosecution under article 16 of the law.

Under the provision of Article 4 of the BP Notice no 5/2013, the BP determines that institutions subject to ML/TF preventive supervision perform a permanent assessment of the risks inherent to its specific activity. Furthermore, the BP Notice no 9/2012 establishes that the RPB, annually submitted to the BP, must contain a description of the ML/TF risk management model of the reporting institution, with information about:

- the ML/TF risk factors that exist in the context of the institutions' specific operational reality, by business area;
- a qualitative assessment of the probability (reduced, medium-low, medium-high, high) of occurrence of each of the identified risk factors, duly substantiated;
- the qualitative assessment of the degree of financial or reputational impact (reduced, medium-low, medium-high, high) resulting from the occurrence of each of the identified risk factors, in the institution's activity, duly substantiated;
- the implemented controls and procedures meant to mitigate the identified and assessed risk factors;
- how the institution monitors the adequacy and effectiveness of the control mechanisms implemented to mitigate the identified and assessed risk factors.

Furthermore, the QAA foreseen in the BP Instruction no 46/2012, in addition to facilitating a clearer perception of the quality of the ML/TF prevention systems implemented in the institutions, also aims to provide financial entities a supplementary self-diagnosis tool, susceptible to contribute to improve those systems, and the consequent increase of the

ML/TF risk monitoring.

Where they are granted an authorisation to operate, persons that provide services for the transmission of money or value are classified as financial institutions and, as such, are bound to the correspondent set of AML/CFT rules.

Where money or value transfer services are carried out on a professional basis without an authorisation, the BP is legally empowered to pursue such unauthorised financial activity, which is punishable under Article 95(a) of the regime attached to Decree-Law no 317/2009, of 30 October (RJSPME). When the suspected illegal activity is confirmed by the investigative actions carried out by the BP, the final outcomes include the following:

- The disclosure of public warnings (at the BP's website) about the illegitimacy of such operators to the exercise of financial activity;
- The adoption of measures aiming to terminate the illegal activity and its advertising (including the issuance of injunctions by the BP);
- The opening of administrative offence procedures;
- The winding-up and liquidation of the legal persons that exercise financial activities without being duly authorized [in accordance with the Article 126(2) of Decree-Law no 298/92, of 31 December (RGICSF).

EU Directive 2015/849, of 20 May, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, has most recently reinforced obligations related to customer due diligence and beneficial ownership identification. It should be read in conjunction with EU Regulation 2015/847, of 20 May, on information accompanying transfers of funds. At the time of the country visit, Portugal was implementing the Directive into the domestic legal framework and the BP will subsequently update Notice no 5/2013 as applicable. The new AML/CFT Law (Law no 83/2017, of 17 August) reinforce existing measures particularly on customer due diligence, customer, beneficial owner identification and record keeping.

In light of the revocation of Law no 25/2008 and introduction of Law no 83/2017, of 18 of August 2017, Banco de Portugal reviewed its regulatory AML/CFT framework, namely Notice no 5/2013, and a new AML/CFT notice was expected in 2018. Until its approval and entry into force Notice no 5/2013 obligations, as long as they do not contradict Law no. 83/2017, remain valid and must be complied by all obliged entities.

Financial institutions are obliged entities under Article 3 of Law no 83/2017 and the competent authorities', including Banco de Portugal's, supervisory competencies are described in Articles 84 to 88.

Rules already mentioned on authorisation to operate have not been altered by the approval of Law no 83/2017, of 18 of August, this means that persons that provide services for the transmission of money or value (MVTs) continue to be classified financial institutions and, as such, are bound to the correspondent set of AML/CFT rules.

Finally, Banco de Portugal has continued its supervisory activity without interruption, continuing to follow procedures for the granting of authorisation to operate and the compliance, by financial institutions, of the applicable AML/CFT rules.

When the financial institutions do not comply with the AML/CFT legal rules and regulations applicable to their activity, Banco de Portugal has a various set of supervisory measures, such as:

A) CORRECTIVE MEASURES [as foreseen in Article 5(2)(d) and (e) of the BP Notice no 5/2013]:

- Issuing of RECOMENDATIONS aimed at improving the AML/CFT mechanisms and procedures;
- Issuing of INJUNCTIONS imposing the termination of irregular practices and/or the adoption of the necessary procedures to avoid future occurrences;
- Demand for the strengthening of the provision, procedures, mechanisms and strategies created for governance of the corporation, internal control and risk self-assessment;
- Restriction or limitation of the financial institution's activities or operations;
- Adoption of measures to reduce the risk inherent in the activities, products and systems of financial institutions.

B) REVOCATORY MEASURES, through the withdrawal of the authorization conferred to the institution for the exercise of the financial activity, as a consequence of serious or repeated violations the AML/CFT laws and regulations [Articles 22(1)(k) and 174-A of RGICSF and Article 16(3) of RJSPME].

C) SANCTIONATORY MEASURES, through the opening of administrative offence procedures for the punishment of breaches of the AML/CFT laws and regulations [Article 39(1)(c) of Law no 25/2008].

Banco de Portugal gathered data on corrective and sanctionary action on AML is as follows:

CORRECTIVE MEASURES – UPDATE AND CORRECTION	2012	2013	2014	2015	2016	Total
Number of Injunctions	15	9	11	176	106	317*
Number of Recommendations	16	14	7	36	29	102

*From the 1st of January to the 24th of March 2017, at least 48 injunctions have been issued during that period, amounting to a total of 365 injunctions until the 24th of March of this year.



SANCTIONATORY MEASURES	2012	2013	2014	2015	2016
Number of Administrative Proceedings	22	71	24	19 ^{a)}	35
Total Amount of Fines / number of fines applied in each year	205.750,00€ 5 fines	233.500,00€ 7 fines	140.000,00€ 8 fines	1.000.000,00€ 3 fines	103.500,00€ 5 fines
Number of Admonitions	0	55	16	1	12



The breakdown of Banco de Portugal supervised entities is as follows:

Type of financial institution	Number
Agência de Câmbios (Exchange Bureaux)	7
Bancos (Banks)	37
Caixa Central e Caixas de Crédito Agrícola Mútuo (Central Mutual Agricultural Credit Bank and Mutual Agricultural Credit Banks)	88
Caixas Económicas (Savings Banks)	4
Entidades de Serviços Postais Prestadoras de Serviços Financeiros (Postal Financial Institution)	1
Instituições de Moeda Eletrónica (Electronic Money Institutions)	1
Instituições de Pagamento (Payment Institutions)	17
Instituições Financeiras de Crédito (Financial Credit Institutions)	13

Type of financial institution	Number
Outras Empresas (alínea I do n.º 1 do artigo 6.º do RGICSF) <i>(Other financial institutions defined in Article 6, paragraph 1.I)</i>	1
Sociedades Corretoras <i>(Brokerage Firms)</i>	4
Sociedades de Factoring <i>(Factoring Companies)</i>	3
Sociedades de Garantia Mútua <i>(Mutual Guarantee Companies)</i>	4
Sociedades de Investimento <i>(Investment Companies)</i>	2
Sociedades de Locação Financeira <i>(Financial Leasing Companies)</i>	1
Sociedades Financeiras de Corretagem <i>(Brokerage dealers)</i>	2
Sociedades Financeiras de Crédito <i>(Credit Financial Companies)</i>	3
Sociedades Gestoras de Fundos de Investimento Imobiliário <i>(Real Estate Investment Funds Management Companies)</i>	26
Sociedades Gestoras de Fundos de Investimento Mobiliário <i>(Securities Investments Funds Management Companies)</i>	19
Sociedades Gestoras de Fundos de Titularização de Créditos <i>(Credit Securitisation Funds Management Companies)</i>	3
Sociedades Gestoras de Património <i>(Asset Management Companies)</i>	10
Sucursal de Instituição de Crédito Com Sede em Países Terceiros <i>(Branches of Credit Institutions with Head Office in third countries)</i>	1
Sucursal de Instituição de Crédito Com Sede na EU <i>(Branches of Credit Institutions with Head Office in the EU)</i>	29
Sucursal de Instituição de Pagamento com Sede na EU <i>(Branches of Payment Institutions with Head Office in the EU)</i>	8
Instituições de Pagamento com Sede na UE a atuar através de Rede de Agentes <i>(Branches of Payment Institutions with Head Office in the EU - Operating through agent networks)</i>	11
Instituições de Moeda Eletrónica com Sede na UE a atuar através de Rede de Agentes <i>(Branches of Electronic Money Institutions with Head Office in the EU – Operating through agent networks)</i>	2
Instituições de Moeda Eletrónica com Sede na UE a atuar através de Rede de Distribuidores <i>(Branches of Electronic Money Institutions with Head Office in the EU – Operating through distributors network)</i>	5
TOTAL	302

(b) Observations on the implementation of the article

The main AML/CFT legal framework in Portugal is established in Law no 83/2017 (entered into force on 19 September 2017), which transposes the Directive (EU) 849/2015 (Fourth AML Directive) and consequently FATF Recommendations (2012). The law establishes a list of financial institutions and non-financial businesses and professions subjected to the AML/CFT regime and supervisory and oversight authorities of these institutions, businesses and professions categorized by sector.

As the regulatory and supervisory authority for financial institutions, Banco de Portugal (the Portuguese Central Bank (BP)) has been issuing a thoroughly detailed set of binding regulatory standards. Authorities provided some statistics regarding corrective measures and sanctions imposed and entities supervised by the BP.

Regulatory and supervisory authorities for other bodies particularly susceptible to money-laundering, e.g. Designated non-financial businesses and professions means (DNFBPs): are specified in articles 84-91 of Law no 83/2017.

Furthermore, the Law and other legislation and implementing regulations issued by regulatory bodies establish appropriate requirements for reporting entities, based on risk, in relation to customer and beneficial owner identification, record-keeping and reporting suspicious transaction to the Financial Intelligence Unit of Portugal.

It was concluded that Portugal has implemented the provision under review.

Subparagraph 1 (b) of article 14

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 and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Law no. 83/2017 now defines, in Chapter IX, Articles 122 to 144, a thorough regime of cooperation between competent authorities at national and international level.

Despite the direct cooperation, the main channel for competent authorities to coordinate and cooperate at national level is the said AML/CFT Coordination Commission. It is comprised of over 20 of Portugal's key AML/CFT agencies, including policy makers, the FIU, law enforcement authorities (LEAs), financial and non-financial supervisors, tax and customs authorities, intelligence services, prosecutorial authorities, etc. Its main mission is to promote the exchange of information and reciprocal consultation amongst the member entities: para 3 j) of CM Resolution no 88/2015. Furthermore, numerous information-

sharing agreements are in place between competent authorities to facilitate real-time exchange of information spontaneously or upon request.

Regarding cooperation at international level, and despite informal channels to cooperate, formal mechanisms are in place for many authorities to provide a range of information (supervisory and operational) and international cooperation both spontaneously and upon request. Furthermore, agencies (including the FIU) have a number of MoUs available to facilitate information exchange with international partners and make use of informal cooperation to rapidly provide a wide range of information in urgent cases to foreign counterparts (e.g. terrorist attacks abroad).

For instance, the Tax and Customs Authority (AT) has clear and secure mechanisms to exchange information with its European counterparts through a common platform based on the Common Communication Network (CCN) and on the Common Systems Interface (CSI), developed by the EU to assure all electronic transmissions among the competent customs and tax authorities. International information requests are recorded on the Integrated Tax Inspection and Information System and are processed at the Central Liaison Office (CLO). The Egmont Secure Web is used by the FIU to exchange information. ASAE is also able to rapidly communicate and share information through platforms such as the Secure Information Exchange Network (SIENA) for the secure and confidential exchange of information related to operational and strategic crime between EUROPOL, its Member States, and third parties, such as Interpol.

