



Direção-Geral da Política de Justiça



MINISTÉRIO DA JUSTIÇA

UNCAC – INTERGOVERNMENTAL WORKING GROUP ON PREVENTION  
SIXT INTERSESSIONAL MEETING – VIENNA, 31 AUGUST TO 2 SEPTEMBER 2015

PORTUGAL

MEASURES TO PREVENT MONEY LAUNDERING (UNCAC, Article 14)

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

The same applies when the person conceals or disguises the true nature, source, location, disposition, movement, rights with respect to, or ownership of proceeds (paragraph 3). The offences laid down in paragraphs 2 and 3 are punished even if the acts which constitute the predicate offence have been committed outside the national territory, or if the place where the offence was committed or the identity of the offenders remain unknown (paragraph 4).

For the purposes of the mentioned paragraphs 2 to 4, proceeds of crime are those assets which derive from the criminal offences of living on earnings of prostitution, child sexual abuse or sexual abuse of dependant minors, extortion, illegal trafficking of drugs and psychotropic substances, arms trafficking, trafficking in human organs or tissues, trafficking in protected species, tax fraud, trafficking on influence, corruption and other offences referred to in Article 1(1) of the Law nr. 36/94 of 29 September and from a criminal offence punishable by a minimum term of imprisonment exceeding six months or by a maximum term of imprisonment exceeding five years, as well as those obtained with such proceeds (paragraph 1).

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

The comprehensive domestic regulatory and supervisory regime for financial and non-financial institutions, including money remittance services - informal services for the transmission of money or values are prohibited - and, where appropriate other bodies particularly susceptible to money-laundering, is set forth in Law nr. 25/2008, of 5 June, setting out preventive and repressive measures to combat money laundering and terrorist financing, transposing into Portuguese law the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 and Commission Directive 2006/70/EC, of 1 August 2006, on the prevention of the use of the financial system and designated non-financial businesses and professions for the purposes of money laundering and terrorist financing.

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



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

#### Article 3 (Financial entities)

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

- a) Credit institutions;
- b) Investment companies and other financial companies;
- c) Entities in charge of the management or trading of hedge funds;
- d) Collective investment undertakings marketing their units;
- e) Insurance undertakings and insurance intermediaries carrying on the activities referred to in subparagraph c) of Article 5 of Decree-Law nr. 144/2006 of 31 July, with the exception of connected insurance mediators as mentioned in Article 8 of the aforementioned Decree-Law, when they act in respect of life insurance;
- f) Pension-fund management companies;
- g) Credit securitisation companies;
- h) Risk capital companies and investors;
- i) Investment consultancy companies;
- j) Companies trading goods or services related to investment in fixed assets.

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

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

4 - For the purposes of this Law, the entities referred to in the foregoing paragraphs shall be called «financial entities».

#### Article 4 (Non-financial entities)

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

- a) Casino operators;
- b) Operators awarding betting or lottery prizes;
- c) Real estate agents as well as construction entities selling directly real property;
- d) Persons trading in goods, only to the extent that payments are made in cash in an amount of EUR 15000 or more, whether the transaction is executed in a single operation or in several operations which appear to be linked;
- e) Certified auditors, chartered accountants, external auditors and tax advisors;
- f) Notaries, registrars, lawyers, *solicitadores* and other independent legal professionals, acting either individually or as a legal person, when they participate or assist, by acting for a client or otherwise in transactions concerning:
  - i) Purchase and sale of real property, business entities and shareholdings;
  - ii) Management of client money, securities or other assets;
  - iii) Opening or management of bank, savings or securities accounts;
  - iv) Creation, operation or management of companies or similar structures, as well as legal arrangements;
  - v) Financial or real estate operations representing a client;
  - vi) Acquisition and sale of rights over professional sportspersons;

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

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

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

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

In order to enhance cooperation between the three supervisory authorities, the National Council of Financial Supervisors (CNSF) was set up in 2000 encompassing the Central Bank (BdP), the Portuguese Insurance Institute (ISP) and the Securities Market Commission (CMVM). These authorities act within their supervision powers of, respectively: credit institutions, investment firms and other financial companies (BdP), insurance and re-insurance companies, insurance intermediaries, pension funds and their management companies (ISP) and securities markets and financial intermediaries' activities (CMVM).

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

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

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

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

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

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

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

The FIU centralizes, processes and disseminates information concerning the investigation of money laundering and tax-related offences. The FIU receives the suspicious transaction reports (STRs) directly from all the financial and non-financial entities subject to Law nr. 25/2008 (AML/CFT Law).

The FIU is a member of the Egmont Group and collaborates regularly in initiatives and promotes regular working meetings with the supervision authorities of the financial sector and oversight authorities of DNFPBs. Regarding internal co-operation, the FIU maintains regular contacts with financial entities and supervision authorities through working meetings and seminars. The same type of contacts was already initiated with non-financial entities and with the monitoring authorities of this sector.

