Financial Action Task Force

Groupe d'action financière

THIRD MUTUAL EVALUATION REPORT ON
ANTI-MONEY LAUNDERING AND
COMBATING THE FINANCING OF TERRORISM

PORTUGAL

13 OCTOBER 2006

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Preface - information and methodology used for the evaluation

1. The evaluation of the Anti-Money Laundering (AML)[1] and combating the financing of terrorism (CFT) regime of Portugal was based on the Forty Recommendations 2003 and the Nine Special Recommendations on TF 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004. The evaluation was based on the laws, regulations and other materials supplied by Portugal, and information obtained by the evaluation team during its on-site visit to Portugal from 6 March to 17 March 2006, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Portuguese government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

2. The evaluation was conducted by an assessment team which consisted of members of the FATF Secretariat and FATF experts in criminal law, law enforcement and regulatory issues: Mr. Aricio Fortes, Deputy General Counsel of the Legal Department of the Banco Central of Brazil (legal expert); Ms. Consuelo Carrasco, General Directorate of the Treasury and Financial Policy of the Spanish Ministry of Economy and Finance (financial expert); Mr. Golo Trauzettel, Anti-Money Laundering Group Section GW 1, German Federal Financial Supervisory Authority (financial expert); Capitaine Vincent Bleriot, Organised Crime Section, General Directorate of the French National Gendarmerie (law enforcement expert); Mr. Vincent Schmoll and Mr. Mark Hammond from the FATF Secretariat. The assessment team reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter ML and the financing of terrorism through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.[2]

3. This report provides a summary of the AML/CFT measures in place in Portugal as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). It also sets out Portugal's levels of compliance with the FATF 40+9 Recommendations (see Table 1).[3]

[1]See Annex 1 for a complete list of abbreviations and acronyms.
2See Annex 2 for a detailed list of all bodies met during the on-site mission.
See Annex 3 for copies of the key laws, regulations and other measures.
See Annex 4 for a list of all laws, regulations and other material received and reviewed by the assessors.
3Also see Table 1 for an explanation of the compliance ratings (C, LC, PC and NC).

EXECUTIVE SUMMARY

1 Background Information

4. This report provides a summary of the AML/CFT measures in place in Portugal at March 2006 (the date of the on-site visit). The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Portugal's levels of compliance with the FATF 40 + 9 Recommendations (see attached table on the Ratings of Compliance with the FATF Recommendations). The Portuguese Government recognises the importance of an effective AML/CFT regime and continues the process of updating its ML/TF framework.

5. The Portuguese legal framework for combating money laundering and terrorist financing is generally comprehensive. The ML offence is broad in scope and in accordance with the UN Vienna and Palermo Conventions. The TF offences are broadly satisfactory, although they do not appear to cover autonomously acts of the financing of an individual terrorist (that is not related to a terrorist group). The Portuguese confiscation and seizing system is also generally comprehensive. The system for freezing terrorist related funds has some deficiencies relating to its scope and certain limitations on the length of time during which terrorist funds may be frozen (that is, for the duration of the Portuguese judicial proceedings). Statistics on prosecutions for money laundering and terrorist financing, as well as related confiscation data are maintained by Portuguese authorities; however, they are not comprehensive in all areas, thus it is difficult to assess fully the effectiveness of these regimes. Portugal has a generally clear and complete framework for providing international co-operation.

6. The Portuguese financial intelligence unit (FIU) has been an active member of the Egmont Group since 1999. The Portuguese AML system requires obligated parties to report suspicious transactions to the Attorney General's office, which then immediately forwards the reports to the FIU. The Unit thus receives Suspicious Transaction Reports (STRs) and Currency Transaction Reports (CTRs) indirectly, and it uses both types of reports for developing cases that are forwarded to the public prosecutor for action against money laundering. The FIU is generally effective in its functions. Portuguese national authorities have adequate legal powers for gathering evidence and compelling the production of documents, as well as a broad range of special investigative techniques.