The BP foresees the need to cooperate in Articles 81, 82, 122 (A), 137 and 138 of RGICSF and Article 37 of RJSPME, referring to cooperation with European Union countries' supervisors, other competent authorities and with third countries (see also the varied protocols celebrated and currently being negotiated) on the varied fields of supervision. The BP also takes part in the Commission for the Coordination of National Policies of Prevention and Combating Money Laundering and Terrorist Financing (AML/CFT Coordination Commission), which is responsible for the proper execution, at national level, of the national ML/TF risk assessment and strategy and for cooperation as per Council of Ministers Resolution no 88/2015, of 1 October 2015.

Portugal has established an FIU, the Unidade de Informação Financeira, with competency to receive, analyse and disseminate information related to ML/TF suspicious activity and related predicates (Decree-Law no 304/2002). The FIU is a member of the Egmont Group since its creation in 2002. There are specific channels to exchange information, which are safe and protected, depending on the degree of confidentiality of such information. Furthermore, the FIU can disseminate any information, as well as the results of the analysis, upon request or spontaneously, and in the way, it deems most appropriate.

In addition, when relevant Banco de Portugal contacts and is contacted by law enforcement and the intelligence services in order to exchange information of specific individuals and/or criminal typologies. Banco de Portugal is also obliged, further to Article 104 to report any suspicious activity identified in the carrying out of its supervisory functions to the Prosecutor's Office as well as to the Financial Intelligence Unit.

Although not all information exchange between competent authorities is statistically reflected in the elements already provided, as such cooperation also takes place at an informal level, statistical data collection is expected to become more detailed in the future, by the application of the new regulatory framework on this subject defined in Articles 113 to 121 of Law no. 83/2017.

Finally, further considerations regarding the status of Portugal's national coordination of cooperation between authorities will be available through the Financial Action Task Force's mutual evaluation report which concluded "there is a good level of cooperation between national authorities on an operational level".

Exemplifying national cooperation, the BP has received the following requests from other competent authorities:

	2012	2013	2014	2015	2016
Requests from FIU, judicial and law enforcement authorities	1982	2944	2706	3402	3675

Exemplifying the ongoing and future cooperation developed by the BP as relevant to its competences as supervisor:

CELEBRATED PROTOCOLS	
SUPERVISORY AUTHORITY	COUNTRY
<i>Commission Bancaire, Comité des Etablissements de Crédit</i>	France
<i>Banco de España</i>	Spain
<i>Institut Monétaire Luxembourgeois</i>	Luxembourg
<i>Commission Bancaire et Financière</i>	Belgium
<i>De Nederlandsche Bank</i>	Netherlands
<i>Autoridade Monetária e Cambial de Macau</i>	Macau (China)
<i>Bundesaufsichtsamt für das Kreditwesen</i>	Germany
<i>Bank of England</i>	United Kingdom
<i>Banco de Moçambique</i>	Mozambique
<i>Polish Financial Supervision Authority</i>	Poland
<i>Banco Central do Brasil</i>	Brazil
<i>Bank of Romania</i>	Romania
<i>Malta Financial Services Authority</i>	Malta
<i>Banco de Cabo Verde</i>	Cape Verde
<i>Dubai Financial Services Authority</i>	Dubai
<i>Banco Nacional de Angola</i>	Angola

PROTOCOLS IN NEGOTIATION	
SUPERVISORY AUTHORITY	COUNTRY
<i>Cayman Islands Monetary Authority</i>	Cayman Islands
<i>Central Bank of Libya</i>	Libya
<i>Comissão de Valores Mobiliários</i>	Brazil
<i>New York State Banking Department</i>	USA
<i>Banco Central de São Tomé e Príncipe</i>	São Tomé e Príncipe
<i>China Banking Regulatory Commission</i>	China
<i>Swiss Financial Market Supervisory Authority</i>	Switzerland
<i>Bank of Namibia</i>	Namibia

(b) Observations on the implementation of the article

Law no 83/2017 provides a legal basis for Portuguese authorities to cooperate domestically and internationally. The main channel for competent authorities to coordinate, cooperate and exchange information at the national level is the AML/CFT Coordination Commission. Additionally, there are numerous information sharing agreements in place between domestic competent authorities to facilitate real-time exchange of information.

Regarding international cooperation, Portuguese authorities can share information both spontaneously and upon request. Such exchanges may take place informally or in accordance with formal arrangements like memorandums of understanding with foreign counterparts.

It was concluded that Portugal has implemented the provision under review.

(c) Successes and good practices

Portugal has established domestic coordination meetings and platforms within the AML/CFT sector which meet periodically with the attendance of all supervisory and oversight authorities as well as, among others, the Public Prosecution Service and the Financial Intelligence Unit.

Paragraph 2 of article 14

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

(a) Summary of information relevant to reviewing the implementation of the article

EU Regulation 1889/2005, which is directly applicable in the Portuguese legal order, lays down a regime of control of cash entering or leaving the EU territory. Decree-Law no 61/2007 establishes the national regime for the control of cash movements that enter or exit the national territory from or to territories outside the EU and/or other Member-states of the EU.

Portugal implemented a mixed system of control: a declaration system for amounts of cash and BNIs (defined in Article 2 of Decree-Law no 61/2007 in line with the FATF definition of BNIs, and including gold) entering or leaving the EU (Article 3 (1) Decree Law no 61/2007) and a disclosure system on request for cash movements within Member States of the EU (Article 3 (2)). The remittance of cash, as cargo or by post, is subject to a customs declaration under the Union Customs Code - EU Regulation 952/2013.

The designated authority responsible to centralise, collect, register and process the information contained in the declarations is the Tax and Customs Authority: Article 4 (1) of Decree-Law no 61/2007. All persons are required to submit a truthful declaration for amounts of cash and BNIs equal or higher than 10,000 EUR, entering or leaving the EU: Article 108 (7) of Law no 15/2001. The Single European Cash Declaration form https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/declaration_form_pt_en.pdf is used for the declaration.

The information gathered in the declaration/disclosure process is sent to the Criminal Police

by the FIU. If there is a suspicion that the cash/BNIs being transported relate to ML/TF, there will be a criminal investigation and the respective ML/TF sanctions are applicable. Like the seizure of cash, confiscation is also applicable according to the Criminal Code (Articles 109-111), Code of Criminal Procedure (Article 178) and Law no 5/2002.

Number and amounts (EUR) of incoming and outgoing declarations submitted between 2012-2016

Year		2012	2013	2014	2015	2016
Incoming	Number	985	1090	997	839	513
	Amounts	134 835 149	107 852 028	130 090 195	155 329 207	124 728 613
Outgoing	Number	85	79	64	73	108
	Amounts	2 780 980	2 517 118	4 197 513	2 804 377	4 609 871

Countries of origin of incoming and outgoing declarations submitted between 2012-2016

Country	Angola	Cape Verde	South Africa	Brazil	Venezuela
Number	2 861	446	166	148	111

Currency (country)	2012	2013	2014	2015	Total
USD (US)	542 668 (476 463€)	1 892 135 (1 661 297€)	1 114 810 (978 805€)	671 646 (589 706€)	4 221 259 (3 706 272€)
EUR (Eurozone)	520 742	704 453	723 567	556 683	2 505 445
AOA (Angola)	--	--	28 865 000 (152 778€)	5 000 000 (26 464€)	33 865 000 (179 242€)
BRL (Brazil)	--	--	--	80 000 (21 402€)	80 000 (21 402€)
GBP (UK)	10 712 (12 103€)	--	260 (293€)	5 000 (5 649€)	15 972 (18 046€)
VEF (Venezuela)	3 724 (327€)	2 130 (187€)	15 372 (1 352€)	--	21 226 (1 867€)
CNY (China)	--	5 665 (731€)	--	--	5 665 (731€)

Sample of amounts seized and detained (currency of country of origin) Value between brackets is equal to the equivalent value in EUR.

The above amounts are related to the duty to declare cash in accordance to Regulation (EC) no 1889/2005 of the European Parliament and of the Council, of 26 October 2005, on controls of cash entering or leaving the Community. The legal instrument has a preventive nature with regard to ML and particularly to TF. However, it is not possible to know how much of the cash seized/detained is related to money laundering.

Administrative offences for cash controls violations (2012 – 2016):

Table 14. Administrative offences for cash controls violations (2012 – 2016)

Year	Administrative Offences	Fines (EUR)
2012	43	86 516
2013	58	116 754
2014	49	98 399
2015	28	56 420
2016	20	21 585

Source: Portuguese authorities

(b) Observations on the implementation of the article

As an EU Member State, Portugal directly applies relevant EU legislation such as EU Regulation 1889/2005 to monitor movements of cash and bearer negotiable instruments across EU borders. In addition, the national regime in this area is established by Decree-Law no 61/2007.

Portugal implemented a mixed system of control: a declaration system for amounts of cash and bearer negotiable instruments entering or leaving the EU and a disclosure system on request for cash movements within the EU. The threshold amount for declarations is 10,000 EUR.

The Tax Authority is responsible for centralizing, collecting, registering and processing the information contained in the declarations. Information gathered in the declaration/disclosure process is sent to the FIU, which forwards this information to the Criminal Police when a crime is suspected.

It was concluded that Portugal has implemented the provision under review.

Paragraph 3 of article 14

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

- (a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;*
- (b) To maintain such information throughout the payment chain; and*
- (c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.*

(a) Summary of information relevant to reviewing the implementation of the article

Regulation (EU) 2015/847, of 20 May 2015, on information accompanying transfers of funds, is directly applicable in the Portuguese legal order and lays down obligations for financial institutions when handling wire transfers. This regulation replaces Regulation (EC) 1781/2006, of 15 November 2006, on information on the payer accompanying transfers of funds.

Decree-Law no 125/2008 establishes the penalties applicable to infringements of the provisions of Regulation (EC) no 1781/2006. Law no. 83/2017 implements and updates the provisions of Decree-Law no 125/2008 as per EU Regulation 2015/847 on the information accompanying transfers of funds.

Specifically, Articles 147 to 156 of Law no 83/2017 define the terms financial institutions must comply with in carrying out relevant transactions, including customer information, risk based procedures, measures in case of suspicious operation, record keeping and cooperation.

Further developments regarding these provisions are expected to take place within the current review of Banco de Portugal Notice no 5/2013 in order to suit and best supplement

the recently approved Law no. 83/2017 and EU guidelines on this matter.

Regulation (EU) no 260/2012, of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in Euro and amending Regulation (EC) no 924/2009 (Text with EEA relevance) - SEPA Regulation also applies.

Financial institutions are thus required to ensure that all cross-border wire transfers of EUR 1,000 or more are accompanied by the required and accurate originator and beneficiary/payee information.

Furthermore, financial institutions are required to collect beneficiary/payee information under the following rules:

Article 5 (Requirements for credit transfer and direct debit transactions) of the SEPA Regulation -requires a set of information from both the payer's PSP and the payee's PSP, which must provide the data elements specified in the Annex [TECHNICAL REQUIREMENTS (ARTICLE 5)], namely:

[...]

(2) In addition to the requirements referred to in point (1), the following requirements shall apply to credit transfer transactions:

(a) The data elements referred to in Article 5(2)(a) are the following:

[...]

(iii) the IBAN of the payee's payment account,

(iv) where available, the payee's name,

(v) any remittance information.

(b) The data elements referred to in Article 5(2)(b) are the following:

[...]

(iv) the IBAN of the payee's payment account,

(v) any remittance information,

(vi) any payee identification code,

(vii) the name of any payee reference party,

(viii) any purpose of the credit transfer,

(ix) any category of the purpose of the credit transfer.

[...]

(3) In addition to the requirements referred to in point (1), the following requirements shall apply to direct debit transactions:

(a) The data elements referred to in Article 5(3)(a)(i) are the following:

(i) the type of direct debit (recurrent, one-off, first, last or reversal),

(ii) the payee's name,

(iii) the IBAN of the payee's payment account to be credited for the collection,

[...]

(x) the payee's identifier,

(xi) where the mandate has been taken over by a payee other than the payee who issued the mandate, the identifier of the original payee who issued the mandate,

(xii) any remittance information from the payee to the payer,

(xiii) any purpose of the collection,

(xiv) any category of the purpose of the collection.

(b) The data elements referred to in Article 5(3)(b) are the following:

[...]