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

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

It should be pointed out that due to the review of the FATF Recommendations and to the approval of the new (fourth) EU Directive on the prevention of the use of the financial system and designated non-financial businesses and professions for the purposes of money laundering and terrorist financing the Portuguese legislation will be updated accordingly.

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

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

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

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



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

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

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

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

Since 2008, after the entry into force of the Public Contracts Code, Portugal put in place a national web portal, BASE ([www.base.gov.pt](http://www.base.gov.pt)) that centralises information on public contracts. The Institute of Construction and Real Estate (InCI) is responsible for the management of this portal. BASE receives data from the electronic edition of the Portuguese Official Journal and from the certified electronic platforms concerning open and restricted pre-award procedures. All public contracting authorities use the reserved area of the portal to record contract data, upload the contracts and record information on their performance. From 2008 to 2011, BASE only publicised contracts relating to direct awards.

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

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

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 stated that the national budget is approved by the Assembly of the Republic (Parliament) and all the documents and proposals are publicly available in its website and the discussions are public (<http://www.cn.parlamento.pt/StateBudgetPublicAccounts/index.html>).

The Portuguese public administration is subject to the principles of "open administration" and transparency, namely in what regards its organization, functioning and decision-making processes.

In the last ten 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.

<sup>1</sup> Decree-Law nr. 149/2012 published on 12 July 2012.



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

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

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

Law nr. 83/95 of 31 August defines the terms of participation by the people in administrative procedures and the right to popular action to prevent and repress offences caused by diffuse interests. This concept includes public health, the environment, the quality of life, consumer protection in goods and services, the nation's cultural heritage and everything in the public domain.

Access to administrative documents is regulated by Law nr. 65/93 of 26 August, known as LADA (Law on the Access to Administrative Documents).

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

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

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

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

More recently, following the practice of earlier years, approval was given to the "Ethical Charter - Ten Ethical Principles for Public Service". This can be found on the home page of the General Directorate of Public Administration, which is the main portal for the public service. These are the ten ethical principles:  
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1. The Principle of Public Service - Public servants must dedicate themselves exclusively to service for the general public and the citizens, not for any specific or group interest.
2. The Principle of Legality - Public servants must act in accordance with the principles enshrined in the Constitution and within the law.
3. The Principle of Justice and Impartiality - Public servants, during the performance of their activity, must treat all citizens fairly and impartially, acting according to rigorous standards of neutrality.
4. The Principle of Equality - Public servants cannot give undue advantage or cause harm to any citizen on account of parentage, gender, race, language, political, ideological or religious convictions, economic situation or social status.
5. The Principle of Proportionality - Public servants, during the performance of their activity, can only demand of any citizen what is strictly necessary for the execution of the public activity.
6. The Principle of Collaboration and Good Faith - Public servants, during the performance of their tasks, must perform their activity on the basis of good faith, having regard for the interests of the community and enhance its participation in the administrative activity.
7. The Principle of Information and Quality - Public servants should supply information and/or clarification in a clear, simple, polite and swift way.
8. The Principle of Loyalty - Public servants, during the performance of their tasks, should act with loyalty, solidarity and cooperation.
9. The Principle of Integrity - Public servants should be governed by criteria of personal honesty and integrity.
10. The Principle of Competence and Responsibility - Public servants should act in a responsible and competent way, they should be dedicated and self-critical, working always to be better professionals.

As a final point, we should state that a Commission - established in January 2010 – worked in the elaboration of a “Reference Framework” for codes of conduct and ethical issues of the public sector (including central, regional and local levels as well as to publicly owned companies). This document is to serve as a guideline for the entities concerned when drawing up or amending their particular ethical codes and rules of conduct and accompanying sanctions. The Commission was chaired over by the Secretary of State for Justice and was composed of representatives of the Presidency of the Council of Ministers, the Ministries of Finance and Public Administration and Justice and by the Secretary-General of the Council for the Prevention of Corruption. The Commission has, in accordance with its mandate, prepared a draft text for the “Reference Framework”, which was approved by the Parliament.

The “Management plans on risks of corruption and related offences” established by the various entities concerned, which are monitored by the CPC – Council for the Prevention of Corruption, set up in September 2008, by Law nr. 54/2008, of 4 September, as an independent body competent for the definition of corruption preventive policies, serves as a basis for the elaboration of codes of conduct and ethics in various institutions at different levels of the public administration and in the State owned companies. The elaboration of such plans is aimed at identifying the situation in terms of risks of corruption and, thus, to assist in defining not only preventive and corrective measures, but also to prepare follow-up measures, including training needs and awareness-raising.



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Regarding the preventive side of corruption it should be highlighted the important role that the Council for the Prevention of Corruption is playing in the preventive side of this phenomenon. Bearing in mind the need for transparency, this Council has adopted several Deliberations and Recommendations with the purpose to prevent corruption. Reference should further be made, for example, to Recommendation of 1 July 2009, on the elaboration and application of Plans on the prevention of risks of corruption and related offences that determines that Public Administration entities and the senior managing bodies of the funds, values or public property management entities, are to be entrusted with the elaboration of this type of plans.

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

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