7. The preventive side of the Portuguese AML/CFT regime is covered by Law 11/2004, and implementing regulations issued by the supervisory authorities (in particular, the Bank of Portugal (BdP), the Portuguese Insurance Institute (ISP) and the Securities Market Commission (CMVM) and Law 5/2002 and Law 11/2002 which introduced CFT prevention and freezing. Together these laws deal with customer identification and other AML/CFT obligations and apply to a broad range of financial institutions and DNFBPs. Law 11/2004 offers generally complete coverage of requirements for the customer due diligence regime, though there are a few minor shortcomings that mean the current regime does not meet all of the subtleties of FATF requirements, and CFT legislation does not explicitly extend CDD to the risk associated with terrorist financing. Mechanisms for determining the beneficial owner do not fully meet the FATF requirements. A broad range of categories of designated non-financial businesses and professions (DNFBPs) are subject to the Portuguese AML law and ultimately to the CFT law. The principal deficiencies in this area also relate to those that are found in the broader financial sector, and monitoring of the implementation of AML/CFT measures by DNFBPs should be reinforced.

8. Portuguese authorities identified that narcotics related crimes provide the main source of criminal proceeds. Due to its geographical location Portugal provides passage for, and is a point of logistical support, in the transit of drugs destined to other countries in Europe and, as one of the entry points for international drug trafficking into Europe, it could therefore be vulnerable to the placement of funds from crimes committed outside the country. Other types of crimes that generate significant

criminal proceeds are corruption, trafficking in works of art and cultural artefacts, extortion, embezzlement, tax offences and aiding or facilitating illegal immigration.

9. Investigations into ML have confirmed that the proceeds from drug trafficking are most likely to involve the attempted placement of cash into the financial system. There is no clear evidence of TF operations in Portugal, although there are some indications of fundraising for the support of radical organisations outside Portugal.

10. Portugal has a developing and diverse financial sector that has undergone important changes, in part, associated with the accession to the EU. In 2004, 246 credit institutions were licensed to operate, and perform a variety of financial activities, including insurance, money market instruments and money transmission services. The Portuguese banking system is concentrated within five banking groups, with an increasing of foreign banking institutions (accounting for 20% of the banking market share in 2004). Insurance companies provide direct insurance and re-insurance alongside a number of connected activities. Portugal has a stock exchange (including a futures and options exchange) and bureaux de change, which under certain conditions may also perform money remittance services, are licensed to operate.

11. A full range of designated non-financial businesses and professions (DNFBPs) operate in Portugal: Casinos, real estate agents, dealers in precious metals and stones, lawyers, *solicitadores*, notaries, statutory auditors and chartered accountants.

12. Portugal is a democratic republic based on its Constitution of 1976 with a parliamentary system of government, a President and it belongs to the civil law legal tradition. The Ministry of Finance and Public Administration is responsible for defining and executing Portuguese financial policy, setting out fiscal policy and co-ordinating financial relations between the State and the EU. The Ministry of Justice is responsible for conceiving, conducting, carrying out and assessing Portuguese polices for justice. The Ministry is also the competent authority for domestic judicial legislation and policies relating to the prevention and repression of criminal behaviour including ML and TF. Portugal is currently in the process of further reviewing its criminal legislation and updating its legislation for the purposes of implementing the Third EU Money Laundering and Terrorism Financing Directive.

2 Legal System and Related Institutional Measures

13. Portugal has an all-crimes money laundering (ML) offence, which meets the FATF requirements; however the number of ML investigations, prosecutions and convictions remains low. ML is criminalised under Law 11/2004. This text added Article 368-A to the Criminal Code and includes a list of predicate offences for ML. It also criminalised self-laundering. Portugal has a mixed approach to the ML offence, which combines a list of predicate offences and the criteria of the applicable penalty. All those crimes that are punishable with a minimum penalty of more than 6 months imprisonment, regardless of the maximum limit, as well as those punishable with a maximum penalty of 5 years, regardless of the minimum limit, are considered predicate offences for ML. Only natural persons are criminally liable for a ML offence; criminal liability for ML therefore does not extend to legal persons. However, Law 11/2004 foresees a range of proportional and dissuasive sanctions that can be applied to legal persons.