(xii) the payee's name,

(xiii) the IBAN of the payee's payment account to be credited for the collection,

[...]

(c) The data elements referred to in Article 5(3)(c) are the following:

(i) the unique mandate reference,

(ii) the payee's identifier,

(iii) the payee's name,

(iv) the amount of the collection,

(v) any remittance information,

(vi) the identification code of the payment scheme.

Further, Article 27 (1) (Transfers of funds) of the BP Notice no 5/2013 requires, in the specific case of transfers of funds not linked to any account held, as appropriate, by the payer or the payee and carried out in person or at a distance, financial institutions, where they act as payers or payees, to:

(a) when the individual or aggregate amount of transfers is equal to or higher than EUR 15,000, comply with all the obligations laid down in Article 26 for occasional transactions in general with regard to their payers or payees;

(b) when the individual or aggregate value of transfers is between EUR 1,000 and EUR 15,000 and these are not covered by the exceptions laid down in Article 3(2), (4), (5) and (7) of Regulation (EC) no 1781/2006, of 15 November 2006, identifies their payers or payees, pursuant to the provisions of the following paragraph.

This means that, either financial institutions are transferring funds between accounts that are fully identifiable with regards to the payer and the payee (account held, as appropriate, by the payer or the payee), or they are obliged (by Article 27(2)) to fully implement the identification process referred to in Article 10, which comprises:

(a) Obtaining at least the full name and the type and number of the identification document of the natural or legal person;

(b) Checking the accuracy of those particulars based on documents, data or information from a reliable independent source, with the responsibility, in all cases, to prove to any competent authority that the supporting evidence used is suitable and eligible.

Moreover, Article 27(5) also establishes that the provisions of Article 26 (2), (3), (4), (7), (8), (9), (11) and (12) shall also apply to the transfers of funds referred to in paragraph 1(b).

Lastly, Article 39 of the BP Notice no 5/2013 requires money remitters and other non-banking financial institutions to have an entire knowledge of the circuit of funds they operate (and the respective intermediaries), from the moment funds are collected from the payer until they are delivered to the final beneficiary.

In 2012, the BP identified structuring deficiencies in an onsite inspection carried out to a money remitter, whose authorisation to operate has been further withdrawn. Among those serious deficiencies, the BP identified breaches of Regulation (EC) no 1781/2006 that hampered proper traceability of funds and launched the necessary administrative proceedings.

The MVTS sector is supervised by the Banco de Portugal as confirmed by the current legal framework and the supervisory actions described above.

In addition to full implementation of the adequate legal framework in relation to this group of obliged entities, Banco de Portugal carries out off-site and on-site supervision of this sector as determined by its risk-based approach and can be confirmed in the attached table.

Number of on-site supervisory actions carried out by Banco de Portugal as regards MVTS:

FINANCIAL INSTITUTION	2012	2013	2014	2015	2016
MVTS	11	3	6	6	3

Furthermore, as a consequence of the approval of Banco de Portugal's Notice no. 5/2013, an off-site analysis to all MVTS entities registered in Portugal was conducted, in order to assess the compliance of this sector with the then new regulatory framework.

As a result of these supervisory actions, dozens of injunctions and recommendations were issued and approximately 23 administrative procedures were applied.

(b) Observations on the implementation of the article

In Portugal, a number of provisions to regulate electronic transfers and money remitters exist. These include EU Regulation 2015/847 on information accompanying transfers of funds, EU Regulation 260/2012 establishing technical and business requirements for credit transfers and direct debits in Euros, Law no 125/2008 and the Single Euro Payments Area Regulation. These provisions address the requirements of the provision under review satisfactorily.

Paragraph 4 of article 14

4. In establishing a domestic regulatory regime and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are

called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Portugal takes part and cooperates with all relevant international fora to the coordination, prevention and combat of money laundering and its predicate offences and is a member of FATF since 1989.

As such and of particular relevance is the participation of Banco de Portugal and the other supervisory authorities of the financial system (CMVM for securities and ASFP for insurance) in working groups at Financial Action Task Force, the European Commission, the European Banking Authority, IOSCO and others as relevant.

Portugal assists in the drafting, discussion, negotiation and approval of international guidelines and typologies promoted by these organisations on a regular basis, also frequently responds to questionnaires and other requests from international organisations on the matters of anti-money laundering and its predicate offences.

For example, most recently, Portugal has offered comments, among others, to FATF's Policy Development Group on several Draft Guidance and responded to the IMF's Annual Report on Exchange Arrangements and Exchange Restrictions that included data gathering on existing cash controls and financial supervisory action.

In addition, within EBA, Portugal takes part in several Working Groups on anti-money laundering related topics including, risk, supervision, emerging threats and customer due diligence.

Finally, Portugal has recently confirmed its intention to be fully compliant with the EBA guidelines "on the characteristics of a risk-based approach to anti-money laundering and terrorist financing supervision, and the steps to be taken when conducting supervision on a risk-sensitive basis". A reform of existing regulatory instruments is on-going to ensure this can take place in due course.

In regard to specific examples of the engagement of Portuguese authorities in international fora is best illustrated by Banco de Portugal's active participation and contributions to the numerous working groups it supports at FATF, EBA, and at the EU level. The range of topics covered by this work includes national and international risk assessment, new tools for customer due diligence, the supervision of agents and distributors, among others.

As a result of its international engagement Banco de Portugal works to disseminate the relevant documents with its supervised entities and include, when appropriate, international standards within its regulations and supervisory practices.

Banco de Portugal's Notice no. 5/2013, in particular Annex I and II, is a good example of how the supervisor's international engagement can be reflected in national policy making and the insertion of specific risk and suspicion indicators in national regulatory standards.

Additionally, the supervisor has also issued specific guidance to the financial institutions based on international identified trends and others. At the beginning of 2017, for example,

Banco de Portugal issued a set of ‘preventive and mitigating measures’ to be implemented by the obliged entities according to their specific levels of risk. The ‘measures’ were based not only on the data gathered during the previous sectorial risk assessment but also in international guidance and typology papers issued by international organisations, and as a result of Banco de Portugal’s participation in the relevant working groups.

(b) Observations on the implementation of the article

Portugal is a member of FATF since 1989 and takes part and cooperates in all relevant international fora to prevent and combat money laundering and its predicate offences.

Portugal assists in the drafting, discussion, negotiation and approval of international guidelines and typologies promoted by these organisations on a regular basis, also frequently responds to questionnaires and other requests from international organisations on the matters of anti-money laundering and its predicate offences.

Furthermore, BP and other supervisory authorities participate in working groups at Financial Action Task Force, the European Commission, the European Banking Authority, IOSCO.

It was concluded that Portugal has implemented the provision under review.

(c) Successes and good practices

The Portuguese AML supervisors systematically use relevant initiatives of various international bodies in their work on supervision and guidance to the private sector, best practice papers and guidance papers from the FATF and European Banking Authority.

Paragraph 5 of article 14

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Portugal participates in all the EU fora and working groups related with ML/FT issues, namely in the Experts Group on ML/FT, the FIU.Net and FIU Platform. Portugal also participates in all activities of FATF as a member, and in the activities of FATF-Style regional bodies, as GAFILAT (Latin America) and GIABA (Western Africa) as observer, as well as in Moneyval (Council of Europe). The FIU attends the Egmont Group meetings.

Judicial, law enforcement, the FIU and financial regulatory authorities usually cooperate and provide training, particularly with South American and Portuguese speaking countries.

Competent authorities have entered into numerous MoUs or bilateral and multilateral

agreements with other foreign entities to facilitate bilateral cooperation. These information-sharing agreements reflect a broad range of foreign counterparts from numerous jurisdictions

Regarding the BP: for cooperation with authorities from EU Member States see Articles 81 of RGICSF (Legal Regime of Credit Institutions and Financial Companies) and 37 of RJSPME (Legal Framework of payment institutions and electronic money). For cooperation with authorities from third countries based on reciprocal cooperation agreements, see Article 82 of RGICSF.

The BP has received and made, at least, the following number of international cooperation requests. See also the data provided above on existing protocols with other authorities and other protocols that are being negotiated.

	2012	2013	2014	2015	2016
Number of international cooperation requests received	44	36	32	30	18
Number of international cooperation requests made	Not available	Not available	Not available	≥ 152	234

Judicial and law enforcement cooperation is performed in the framework of criminal money laundering (and terrorism financing) investigations. The Central Department for Criminal Investigation and Prosecution, a department of the Prosecutor General's Office which deals with serious crimes including corruption, terrorism and money laundering, cooperates with counterparts, for instance in concrete cases that involves Panama, Switzerland, Brazil, and some African countries.

International police cooperation is as well carried out by the Criminal Police (Polícia Judiciária) in a bilateral basis or through the EUROPOL and INTERPOL channels.

(b) Observations on the implementation of the article

Portugal participates in all activities of FATF as a member and as an observer in the activities of FATF-style regional bodies such as Moneyval, GAFILAT and GIABA. Additionally, Portugal participates in all relevant EU fora and working groups related to money laundering and terrorism financing issues, namely the Experts Group on ML/FT, the FIU.Net and FIU Platform.

Furthermore, competent authorities have entered into numerous MoUs or bilateral and multilateral agreements with other foreign entities to facilitate bilateral cooperation. The FIU as a member of the Egmont Group participates in the Group's activities.

It must also be positively noted that judicial, law enforcement, and other competent authorities of Portugal cooperate and provide training, particularly to South American and Portuguese speaking countries.

It was concluded that Portugal has implemented the provision under review.

(c) Successes and good practices

The Portuguese authorities provide training, particularly to South American and Portuguese speaking countries, which represents additional efforts in promoting global, regional, sub-regional cooperation

V. Asset recovery

Article 51. General provision

Article 51

1. The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

(a) Summary of information relevant to reviewing the implementation of the article

The principle of returning of assets is recognized in the Portuguese legislation.

The procedures for the returning of assets are foreseen in Law no 144/99, of 31 August, on international judicial cooperation in criminal matters and in Law no 88/2009, of 31 August, approving the legal regime for issuing and executing decisions of confiscation of instruments, proceeds and advantages of crime, transposing into national law the Framework Decision 2006/783/JHA of the Council of 6 October 2006 on the principle of mutual recognition to decisions of confiscation, as amended by the Framework Decision 2009/299/JHA of the Council of 26 February.

According to Article 110 (4) (Proceeds of fines and confiscated property) of Law no 144/99, property confiscated shall revert to the State of enforcement. However, it may be remitted to the sentencing State if it so requires, if the property is of special interest (e.g. cultural, scientific or social interests) to it and if reciprocity is ensured.

This means that in the case of Portugal, the confiscated property could be returned to its prior legitimate owners.

When EU Member States are involved, the rule is the following according to Article 18 of Law no 88/2009:

“1 - Where the property obtained by the execution of the confiscation order is a sum in cash, the following rules shall apply:

- a) If the amount obtained by execution of the confiscation order is less than or equal to € 10.000, it reverts to the Portuguese State;
- b) In all other cases, 50% of the amount obtained in the execution of the confiscation order shall be transferred to the issuing State.

2 - When the property obtained by the execution of the confiscation order is sold, the

respective product has the destination provided in the previous paragraph.

3 - When the property obtained by the execution of the confiscation order is not a cash amount and is not sold under the terms of the previous paragraph, it is transferred to the issuing State, except in the cases provided for in paragraph 4.

4. Where the confiscation order relates to a sum of money, the transfer of property obtained by the execution of the confiscation order, other than a cash sum, shall be subject to the consent of the issuing State.

5. Where it is not possible to apply the provisions of paragraphs 2 to 4, the destination of the goods shall be governed by domestic law.

6 - Goods covered by the confiscation order which constitute cultural property belonging to the national cultural heritage are not sold or returned.”

The competent authority for receiving and accepting requests for asset recovery and assessing that these requests are reasonably substantiated and supplemented is the Public Prosecution Service. The average timeframe for the execution of these requests is between 24 and 48 hours.

The GRA (Gabinete de Recuperação de Ativos - Portuguese Assets Recovery Office) and the Criminal Police, the law enforcement authority with competence for the criminal investigation of corruption and other serious crimes, support Public Prosecutors in the procedures for identifying, tracing and seizing of assets or property in order to be confiscated and/or returned to the requesting States.

Whenever it is decided, by a judicial judgement rendered by a Court of First Instance or a Superior Court (Court of Appeal or Supreme Court of Justice), that the confiscated assets are worth more than the amount of advantage resulting from the criminal activity proved during the criminal proceedings, some of these assets will be returned to their lawful owners. This may also occur in situations where it is proven that the confiscated assets belong to *bona fide* third parties.

As provided by the GRA, in the framework of an investigation carried out by French authorities, under Framework Decision 2003/577/JHA - transposed into Portuguese legal system by Law no 25/2009, of 5 June - it was requested to Portugal the seizure of financial products in two banking institutions. The criminal investigating Judge immediately recognized the decision and the products have been also immediately seized.

(b) Observations on the implementation of the article

The legal framework on asset recovery in Portugal consists mainly of the Criminal Code, Criminal Procedure Code, Law no 83/2017, Law no 144/99 on International Judicial Cooperation in Criminal Matters and Law no 88/2009 (Approving the legal regime for issuing and executing decisions of confiscation of instruments, proceeds and advantages of crime). In accordance with article 8 of the Constitution, self-executing provisions of the Convention may be directly applied in Portugal as well.

The competent authority for receiving, considering and implementing requests for asset recovery in Portugal is the Public Prosecution Service. The Criminal Police supports public prosecutors in identifying, tracing and seizing assets for confiscation and/or return to the requesting States. There are dedicated bodies to identify and trace criminal proceeds or

instrumentalities and cooperate with asset recovery offices of other States (Portuguese Assets Recovery Office - GRA) and to manage seized and confiscated property (Office for the Management of Assets - GBA).

It was concluded that Portugal has implemented the provision under review.

Article 52. Prevention and detection of transfers of proceeds of crime

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.

(a) Summary of information relevant to reviewing the implementation of the article

Law 83/2017 defines the obligation to identify customers in Article 23 along with due diligence provisions, and the obligation to identify beneficial owners is provided in articles 29 to 34. The identification of politically exposed persons is included in Article 39(1), depending on the degree of risk identified (Article 39(5)).

Risk assessment related to politically exposed persons is further developed in Article 14(2) - on risk management - and Article 36(2) - on enhanced due diligence - determining the degree and mode through which additional measures must be enforced by financial institutions when dealing with politically exposed persons.

This provision is developed by Article 37 of the BP Notice no 5/2013, which specifies the need to include the identification of PEP relationships (and their condition as beneficial owners more generally). As far as foreign PEPs are concerned, the regime is applicable 12 months after they have ceased to be in functions and even after this period if these persons still present a higher money laundering risk: Article 12 (5) of AML/CFT Law.

Article 37 of the BP Notice no 5/2013 extends the adoption of enhanced due diligence measures towards PEPs residing in Portugal and the holders of other political and public positions, which are identified as high risk. This provision also clarifies that the regime provided therein is applicable to cases where the PEP or the holder of the other political and public positions acts as customer, representative or beneficial owner before the financial institution.

The BP Notice no 5/2013 also determines, in article 19 [which further develops article 7(4) of the AML/CFT law], the obligation to obtain reliable elements regarding the identity and capacity of beneficial owners.

BP Notice no 5/2013, while still applicable, is being revised in line with Law no 83/2017. A new Notice is expected early 2018.

The BP carried out inspections in supervised institutions with a particular exposure to business relationships with PEPs. In addition, the BP evaluates the quality of PEP identification through customer samplings, where these type of business relationships is always included.

(b) Observations on the implementation of the article

In Portugal, obliged entities are required to identify their clients, including occasional clients as well as all representatives and beneficial owners. They are also required to verify the identities of their clients, to set up their risk profiles and implement an appropriate risk management system. Obligated entities are required to have risk-based procedures to determine if the customer is a Politically Exposed Person (PEP), a close family member of a PEP, a person known to be close associate of a PEP.

In addition, in line with the 4th EU AML Directive, Law no 83/2017 creates a central register of beneficial owners and abolishes bearer shares. This should be highlighted as a good practice.

Portugal has implemented the provision under review.

(c) Successes and good practices

The creation of a Central Register for Beneficial Owners.

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

(a) Summary of information relevant to reviewing the implementation of the article

Article 36 of AML/CFT Law and Article 35 of the BP Notice no 5/2013 require financial institutions to apply enhanced due diligence measures to situations identified as high risk. To this end, Annex 1 of the BP Notice no 5/2013 provides for an indicative list of potentially higher-risk factors, to which financial institutions must pay particular attention.

Moreover, the BP Notice no 5/2013 defines in Annex 2, regarding the ‘Obligation of scrutiny’ (Article 50), examples of potentially suspicious indicators for purposes of account-opening and general monitoring, which distinguishes between different types of suspicious indicators, including types of clients, accounts, services and transactions.

The Notice also defines, in Article 49, the conditions under which records and documental evidence should be kept and maintained by the financial institutions.

Lastly, Article 8 (1)(d) and (e) of AML/CFT Law requires obliged entities to carry out proper account monitoring and update regularly the elements previously obtained for CDD purposes, with the specifications laid down in the BP Notice no 5/2013.

In 2017, the BP disseminated ‘preventive and mitigating measures’ for AML/CFT purposes. The guidance document was adapted taking into account the specificities of each sector and shared with supervised entities in order to address some of the difficulties identified during the national risk assessment process and as a result of the on-site and off-site supervisory activity.

The 2015 national risk assessment identified a few difficulties still remaining in financial institutions’ implementation of AML/CFT obligations.

On-site and off-site inspections have demonstrated that some institutions occasionally present deficiencies with the application of customer due diligence measures, identifying and adequately mitigating the risk of politically exposed persons, as well as other deficiencies related to the identification, evaluation and management of their AML/CFT risk.

In addition to its supervisory activity (with the issue of injunctions, administrative procedures and recommendations) Banco de Portugal has issued guidance in order to assist obliged entities tackle these issues.

(b) Observations on the implementation of the article

AML/CFT Law requires financial institutions to apply enhanced due diligence measures to situations identified as high risk. To this end, Annex III of the law and Annex I of BP Notice 5/2013 provide for an indicative list of potentially higher-risk factors, to which financial institutions must pay particular attention. Competent authorities, including Bank of Portugal, may define other potential higher-risk situations.

Additionally, Bank of Portugal disseminates and updates a list of examples of potentially suspicious indicators listing conduct, activities or operations that may be related to funds or other assets that originate from criminal activities or that are related to the financing of terrorism.

During the country visit, it was explained that relevant authorities provide guidance to obliged entities on how to detect criminal activity of former PEPs. These include issuance of a set of indicators on how to identify PEPs, after they cease to be PEPs. This approach should be highlighted as a good practice.

It was concluded Portugal has implemented the provision under review.

(c) Successes and good practices

Portuguese authorities provide guidance on how to detect criminal activity of PEPs. These include a set of indicators on how to identify PEPs, after they are no longer PEPs.

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.

(a) Summary of information relevant to reviewing the implementation of the article

The BP determines - under the provision of Article 36 of Law no 83/2017 and Article 39(1)(c) of the BP Notice no 5/2013 - the adoption of enhanced due diligence measures to natural or legal persons that present an increased, potential or effective ML/TF risk, and its subsequent dissemination throughout the universe of supervised institutions (procedure regularly undertaken by the BP, in face of information gathered during its supervisory functions or through the cooperation with other entities - financial supervisors, Prosecutor's General Office, Criminal Police, Financial Intelligence Unit, intelligence services, etc.).

Article 36 of Law no 83/2017 defines the conditions under which enhanced due diligence must be applied, referencing in particular annex III of the Law, which refers to specific indicators of high risk and situations that may be associated with them. In this context please note that the annexes to Notice no 5/2013 are a good example of such measures.

The BP also prescribes the adoption of enhanced customer due diligence to the supervised institutions regarding all the business relationships and occasional transactions established or to be established with all the natural and legal persons residing in the referred jurisdictions by the FATF releases as being able to put in risk the international financial system.

Banco de Portugal communicates all relevant information (including the identity of particular persons or entities) to the financial institutions on a regular basis.

The additional dissemination of indicators and/or persons of interest to the application of enhanced due diligence may be carried out by the supervisor whenever adequate pursuant to article 36(2) of the Law.

Dissemination examples were provided in the previous answer.

(b) Observations on the implementation of the article

Portuguese authorities have legal powers to share information on particular natural and legal persons to whose accounts and transactions enhanced due diligence measures shall apply. It was also confirmed during the country visit that the authorities may use these powers upon a foreign request or based on the United Nations sanctions lists.

Portugal has implemented the provision under review.

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.

(a) Summary of information relevant to reviewing the implementation of the article

As stated above and applicable to all suspicious activity, Law no 83/2017 defines, in Article 51, the ‘record keeping duty’, with which all obliged entities must comply. It states that records should be kept for a period of seven years after the moment of customer identification and in a manner that allows the reconstitution of the operations.

The BP Notice no 5/2013 furthermore defines in Article 49 more detailed terms under which information should be kept, including ease of access, restrictions to be applied to access and also terms of usage. In addition, paragraph 2 elaborates on the level of detail that the collected information should allow its users to ‘see’, including mention to intermediaries, beneficiaries and associated institutions.

Specifically, regarding PEPs, Article 37(a) of the Notice determines the need to comply with the mechanisms for identification and due diligence as set forth in law. Article 37(9) consolidates the practice affirming the need to document and preserve evidence of all gathered data for a minimum period of seven years.

Banco de Portugal supervises compliance with article 51 of Law no 83/2017 as part of its on-site and off-site supervisory activity. Between 2012 and 2016, Banco de Portugal identified 9 deficiencies related to record keeping (3 during on-site and 6 during off-site).

In sum, breaches of compliance directly attributed to record keeping deficiencies are scarce and not an area that the supervisor identifies as high risk.

(b) Observations on the implementation of the article

Portugal has implemented the provision under review.

Paragraph 4 of article 52

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. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

(a) Summary of information relevant to reviewing the implementation of the article

As part of its functions as supervisor Banco de Portugal is responsible for the authorization procedure of new financial institutions as foreseen in Chapter II of the Legal Framework of Credit Institutions and Financial Companies. Within this process the supervisor requires a set of institutional elements and other information to be delivered and conducts an on-site inspection to guarantee that the institution has all the resources needed, which is incompatible with the nature of shell banks and therefore renders impossible its authorization to operate at national level.

With a view to preserve the integrity of the financial system Article 66 of Law no 83/2017 specifically prohibits the setting-up of shell banks or of any correspondent relationships with such entities. At this level Banco de Portugal has included the assessment of compliance with this requirement in its supervisory action (especially during on-site inspections) having found no evidence that it takes place within its financial system and the reach of its supervisory powers. As a result, positive examples of enforcement action cannot be given.

Financial institutions are also obliged to report any transactions related to these entities which may be identified within its normal operations.

Breaches of this provision continue to be defined as administrative offences, currently established in Article 169, and therefore subject to follow-up action by the supervisor.

(b) Observations on the implementation of the article

The establishment of “shell banks” is prohibited in Portugal. Financial institutions are prohibited from establishing or maintaining correspondent banking relationships with any fictitious financial institution and must verify that their correspondents abroad are subject to the same obligation.

Portugal has implemented the provision under review.

Paragraph 5 of article 52

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

In Portugal a (financial) disclosure system for appropriate public officials is foreseen in Law no 4/83, of 2 April (as amended by Law no 38/83, of 25 October 1983, Law no 25/95, of 18 August 1995, Law no 19/2008, of 21 April, Law no 30/2008, of 10 July, and Law no 38/2010, of 2 September), which establishes the public control of the wealth of Political Officeholders.