14. The offence of Terrorist Financing (TF) was established by Law 52/2003 which punishes funding in any way terrorist acts or terrorist organisations and defines the offences of a terrorist organisation, terrorism and international terrorism. The broad wording of the TF offence captures both illicit and licit funds if they support a terrorist act or organisation, but does not extend coverage as such to the provision of funds to a single terrorist. Law 52/2003 clearly provides for the criminal liability of legal persons with regard to TF.

15. Between 2000 and 2005, 16 people were convicted of ML offences, and criminal sanctions ranging from 1 to 8 ½ years imprisonment were applied. A lack of comprehensive statistics on ML investigations, prosecutions and convictions prevents a full evaluation of effectiveness. There have been no prosecutions for TF.

16. Articles 109 – 111 of the Criminal Code allow for the confiscation and seizing of the proceeds of crime. Article 9 (2) of Law 11/2004 also allows the Public Prosecution to suspend or freeze funds if there is a suspicion that the transaction may be related to the commission of a laundering offence. Article 4 of Law 5/2002 provides for the suspension of movements of banking accounts and Article 7 provides a special confiscation regime applicable, among others to the TF and ML offences.

17. Measures are in place to freeze terrorist funds and to implement UN Security Council Resolutions 1267 (1999) and 1373 (2001) under EU Council Regulations and through judicial inquiries applying Law 5/2002 and Law 144/99. EU Regulations have direct force of law in Portugal, and financial institutions are required to freeze assets from the date of such EU Regulations and UN Security Council Resolutions, according to Law 11/2002. Regulations made under this Law further provide for criminal penalties for non-compliance with EU or UN Security Council Resolutions. Communication procedures are largely effective in informing the financial sector of their freezing obligations.

18. The FIU was created in 2002 as an autonomous department within the Criminal Police replacing the BIB-ML Investigation Squad (created in 1994). All STRs are received by the FIU from the Attorney General's office, as they are the designated competent authority by law to receive and disseminate STR information. The number of STRs received by the FIU has increased from 166 in 2002 to 330 in 2005. The FIU also received CTR reports (some 44,165 in 2005) that are also used in developing analysis of ML cases.

19. Adequate powers are available to investigative authorities to gather evidence and compel the production of financial records and files from financial institutions and DNFBPs. Portuguese authorities have sufficient powers to prosecute ML and TF offences; however, the structures, staffing and resources to investigate these offences are also responsible for examining a range of crimes. While legal measures are available to investigate and prosecute for ML or TF offences, a relatively small number of cases have been successfully prosecuted.

3 Preventive Measures - Financial Institutions

20. Law 11/2004 defines those financial institutions that are subject to AML/CFT obligations, classifying them as designated bodies under the Act. Designated bodies include all relevant financial institutions as defined. Designated bodies are obliged under Law 11/2004 to comply with several duties, to identify customers, to retain records in relation to customers and transactions, and to adopt measures to prevent and detect ML – including training employees and detecting and reporting suspicious transactions. The Portuguese legislative framework does not impose AML/CFT obligations on the basis of risk.

21. The requirements to conduct customer due diligence (CDD) are set forth in part in Law 11/2004 which requires that financial entities obtain identification from customers and their representatives when opening accounts, when entering into a business relationship, such as opening accounts, when carrying out transactions or a series of linked transactions exceeding €12,500 and when there is a suspicion of ML.

22. BdP Notices and Instructions, ISP Standards and CMVM Regulations oblige financial institutions to undertake additional measures including detailed requirements on what type of documents institutions require in each case. Duties are imposed on financial institutions to identify legal persons. Beneficial ownership must be established whenever an institution knows or suspects

that a natural person is not acting on their own behalf. Identification of those with holdings in capital or voting rights equal to or higher than 25% of a legal entity is required as well as the identification of the members of its board of directors.

23. BdP Notices and Instructions and ISP Regulatory Standards require financial institutions to keep an ongoing monitoring of the business relationship, including the examination of operations undertaken during the course of the relationship. BdP Instructions also require banks define risk profiles of both clients and transactions.

24. There are certain exceptions to the duty of identification: when a customer is a financial entity subject to the ML regime in Portugal, or a regime that is considered equivalent. Equivalent jurisdictions include member States of the EU or FATF. Certain insurance transactions are also exempted from ML obligations. Identification is not exempted when there is a suspicion of ML or a jurisdiction is considered as non-cooperative.