According to this Law (Article 4), the following are political offices for the purposes of the present Law:

- a) President of the Republic;
- b) President of Parliament (Assembleia da República);
- c) Prime Minister;
- d) Members of Parliament;
- e) Members of Government;
- f) Representative of the Republic in the Autonomous Regions (Azores and Madeira);
- g) Members of the Constitutional Court;
- h) Members of the self-government organs of the Autonomous Regions;
- i) Members of the European Parliament;
- j) Members of constitutional organs; l) (...);
- m) Mayors and municipal councillors.

The following are equivalent to political officeholders, for the purposes of the present Law (Article 2):

- a) Executive members of the permanent organs of the national and Autonomous Regional directorates of political parties;
- b) Candidates for President of the Republic.

In addition, the following are deemed senior public officeholders for the purposes of the present Law (Article 3):

- a) Senior public managers;
- b) Members of managing bodies of companies in which the state holds a stake, when nominated by the latter;
- c) Members of executive bodies of enterprises that form part of the local business sector; d) Members of the governing bodies of public institutes;
- e) Members of independent public entities provided for in the Constitution or the law;
- f) Level-one senior officeholders and equivalents.

According to Article 1 of this Law, the holders of political offices and equivalents and senior public officeholders shall, within a time limit of sixty days counting from the date on which they begin to exercise the respective functions, submit a declaration of their income and of their assets and corporate or associative positions to the Constitutional Court, to include:

- a) The total amount of the gross income set out on the last return made for the purposes of calculating personal income tax, or which would be so set out if that return were not the object of dispensation;
- b) A description of the items that comprise their assets in Portugal and abroad, to be ordered by major headings, particularly real-estate assets, shares or other stakes in the capital of civil or commercial enterprises, rights to boats, aircraft or automobiles, and securities portfolios, term bank accounts, equivalent financial investments and, if their amount is greater than fifty minimum wages (approximately 29 000 EUR in 2018), current bank accounts and credit rights;
- c) A description of their liabilities, particularly in relation to the state, lending institutions and any public sector or private companies in Portugal and abroad;
- d) A list of corporate and associative positions they hold or have held in the two years preceding the declaration, in Portugal and abroad, in enterprises, public-law foundations and associations and, if the positions are or were remunerated, private-law foundations and associations.

Article 2 (updating) states that a new, updated declaration shall be submitted within a time limit of sixty days counting from the end of the functions that required the submission of the previous one, as well as from the officeholder's reappointment or re-election (paragraph 1).

If Members of Parliament are substituted, both the substitute and the substituted Member are required to submit the declaration referred to in paragraph (1) at the end of the legislature, unless they resign their seat in the meantime (paragraph 2).

Whenever an officeholder is currently exercising functions and there is an effective increase in assets such as to alter the declared amount regarding any of the subparagraphs of the previous Article by more than fifty monthly minimum wages, the officeholder must update the respective declaration.

The final declaration must reflect the change in assets during the term of office to which it refers.

It should be referred that:

“Article 6-A Omission or inaccuracy

Without prejudice to the competences entrusted by law to other entities, when the occurrence of any omission or inaccuracy in the declarations provided for in Articles 1 and 2 is communicated or denounced in any way to the Constitutional Court, the latter's President shall make said communication or denunciation known to the representative of the Public Prosecution Service at that Court, for such purposes as may be deemed fit."

According to Article 6 (Disclosure), the content of the declarations provided for in Law no 4/83 shall be freely disclosable and any citizen may consult the declarations and decisions provided for in this Law (Article 5, Consultation). This means that the Portuguese judicial authorities are able to share that information with the competent authorities in other States Parties when an investigation, a claim and/or the recovery of proceeds of offences established in accordance with this Convention is necessary.

Common public officials are not included in the legislation that regulates the financial disclosure systems of said public officials. However, this information could be provided by Portuguese authorities in the framework of a request of international judicial cooperation in criminal matters, namely through a MLA request.

Regarding sanctions, Article 3 (Failure to comply) is applicable:

1 - In cases in which the declarations provided for in Articles 1 and 2 are not submitted, the entity with the competence to record and keep them shall notify the officeholder to whom the present Law applies to submit a declaration within the following thirty consecutive days, failing which, in cases in which the failure to fulfil is culpable, and except for the President of the Republic, the President of Parliament and the Prime Minister, he/she shall be subject to a declaration of loss of seat, dismissal or judicial removal as appropriate or, when the situation is that provided for in the first part of Article 2(1), subject to disqualification from exercise of the office for a period of between one and five years, which requires the aforesaid declaration and which does not correspond to the exercise of functions as a career judge or prosecutor.

2 - Anyone who makes a false declaration shall be subject to the sanctions provided for in the previous paragraph and shall be punished for the crime of false declaration, as laid down by law.

3 - The administrative secretariats of the entities to which the officeholders to whom the present Law applies belong shall communicate the date on which those officeholders begin and cease functions to the Constitutional Court.

False declarations may entail criminal responsibility in accordance with articles 348-A, 359 and 360 of the Criminal Code.

(b) Observations on the implementation of the article

As already highlighted under article 8(5) above, Portugal has an asset declaration system for selected categories of public officials. There are administrative and criminal sanctions in case of failure to declare, incomplete or false declarations.

During the country visit, the authorities provided further information on the system. The registry contains around 18000 declarations dating back to 1980s. Declarations are paper-based and kept at the Constitutional Court. Anyone may visit the Constitutional Court and examine the declarations. The declarations may also be shared with foreign States upon a request received through mutual legal assistance procedures.

It was also explained that in 2017, there were 19 cases when public officials who failed to comply with the obligation and who were subsequently disqualified by administrative courts from holding public office.

Portugal has implemented the provision under review.

Paragraph 6 of article 52

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

(a) Summary of information relevant to reviewing the implementation of the article

The regime of Law no 4/83, of 2 April, applies to the appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts.

The legislation applicable to PEPs, namely the anti-money laundering and terrorism financing, also applies.

(b) Observations on the implementation of the article

Article 1 of Law no 4/83 requires public officials to declare assets and liabilities “in Portugal and abroad”, such as securities portfolios, term bank accounts, equivalent financial investments and, if their amount is greater than fifty minimum wages, current bank accounts and credit rights.

During the country visit, the authorities clarified that financial ownership, trusteeships, assets in offshore are not the types of information that must be declared under the law.

It was concluded that Portugal has implemented the provision under review.

Article 53. Measures for direct recovery of property

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;

(a) Summary of information relevant to reviewing the implementation of the article

Another State Party is allowed to initiate a civil action in a Portuguese civil court to establish title to or ownership of property acquired through the commission of an offence established in accordance with the Convention.

According to Article 2 of the Code of Civil Procedure (Guarantee of access to the court system):

“1 - Legal protection through the court system implies the right to obtain, in a reasonable timeframe, a judicial decision with the status of *res judicata*, which assesses the merits of the claim filed before the courts, as well as the possibility of enforcing that decision.

2 - Except when the law determines otherwise, to every right corresponds a proper legal action to ensure that right, to prevent or repair its violation and to coercively enforce it, as well as the necessary legal proceedings to ensure the practical effect of that legal action.”

Then, the plaintiff should have a direct interest to claim something in court and therefore be a lawful party to the legal proceedings, as results from Article 30 of the Code of Civil Procedure:

“Article 30 Definition of lawful parties

1 - The plaintiff is a lawful party to the legal proceedings whenever he/she has a direct interest to claim something; the defendant is a lawful party to the legal proceedings whenever he/she has a direct interest to dispute [that claim].

2 - The interest to claim something is displayed by the usefulness of granting the claim and the interest to dispute a claim is displayed by the damages that such granting would cause.”

Therefore, in order to establish title to or ownership of property, as required by Article 53 (a) of the UNCAC, a State Party should intent a legal action to claim a property right (*ação de reinvidicação*) as set forth in Article 1311 of the Civil Code:

“Article 1311

Legal action to claim property rights

1 - The owner/proprietor of an asset can judicially demand from any of its holders the recognition of his/her ownership rights and the restitution of the asset.

2 - If the ownership rights are granted, the restitution of the asset can only be denied in the cases foreseen by law.”

(b) Observations on the implementation of the article

The authorities explained that any natural or legal person, including foreign States, may initiate civil action in Portuguese courts in accordance with Article 2 (Guarantee of access to the court system) and Article 30 (Definition of lawful parties) of the Civil Procedure Code. However, this interpretation of article 30 of the Civil Procedure Code has never been tested in practice.

Based on the above, and as no practical examples had been encountered, **it was recommended that Portugal monitor the implementation of the legislation in order to ensure that another State party is allowed to initiate civil action to establish title over or ownership of property acquired through an offence established in accordance with the Convention. Should the judiciary not interpret the law in this way, legislative reform will be necessary.**

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

(a) Summary of information relevant to reviewing the implementation of the article

A foreign State can intervene or appear in criminal proceedings to enforce their claim for compensation.

In order to receive a compensation or to be paid for damages resulting from the commission of a crime, Title V (Civil parties) of the Code of Criminal Procedure is applicable (Articles 71 et seq.).

Article 71 Principle of adherence

A claim for damages based on the commission of a crime is brought in the respective criminal proceeding and may only be brought separately, before the civil court, in the cases foreseen in the law.

Article 72 Separate claim

1 - The claim for damages may be brought separately, before the civil court, when:

- a) The criminal proceeding has not led to prosecution within eight months following notice of the crime or does not have any progress during such lapse of time;
- b) The criminal proceeding has been closed or provisionally suspended or the procedure has been extinguished before the trial;
- c) The procedure depends upon complaint or upon private prosecution;
- d) There are no damages yet at the time of the prosecution, such are not known or are not known in all their extent;
- e) The criminal sentence has not issued a decision regarding the claim for damages, pursuant to Article 82 (3);
- f) It is brought against the defendant and other persons with purely civil responsibility, or only against these persons has been caused, in such proceeding, the main intervention of the defendant;
- g) The amount of the claim allows the civil intervention of the collective court, in the case where the criminal proceeding should run before the single court;
- h) The criminal proceeding runs under the summary or simplest procedure;
- i) The injured party has not been informed of the possibility to bring a claim for damages in the criminal proceeding or notified to do it, pursuant to Article 75 (1) and Article 77 (2).

2 - In the case where the procedure depends upon complaint or private prosecution (assistente), the prior submission of the claim before a civil court by the persons entitled to file a complaint or prosecution is deemed as waiver to such a right.

Article 74 Legitimacy and procedural powers

1 - The claim for damages is brought by the injured party, considered as such the person that has suffered damages caused by the crime, even if he/she has not constitute himself/herself or may not be constituted as “private prosecutor” (in Portuguese, assistente, a person (usually the claimant) who collaborates with the Public Prosecutor in charge of the file).

2 - The procedural intervention of the injured party is limited to the support and proof of the claim for damages, being correspondently entitled to the rights granted by law to “private prosecutors” (assistentes).

3 - The sued parties and the intervening parties have a procedural position equal to that of the defendant as to the support and proof of the civil issues tried in the proceeding, being each of their defences independent.

(b) Observations on the implementation of the article

The authorities explained that any natural or legal person, including foreign States, may

intervene or appear in criminal proceedings as a civil party to enforce their claim for compensation in accordance with the Criminal Procedure Code. However, this interpretation of the Criminal Procedure Code has not been tested yet in practice as Portugal has never had a case where a foreign State appeared as a civil party.

Based on the above, and as no practical examples had been encountered, **it was recommended that Portugal monitor the implementation of the legislation in order to ensure that another State party is allowed to sue for compensation or damages in Portuguese courts. Should the judiciary not interpret the law in this way, legislative reform will be necessary.**

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.

(a) Summary of information relevant to reviewing the implementation of the article

As results from Article 130 (2) of the Criminal Code (Compensation to the injured party):

“1 - The conditions in which the State may assure the compensation due as a result of the commission of acts criminally typified are set out in special legislation, whenever such compensation cannot be satisfied by the agent.

2 - In the cases not covered by the legislation referred to in the preceding paragraph, the court may grant the injured party, upon his application and up to the limit of the damage caused, the instrumentalities, proceedings or advantages confiscated to the State under Articles 109 to 111, including the value corresponding to them or the revenue resulting from their sale.”

Special legislation as referred in paragraph 1 of article 130(2) means the legislation (to be created at the time) to establish the conditions in which the State may assure the compensation due as a result of the commission of acts criminally typified, which is, for instance Law no. 130/2015, of 4 September, establishing the Statute of Victims (of crimes) or Law no. 104/2009, of 14 of September, approving the regime for compensation of victims of violent crimes and domestic violence.

The term “injured party” should be understood in a broad sense and includes all parties, whether physical person, legal person or State Parties. The party should prove that he/she suffered a damage, meaning that injured party and legitimate owner are different concepts.

(b) Observations on the implementation of the article

Under the Criminal Procedure Code, Portuguese courts may grant injured parties, including

natural persons, legal persons and foreign States, upon their application and up to the limit of the damage caused, the instrumentalities, proceedings or advantages confiscated to the State, including the value corresponding to them or the revenue resulting from their sale. However, this interpretation of the Criminal Procedure Code has not been tested yet in practice as Portugal has never had a case where a foreign State appeared as a civil party.

Based on the above, and as no practical examples had been encountered, **it was recommended that Portugal monitor the implementation of the legislation in order to ensure that another State party is recognized as legitimate owner of property acquired through an offence established in accordance with the Convention. Should the judiciary not interpret the law in this way, legislative reform will be necessary.**

Article 54. Mechanisms for recovery of property through international cooperation in confiscation

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;

(a) Summary of information relevant to reviewing the implementation of the article

Regarding the European Union area, Law no 25/2009, of 5 June, is in force in Portugal transposing into domestic legal order Framework Decision 2003/577/JHA, and establishing the legal regime of issuing and transmitting, by the Portuguese judicial authorities, seizure orders for the purpose of collecting of evidence or of subsequent confiscation of property in the framework of a criminal proceeding, in order to their recognition and enforcement in another Member State of the European Union.

This law also establishes the legal recognition and enforcement in Portugal of decisions taken by a judicial authority of a Member State of the European Union in the framework of criminal proceedings, for collecting evidence or subsequent confiscation of property.

For non-EU Member countries, Law no 144/99, of 31 August, on international judicial cooperation in criminal matters, is applicable, allowing Portuguese competent authorities to execute an order of confiscation issued by a court of another State Party of the UNCAC. According to Article 160, 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.

The foreign authority must state the grounds on which it deems that such proceedings might be located in Portugal.

The Portuguese authority (a Prosecutor) shall take such steps as necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence. This means that the authority should use all the existing procedural rules in order to enforce any decision of a foreign court (a non-EU court), for instance to provide for the recognition of the sentence of that court in order to be enforceable in Portugal where needed.

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 consistent with the Portuguese law in order to prevent any dealing in, transfer of or disposal of property which at a later stage shall be, or may be, the subject of that decision.

The provisions of this Article also apply to objects and instrumentalities of an offence.

All the EU Member States court decisions are directly executable in Portugal. It should be referred the recent approval by the Ministers of Justice of the EU Regulation on Mutual Recognition of Freezing and Confiscation Orders in the JHA Council on 7-8 December 2017.

(b) Observations on the implementation of the article

Portugal may directly enforce foreign judgments and orders for confiscation in accordance with Article 160 of Law no 144/99 and, within the European Union area, Law no 25/2009.

Also, Portugal has provided assistance to other States in the enforcement of foreign confiscations orders in the past but not in a corruption case.

Portugal has implemented the provision under review.

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

(a) Summary of information relevant to reviewing the implementation of the article

In Portugal, in the framework of a criminal proceeding, a Judge can order the confiscation of property for the State (despite the fact that this property is of domestic or foreign origin) in result of the commission of a money laundering related, or any other, offence.

Articles 109 (confiscation of instrumentalities), 110 (confiscation of proceeds and advantages) and 111 (instrumentalities, proceeds and advantages pertaining to third parties) of the Criminal Code and Articles 7 (confiscation) and 12-B (enlarged confiscation) of Law no 5/2002, of 11 January, establishing measures for the combat against organised crime and economic and financial crime, are applicable.

(b) Observations on the implementation of the article

During the country visit, the authorities clarified that proceeds and instrumentalities of money laundering, corruption and other crimes, including when the crime was committed outside Portugal or if the proceeds are of foreign origin, may be confiscated in accordance with the provisions of the Criminal Code and Law no 5/2002.

Portugal has implemented the provision under review.

Subparagraph 1 (c) 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:

...

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

(a) Summary of information relevant to reviewing the implementation of the article

The flight or absence of the offender does not prevent his/her prosecution and conviction or the confiscation of the proceeds of crime for the State (Trials in absentia - Articles 333 and 334 of the Code of Criminal Procedure).

In the event of the offender's death, and according to article 127 (3) of the Criminal Code, the extinction of criminal responsibility does not prevent the continuation of the procedure only for the purpose of confiscation of instrumentalities, proceeds and advantages for the State.

Said provision (Article 127 of the Criminal Code) has been amended in May 2017 in order to transpose to the Portuguese legal order Directive 2014/42/EU, of 3 April, on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.

(b) Observations on the implementation of the article

Under the Criminal Procedure Code of Portugal, inability to prosecute an offender due to

their absence, flight or death does not prevent a court to order confiscation. This power, as explained during the country visit, is also applicable in cases of a foreign order of confiscation made without a conviction.

Furthermore, Portugal provides for the possibility of civil or non-conviction-based confiscation (in accordance with Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union). However, Portugal has never had a corruption case involving civil recovery.

Portugal has implemented the provision under review.

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;

(a) Summary of information relevant to reviewing the implementation of the article

Regarding the European Union area, Law no 25/2009, of 5 June, is in force in Portugal transposing into domestic legal order Framework Decision 2003/577/JHA, and establishing the legal regime of issuing and transmitting, by the Portuguese judicial authorities, seizure orders for the purpose of collecting of evidence or of subsequent confiscation of property in the framework of a criminal proceeding, with a view to their recognition and enforcement in another Member State of European Union.

This law also establishes the legal recognition and enforcement in Portugal of decisions taken by a judicial authority of Member State of the European Union in the framework of criminal proceedings, for collecting evidence or subsequent confiscation of property.

For non-EU Member countries, Law no 144/99, of 31 August, on international judicial co-operation in criminal matters applies, allowing Portuguese competent authorities to give effect to a MLA request issued by a State Party of the UNCAC.

According to Article 145 (Principle and scope), MLA 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.

Assistance shall include in particular and among others the gathering of evidence and the searching and seizure of property, expert's examination and analysis, etc.

(b) Observations on the implementation of the article

A foreign State party may request enforcement of interim measures in Portugal. Such requests do not require a court order but should take the form of letters rogatory transmitted directly between the competent judicial authorities.

With respect to EU member States, Portugal applies the provisions of Law 25/2009 which provides detailed guidance on the recognition and execution of freezing orders in Portugal, issued by a judicial authority of another Member State, in criminal proceedings, in order to collect evidence or confiscate property.

Portugal has implemented the provision under review.

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

(a) Summary of information relevant to reviewing the implementation of the article

Regarding the European Union area, Law no 25/2009, of 5 June, is in force in Portugal transposing into domestic legal order Framework Decision 2003/577/JHA, and establishing the legal regime of issuing and transmitting, by the Portuguese judicial authorities, seizure orders for the purpose of collecting of evidence or of subsequent confiscation of property in the framework of a criminal proceeding, with a view to their recognition and enforcement in another Member State of European Union.

This law also establishes the legal recognition and enforcement in Portugal of decisions taken by a judicial authority of Member State of the European Union in the framework of criminal proceedings, for collecting evidence or subsequent confiscation of property.

For non-EU Member countries, Law no 144/99, of 31 August, on international judicial co-operation in criminal matters applies, allowing Portuguese competent authorities to give effect to a MLA request issued by a State Party of the UNCAC.

According to Article 145 (Principle and scope), MLA 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.

Assistance shall include in particular and among others the gathering of evidence and the

searching and seizure of property, expert's examination and analysis, etc.

The request for freezing or seizure of property should be motivated with information that, for instance, that the property could be found or is in the Portuguese territory or that a bank account exists in a bank. This motivation is understood as the basis to believe there is sufficient ground for taking such action.

(b) Observations on the implementation of the article

During the country visit, the authorities explained that the Public Prosecutor and Criminal Police may temporarily seize and freeze assets until a court order is issued. These powers are provided in article 178 of the Criminal Procedure Code and can be used upon a foreign request as well.

Portugal has implemented the provision under review.

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.

(a) Summary of information relevant to reviewing the implementation of the article

No additional measures are needed. To preserve property for confiscation the measures foreseen in the Code of Criminal Procedure and in Law no 45/2011, of 24 June, are applicable.

This Law created the Asset Recovery Office (GRA) and the Property Management Office (GAB). GRA's mission is to identify, trace and freeze proceeds from (or property related to) crime, at national or international level, to ensure the cooperation between assets recovery offices of other States and to perform all other powers legally conferred upon it. GRA is also entrusted with the collection, analysis and processing of statistical data on the freezing, confiscation and allocation of proceeds from, or property related to, crime

According to Article 10, the management of seized and confiscated property in the scope of national proceedings or of international judicial cooperation acts is ensured by an office of the Institute for Financial Management and Justice Equipment, I.P. (IGFEJ, I.P.), designated as Property Management Office (GAB).

(b) Observations on the implementation of the article

Portugal has implemented the provision under review.

Article 55. International cooperation for purposes of confiscation

Paragraph 1 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

(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.

(a) Summary of information relevant to reviewing the implementation of the article

After the reception of a request from another State party to the UNCAC for the confiscation of proceeds of crime, property, equipment or other instrumentalities, the Portuguese judicial authorities shall transmit the request to the competent court in order to obtain a declaration of confiscation and execute it.

When the requesting State is a Member State of the European Union, Law 88/2009 is applicable. The Law establishes the legal regime for the issuance and transmission by the competent court in criminal matters of orders for the confiscation of property or other proceeds of crime in the framework of criminal proceedings, with a view to their recognition and enforcement in another Member State of the European Union.

This law also establishes the legal regime for the recognition and enforcement in Portugal of decisions on confiscation of property or other proceeds of crime in the framework of criminal proceedings taken by judicial authorities of other Member States of the European Union.

Concerning State Parties of the UNCAC that are not members of the European Union, Law no 144/99, of 31 of August, on international judicial cooperation in criminal matters, is applicable. The request should be sent to the Central Authority (Prosecutor's General Office - Article 21) in order to be sent to the competent court.

According to Article 146, requests for mutual legal assistance addressed to Portugal shall

be carried out in conformity with the Portuguese law. 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.

Article 152 of the same Law states that 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 (INTERPOL, for instance). 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.

After receiving the order for confiscation issued by a court of the requesting State should be executed according, the Portuguese judicial authority shall take the necessary steps in order to enforce the decision of a foreign court imposing the confiscation of proceeds from an offence; the provisions of Part IV (Execution of foreign sentences) shall apply *mutatis mutandis*, as stated in article 160.

When the foreign authority communicates its intention to request the enforcement of a decision of confiscation, the Portuguese judicial authority may take such steps in accordance 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 of confiscation.

The provisions of Article 160 also apply to objects and instrumentalities of an offence.

(b) Observations on the implementation of the article

As stated under article 54 above, while Portugal has sufficient legal framework to provide assistance to other States in confiscation proceedings, it had no relevant examples of international cooperation in corruption cases at the time of the country visit.

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.

(a) Summary of information relevant to reviewing the implementation of the article

The request for the identification, tracing and seizure of proceeds of crime, property, equipment or other instrumentalities for the purpose of eventual confiscation could be fulfilled in accordance with Articles 145 and 160 of Law no 144/99.

Mutual legal assistance particularly includes searches and seizure of property and proceeds

of crime and instrumentalities for eventual confiscation (Article 145).

As foreseen in Article 160 (Proceeds, objects and instrumentalities) at the request of a competent foreign authority, steps may be taken in order to trace the proceeds of a committed offence and the results thereof shall be communicated to the requesting authority. The foreign authority must state the grounds on which it deems that such proceeds might be located in Portugal.

In addition, the GRA (Gabinete de Recuperação de Ativos - Asset's Recovery Office), created by Law no 45/2011, of 24 June (recently amended by Law no 30/2017, of 30 May), is able to take the necessary action for the identification, tracing and freezing of proceeds from, or property related to, crime, either at national or international level, to ensure the cooperation between assets recovery offices of other States and to perform all other powers legally conferred upon it (Article 3).

Successful cases on international cooperation involving crimes other than corruption:

The German Authorities requested asset information regarding a German citizen living in Portugal. This request was urgent, since there were searches and attachment orders to be executed in Germany and Czech Republic. A real estate property in the Algarve area and the address of the German citizen were identified, however the owner of the house where the German citizen lived was unknown. In order to make a positive identification, support from the GRA's delegation of Faro (a city in Algarve) was requested. The Faro delegation identified the house where the German citizen lived and two motor vehicles with German license plates were found in this property.

The Portuguese reply to the German Authorities initial request led to the submission of a Letter Rogatory one month later. The GRA executed the attachment order regarding the real estate property and also confiscated the two motor vehicles mentioned before.

While executing the Letter Rogatory, the Portuguese Authorities were made aware of connections of the German citizen to France and Sweden. This information was forwarded to the German Authorities and may lead to other attachment orders and asset confiscation.

In the opinion of the Portuguese authorities, these new cooperation mechanisms (direct coordination between Asset Recovery Offices) lead to faster and more effective international cooperation.

(b) Observations on the implementation of the article

As stated under article 54 above, while Portugal has sufficient legal framework to provide assistance to other States in confiscation proceedings, it had no relevant examples of international cooperation in corruption cases at the time of the country visit.

Portugal has implemented the provision under review.

Paragraph 3 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;

(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;

(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.

(a) Summary of information relevant to reviewing the implementation of the article

Regarding paragraph (a), as requesting State and in relation to other Member States of the European Union, the request for confiscation should proceed as follows, according to Article 7 of Law no 88/2009:

- When, in the framework of a criminal proceeding, a Portuguese court take a decision on confiscation of property, which is located outside Portugal, in a EU Member State, it shall refer the decision to the competent authority of that State.
- If the confiscation order relates to monetary amounts, the decision shall be transmitted to the Member State where, according to the Portuguese court, it was possible to ascertain that the person to whom the judgment relates has goods or profits.
- If the confiscation order respects specific assets, that decision shall be transmitted to the Member State where, according to the Portuguese court, it was possible to conclude that such assets meet.
- If it is not possible for the Portuguese court to determine the place where the assets or income on which the confiscation decision can be found, it shall be transmitted to the Member State in which the natural person against whom the judgment is given has its habitual residence or the legal person has its seat.

Concerning States outside of the European Union, the request for confiscation should be accompanied by all information enabling it to be executed in the requested State, in particular a copy of the conviction or of the confiscation order, in addition to the general requirements set forth in Article 23 of Law no 144/99.

Regarding paragraph (b), concerning other Member States of the European Union, the request for seizure should proceed as follows, according to Article 5 of Law no 25/2009, of 5 June:

- The seizure order, with a view to its recognition and execution, shall be accompanied by a certificate attached to the said law, which shall form an integral part thereof, duly filled with all the detailed information required.
- The issuing judicial authority may indicate the procedures and formalities to be followed by the judicial authority of the executing State, which are indispensable to ensure the validity of the evidence to be obtained.

Law no 144/99 applies to States outside European Union regarding requests for the seizure of proceeds or property. The request should be accompanied by all information enabling it to be executed in the requested State, in addition to the general requirements set forth in Article 23 of Law no 144/99.

(b) Observations on the implementation of the article

Portugal has implemented the provision under review.

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.

(a) Summary of information relevant to reviewing the implementation of the article

The decisions or actions for the seizure or confiscation as foreseen in paragraphs 1 and 2 of the present Article are executed in accordance to the Portuguese criminal procedural law as well as to Law no 144/99 on international judicial cooperation in criminal matters.

It should be stated that, as results from Article 3 (Primacy of international treaties, conventions and agreements) of said Law, the international judicial cooperation in criminal matters 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.

For EU Members States, Law no 25/2009 and Law no 88/2009 apply to the decisions or actions for the seizure or confiscation, regardless of the fact that Portugal is the requesting or requested State.

(b) Observations on the implementation of the article

Portugal has implemented the provision under review.

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.

(a) Summary of information relevant to reviewing the implementation of the article

A translation of Law no 144/99 has been provided to the UNODC Secretariat during the first cycle review.

Please see attached:

☐ Law no 25/2009, of 5 June, establishing the legal regime for issuing and enforcing decisions of seizure of proceeds or evidence in the European Union, in compliance with Framework Decision 2003/577/JHA, of the Council of 22 July 2003.

☐ Law no 88/2009, of 31 August, approving the legal regime for issuing and executing decisions of confiscation of instruments, proceeds and advantages of crime, transposing into national law the Framework Decision 2006/783/JHA of the Council of 6 October 2006 on the principle of mutual recognition to decisions of confiscation, as amended by the Framework Decision 2009/299/JHA of the Council of 26 February.

(b) Observations on the implementation of the article

Portugal submitted copies of its pertinent laws to the secretariat at the time of the review.

Paragraph 6 of article 55

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

(a) Summary of information relevant to reviewing the implementation of the article

Portugal does not make the taking of the measures referred to in paragraphs 1 and 2 of this Article conditional on the existence of a relevant treaty.

(b) Observations on the implementation of the article

Portugal has implemented the provision under review.

Paragraph 7 of article 55

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a de minimis value.

(a) Summary of information relevant to reviewing the implementation of the article

The general grounds for refusing judicial cooperation are expressly provided for in Articles 6 to 10, 18 and 31 of Law no 144/99. The request should comply with the conditions foreseen in Article 23 (requirements of the request for cooperation).

For Member States of the European Union, Law no 25/2009, of 5 June, establishes in Article 8 the causes for refusal of recognition and enforcement of a decision of seizure. Article 13 of Law no 88/2009 establishes the causes for refusal to recognize and enforce the decision of confiscation.

Generally, the competent judicial authority shall immediately notify the judicial authority of the issuing State of the practical impossibility of executing the confiscation order because the property or evidence has disappeared, has been destroyed or cannot be found at the place indicated on the certificate or by the location proceeds or evidence has not been indicated in a sufficiently precise manner, even after consultation with the issuing State.

(b) Observations on the implementation of the article

Portugal has implemented the provision under review.

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.

(a) Summary of information relevant to reviewing the implementation of the article

As stated in Article 23 (3) of Law no 144/99, the competent authority may require that a formally irregular or an incomplete request for cooperation be modified or completed, without that precluding the possibility of taking provisional measures whenever such measures should not await the revised request.

For Member States of the European Union, Law no 25/2009, of 5 June, refers in Article 8 (1) that the competent judicial authority shall refuse the recognition and the enforcement of a seizure order when the certificate referred to in Article 5 is not received, is incomplete or does not manifestly correspond to the seizure decision in question. However, when this situation occurs, the competent judicial authority before deciding on the non-recognition and non-execution, in whole or in part, should, alternatively:

- (a) grant a time-limit for the certificate to be produced, completed or amended;
- (b) Accept an equivalent document;
- (c) Dismisses the judicial authority of the issuing State of the presentation of the certificate, if it is considered sufficiently clarified

Law no 88/2009, regarding confiscation, states in Article 13 (3) that before deciding not to recognize and not execute a confiscation order under the terms of the preceding paragraphs, the Portuguese authorities may consult the competent issuing State, where consultation is mandatory in cases provided for in paragraphs a) to d) of paragraph 1 and b) of the paragraph 2 of this provision.

b) Observations on the implementation of the article

Portugal's response refers to the procedure when its competent authorities receive a defective request. However, the provision refers to situations when provisional measures have already been taken by Portugal upon a foreign request but are about to be lifted. During the country visit, it was explained that there is no legislation or procedure to deal with such situations even though foreign States are consulted in practice.

Therefore, it was recommended that Portugal take measures to clarify that, the requesting State party is given an opportunity to present its reasons in favour of continuing the measure before lifting of provisional measures

Paragraph 9 of article 55

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

The general principle of the protection of bona fide third parties foreseen in Article 111 of the Criminal Code on instruments, proceeds and advantages belonging to third parties applies. As stated in paragraph 1 of this provision, notwithstanding the provisions of the following paragraphs, confiscation shall not occur if the instruments, products or advantages do not belong at the time of the commission of the facts, to any of the offenders or beneficiaries, or do not belong to them at the moment of the confiscation was decided by the court.

It follows from the reading of this paragraph 1 that the rights of bona fide third parties are

duly taken into account when confiscation should be decided.

In addition, according to Article 347-A (1) of the Code of Criminal Procedure (Statements by the third party to the instruments, products or advantages to be declared confiscated for the State) grants to the (bona fide) third party to which instruments, products or advantages that may be confiscated belong, the exercise of the right of contradiction and the provision of declarations, to questions raised by any of the judges or by members of the jury or by the President, by request of the third party, the Public Prosecution, the defence lawyer, the “assistente” or civil parties.

b) Observations on the implementation of the article

Portugal has implemented the provision under review.

Article 56. Special cooperation

Article 56

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

(a) Summary of information relevant to reviewing the implementation of the article

There is no express prohibition in the Portuguese criminal and procedural law of the possibility for criminal investigation and prosecution authorities to forward, without prejudice to their own investigations, prosecutions or judicial proceedings, information on prosecutions of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

It results from Article 145 (1) of Law no 144/99 that mutual legal 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.

Within the framework of mutual 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, which is the case of the UNCAC, direct communication of information relating to criminal matters may be established between Portuguese and foreign authorities that assist judicial authorities.

(b) Observations on the implementation of the article

Portuguese legislation does not prohibit criminal investigation and prosecution authorities from spontaneously transmitting information to their foreign counterparts. AML/CFT regulatory and supervisory authorities may spontaneously share information with foreign counterparts as provided in Article 129 of Law no 83/2017 (AML/CFT law).

As further explained during the country visit, the authorities regularly exchange information through the Egmont Group, the European platform of AROs, the Camden Asset Recovery Inter-Agency Network, Interpol and Europol. In some instances, such exchanges have resulted in successful asset freezing in concrete cases.

Portugal has implemented the provision under review.

(c) Successes and good practices

Practice of spontaneous sharing of information, with a wide number of counterparts, that have led to successful asset freezing in concrete cases

Article 57. Return and disposal of assets

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.

(a) Summary of information relevant to reviewing the implementation of the article

According to Article 110 (4) (Proceeds of fines and confiscated property) of Law no 144/99, property confiscated shall revert to the State of enforcement, but may be remitted to the sentencing State if it so requires, if the property is of special interest to it and if reciprocity is ensured.

The reference to «special interest» in Article 110(4) is the way to establish the exception to the statement of the law which refers that property that is confiscated after being seized, revert to the State of enforcement.

This means that in the case of Portugal, the confiscated property could be returned to its prior legitimate owners.

When EU Member States are involved, the rule is the following according to Article 18 of Law no 88/2009:

1 - Where the property obtained by the execution of the confiscation order is a sum in cash, the following rules shall apply:

a) If the amount obtained by execution of the confiscation order is less than or equal to € 10 000, it reverts to the Portuguese State;

b) In all other cases, 50% of the amount obtained in the execution of the confiscation order shall be transferred to the issuing State.

2 - When the property obtained by the execution of the confiscation order is sold, the respective product has the destination provided in the previous paragraph.

3 - When the property obtained by the execution of the confiscation order is not a cash amount and is not sold under the terms of the previous paragraph, it is transferred to the issuing State, except in the cases provided for in paragraph 4.

4. Where the confiscation order relates to a sum of money, the transfer of property obtained by the execution of the confiscation order, other than a cash sum, shall be subject to the consent of the issuing State.

5. Where it is not possible to apply the provisions of paragraphs 2 to 4, the destination of the goods shall be governed by domestic law.

6 - Goods covered by the confiscation order, which constitute cultural property belonging to the national cultural heritage, are not sold or returned.

(b) Observations on the implementation of the article

Law no 144/99 foresees for the return of confiscated property to prior legitimate owners including foreign States. In relation to EU Member States, Law no 88/2009 foresees sharing of confiscated assets between Portugal and a requesting State if the value of assets exceed 10 000 EUR.

However, the default rule under Law no 144/99 is for the assets to remain in the State of enforcement (i.e. Portugal) unless the requesting State demonstrates a special interest in the property and provides assurances of reciprocity. In addition, the law is silent about the procedure in the circumstances described in article 57(3)(a) and (b) of the Convention.

Therefore, it was recommended that Portugal adopt such legislative and other measures as may be necessary to give effect to a request made by another State Party for the return and disposal of assets referred to in article 57(3)(a) and (b) of the Convention.

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.

(a) Summary of information relevant to reviewing the implementation of the article

According to Article 110 (4) (Proceeds of fines and confiscated property) of Law no 144/99, property confiscated shall revert to the State of enforcement, but may be remitted to the sentencing State if it so requires, if the property is of special interest to it and if reciprocity is ensured.

This means that in the case of Portugal, the confiscated property could be returned to its prior legitimate owners.

When EU Member States are involved, the rule is the following according to Article 18 of Law no 88/2009:

1 - Where the property obtained by the execution of the confiscation order is a sum in cash, the following rules shall apply:

a) If the amount obtained by execution of the confiscation order is less than or equal to € 10 000, it reverts to the Portuguese State;

b) In all other cases, 50% of the amount obtained in the execution of the confiscation order shall be transferred to the issuing State.

2 - When the property obtained by the execution of the confiscation order is sold, the respective product has the destination provided in the previous paragraph.

3 - When the property obtained by the execution of the confiscation order is not a cash amount and is not sold under the terms of the previous paragraph, it is transferred to the issuing State, except in the cases provided for in paragraph 4.

4. Where the confiscation order relates to a sum of money, the transfer of property obtained by the execution of the confiscation order, other than a cash sum, shall be subject to the consent of the issuing State.

5. Where it is not possible to apply the provisions of paragraphs 2 to 4, the destination of the goods shall be governed by domestic law.

6 - Goods covered by the confiscation order, which constitute cultural property belonging to the national cultural heritage, are not sold or returned.

(b) Observations on the implementation of the article

Please refer to the observation and recommendation made under paragraph 1 of this article.

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;

(a) Summary of information relevant to reviewing the implementation of the article

According to Article 110 (4) (Proceeds of fines and confiscated property) of Law no 144/99, property confiscated shall revert to the State of enforcement, but may be remitted to the sentencing State if it so requires, if the property is of special interest to it and if reciprocity is ensured.

This means that in the case of Portugal, the confiscated property could be returned to its prior legitimate owners.

When EU Member States are involved, the rule is the following according to Article 18 of Law no 88/2009:

1 - Where the property obtained by the execution of the confiscation order is a sum in cash, the following rules shall apply:

a) If the amount obtained by execution of the confiscation order is less than or equal to € 10 000, it reverts to the Portuguese State;

b) In all other cases, 50% of the amount obtained in the execution of the confiscation order shall be transferred to the issuing State.

2 - When the property obtained by the execution of the confiscation order is sold, the respective product has the destination provided in the previous paragraph.

3 - When the property obtained by the execution of the confiscation order is not a cash amount and is not sold under the terms of the previous paragraph, it is transferred to the issuing State, except in the cases provided for in paragraph 4.

4. Where the confiscation order relates to a sum of money, the transfer of property obtained by the execution of the confiscation order, other than a cash sum, shall be subject to the consent of the issuing State.

5. Where it is not possible to apply the provisions of paragraphs 2 to 4, the destination of the goods shall be governed by domestic law.

6 - Goods covered by the confiscation order, which constitute cultural property belonging to the national cultural heritage, are not sold or returned.

(b) Observations on the implementation of the article

Please refer to the observation and recommendation made under paragraph 1 of this article.

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;

(a) Summary of information relevant to reviewing the implementation of the article

According to Article 110 (4) (Proceeds of fines and confiscated property) of Law no 144/99, property confiscated shall revert to the State of enforcement, but may be remitted to the sentencing State if it so requires, if the property is of special interest to it and if reciprocity is ensured.

This means that in the case of Portugal, the confiscated property could be returned to its prior legitimate owners.

When EU Member States are involved, the rule is the following according to Article 18 of Law no 88/2009:

1 - Where the property obtained by the execution of the confiscation order is a sum in cash, the following rules shall apply:

a) If the amount obtained by execution of the confiscation order is less than or equal to € 10 000, it reverts to the Portuguese State;

b) In all other cases, 50% of the amount obtained in the execution of the confiscation order shall be transferred to the issuing State.

2 - When the property obtained by the execution of the confiscation order is sold, the respective product has the destination provided in the previous paragraph.

3 - When the property obtained by the execution of the confiscation order is not a cash amount and is not sold under the terms of the previous paragraph, it is transferred to the issuing State, except in the cases provided for in paragraph 4.

4. Where the confiscation order relates to a sum of money, the transfer of property obtained by the execution of the confiscation order, other than a cash sum, shall be subject to the consent of the issuing State.

5. Where it is not possible to apply the provisions of paragraphs 2 to 4, the destination of the goods shall be governed by domestic law.

6 - Goods covered by the confiscation order, which constitute cultural property belonging to the national cultural heritage, are not sold or returned.

b) Observations on the implementation of the article

Please refer to the observation and recommendation made under paragraph 1 of this article.

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.

(a) Summary of information relevant to reviewing the implementation of the article

According to Article 110 (4) (Proceeds of fines and confiscated property) of Law no 144/99, property confiscated shall revert to the State of enforcement, but may be remitted to the sentencing State if it so requires, if the property is of special interest to it and if reciprocity is ensured.

This means that in the case of Portugal, the confiscated property could be returned to its prior legitimate owners.

When EU Member States are involved, the rule is the following according to Article 18 of Law no 88/2009:

1 - Where the property obtained by the execution of the confiscation order is a sum in cash, the following rules shall apply:

a) If the amount obtained by execution of the confiscation order is less than or equal to € 10 000, it reverts to the Portuguese State;

b) In all other cases, 50% of the amount obtained in the execution of the confiscation order shall be transferred to the issuing State.

2 - When the property obtained by the execution of the confiscation order is sold, the respective product has the destination provided in the previous paragraph.

3 - When the property obtained by the execution of the confiscation order is not a cash amount and is not sold under the terms of the previous paragraph, it is transferred to the issuing State, except in the cases provided for in paragraph 4.

4. Where the confiscation order relates to a sum of money, the transfer of property obtained by the execution of the confiscation order, other than a cash sum, shall be subject to the consent of the issuing State.

5. Where it is not possible to apply the provisions of paragraphs 2 to 4, the destination of the goods shall be governed by domestic law.

6 - Goods covered by the confiscation order, which constitute cultural property belonging

to the national cultural heritage, are not sold or returned.

(b) Observations on the implementation of the article

Please refer to the observation and recommendation made under paragraph 1 of this article.

Paragraph 4 of article 57

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

(a) Summary of information relevant to reviewing the implementation of the article

According Article 26 (1) of Law no 144/99 (Expenses), as a rule, the execution of a request for international cooperation shall be free of charge.

The requesting State or the requesting international judicial entity shall however bear the expenses incurred by reason of sending or handing over property and other expenses deemed by the requested State to be of relevance on account of the human or technological means used (paragraph 2).

The provisions of the abovementioned paragraph 2 may be departed from by way of an agreement between Portugal and the relevant foreign State, or international judicial entity.

According to Article 6 (1) (expenses) of Law no 88/2009, regarding procedures for the execution of confiscation decisions with European Union Member States, Portugal renounces, in conditions of reciprocity, to the reimbursement of expenses for the execution of confiscation decisions.

However, paragraph 1 of Article 6 is not applicable when Portugal considers that, for the execution of a case, it has incurred in expenses considered high or exceptional, and may in such cases submit to the requesting State an application for the sharing of expenses. The application should be instructed with detailed specifications.

b) Observations on the implementation of the article

In the above described circumstances when Portugal is able to return assets to foreign States, it will deduct reasonable expenses associated with the execution of the request. Expenses may be waived or shared if agreed between Portugal and a requesting State.

Portugal has implemented the provision under review.

Paragraph 5 of article 57

5. Where appropriate, States Parties may also give special consideration to concluding agreements or arrangements, on a case-by-case basis, for the final disposal of confiscated property.

(a) Summary of information relevant to reviewing the implementation of the article

As stated before, Portugal celebrated an ad-hoc bilateral agreement with Switzerland for the seizure and sharing of assets. The negotiation for a bilateral agreement for the seizure and sharing of confiscated proceeds with the United States of America is ongoing.

(b) Observations on the implementation of the article

Portugal has implemented the provision under review.

Article 58. Financial intelligence unit

Article 58

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

(a) Summary of information relevant to reviewing the implementation of the article

Portugal cooperates with other European and non-European States in order to prevent and combat the transfer of proceeds of offences established in accordance with UNCAC and to promote ways and means of recovering such proceeds.

Portugal has established an FIU (Unidade de Informação Financeira) with competency to receive, analyse and disseminate information related to ML/TF suspicious activity and related predicates (Decree-Law no 304/2002). The FIU is a member of the Egmont Group since its creation in 2002.

For preventing and combating the transfer of proceeds of offences established in accordance with UNCAC and for promoting ways and means of recovering such proceeds, Portugal celebrated, for instance, an ad-hoc bilateral agreement with Switzerland for the seizure and sharing of assets. The negotiation for a bilateral agreement for the seizure and sharing of confiscated proceeds with the United States of America is also ongoing.

The BP, under Article 40 of Law no 25/2008, has to report to the FIU and to the Public Prosecution Service any suspicious transactions that were identified within the exercise of its supervisory actions and that were not reported by financial institutions.

The BP has communicated the following suspicious transactions to the FIU and the Public Prosecutor:

	2012	2013	2014	2015	2016
No of suspicious transactions communicated	80	77	150	172	218

Number of received STRs and confirmed STRs by the FIU

Year	2012	2013	2014	2015	2016
Received STRs	3 047	2 776	3 910	5 047	5 368
Confirmed STRs	512 (16%)	446 (16%)	439 (11%)	471 (9%)	299 (5, 5%)

Requests for international cooperation sent and received by the FIU

Year	2012	2013	2014	2015	2016
International Requests Received	223	233	214	352	442
International Requests Sent	95	167	93	144	64

As explained above and elsewhere in the report, Portugal has established a financial intelligence unit (Unidade de Informação Financeira (UIF)). It is mandated to receive and analyze suspicious transaction reports submitted by obliged entities and forward intelligence to the law enforcement authorities when there is a suspicion of money laundering or any predicate offence.

During the country visit, the authorities provided further information about UIF. UIF disseminates information to financial and non-financial entities, assesses systemic risks and hosts regular discussions with financial and non-financial entities, supervisory, regulatory and other authorities. The UIF cannot freeze accounts but may temporarily suspend transactions.

The Unit is composed of members of the police service who are experts in anti-money laundering and countering terrorist financing, as well as three experts seconded from the tax authorities. It cooperates with foreign financial intelligence units pursuant to MoUs and via the EGMONT Group.

Portugal has implemented the provision under review.

Article 59. Bilateral and multilateral agreements and arrangements

Article 59

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Although it does not seem necessary for the recovery of assets or for the returning or sharing of assets, since Portugal can always use the UNCAC or the Law 144/99 on international judicial cooperation in criminal matters and even reciprocity as a legal basis, Portugal is complying with this provision.

As said before, an ad-hoc agreement was celebrated with Switzerland in the context of a confiscation order and a bilateral agreement for the sharing of seized and confiscated assets is under negotiation with the United States of America.

(b) Observations on the implementation of the article

It was recommended that Portugal consider concluding further bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to the Convention.