25. Law 11/2004 states that financial institutions should not enter into business relationships if their customer does not supply adequate identification. BdP Instructions and ISP Regulatory Standards require that customer files must be periodically updated.

26. However, measures imposed by laws and regulations do not comprehensively and explicitly provide for all of the CDD requirements set forth under Recommendation 5: Identification requirements for beneficial owners are not completely contained in law but in supervisory regulations; there is no explicit mention of TF in relation to the duty of CDD in suspicious transactions, and in low risk situations some of the current exemptions mean that, rather than reduced or simplified CDD measures. CDD measures must apply when there is a suspicion of ML.

27. There are no specific obligations regarding higher risk relationships for politically exposed persons (PEPs) or for financial institutions to have policies in relation to correspondent banking to prevent misuse for ML/TF.

28. Financial institution secrecy does not inhibit the implementation of the FATF Recommendations and co-operation occurs between financial institutions, judicial authorities and supervisors in appropriate circumstances.

29. Law 11/2004 requires that identity documents must be retained for 10 years from the point of identification and for 5 years after the termination of the business relationship. Financial entities are obliged to supply financial information and document of interest whenever required by the supervisory authorities (within the time period established by them) or by judicial authorities within 5 days (if computerised) or 30 days (if other storage methods are used). Financial entities are informed of a special duty to identify everyone involved in operations relating to jurisdictions that are deemed to be non-cooperative. There are no provisions imposing specific requirements to gather, retain and onward transmit information with reference to wire transfers under Special Recommendation VII.

30. All designated bodies are required to pay attention to suspicious transactions, and Article 7 and 18 of Law 11/2004 requires that, if they detect or suspect or become aware of facts which indicate a ML offence, they must submit an STR to the AG office (who in turn forward the report to the FIU). Law 11/2004 defines what operations could be considered as suspicious, and BdP and ISP Regulatory Instruments provide annexes with lists of potentially suspicious activities that financial entities may use to detect potential instances of ML. TF is an autonomous offence under Law 52/2003 and a predicate offence for ML; suspected instances of TF should also be reported as STRs. Feedback is provided by the FIU on all STRs submitted.

31. Comprehensive obligations are placed on financial institutions to have internal controls to prevent and detect ML or TF contained in Article 11 (1) of the Law 11/2004, paragraphs 10 and 11 of BdP Instruction 26/2005 and ISP Regulatory Standard 10/2005, paragraphs 6 of BdP Instruction 72/96

and Article 19, (3) c) and (4), and Article 36 (2) d) of CMVM Regulation 12/2000. BdP Instructions and ISP Regulatory Standards also require financial entities to have internal control mechanisms to ensure that their duties regarding the prevention of ML are also observed in their foreign subsidiaries and branches. There is, however, no explicit obligation to have a position of compliance officer at a senior management level within a financial institution.

32. Under Article 11, paragraphs 1 and 2 of Law 11/2004, financial entities are bound to create control mechanisms including in subsidiaries and branch offices abroad. They are obliged to have internal control and reporting mechanisms that enable compliance with the duties provided for in the law and prevent the execution of operations related with ML. However, an explicit regulation that requires institutions to pay particular attention to their branches and subsidiaries in countries which do not or insufficiently apply the FATF recommendations is absent. Although, there is the requirement to inform the supervisor if local rules inhibit the application of the ML duties imposed by the Portuguese legislation.

33. The Portuguese financial system is supervised by the BdP, the ISP and the CMVM. Articles 19 (1) and 48 of Law 11/2004 requires supervisory authorities within their respective sectors to impose compliance duties on financial entities to prevent ML and empowers them to investigate administrative breaches of the law and apply administrative sanctions. The three supervisors are independent, adequately structured and staffed and have a full range of supervisory powers to inspect financial institutions and impose sanctions for breaches of laws or regulations. They have sufficient operational independence and autonomy to ensure freedom from undue influence or interference. Law 11/2004 requires that supervisory authorities impose compliance duties on financial entities to prevent ML. Law 5/2002 provides a general provision in relation to "untruthful information"; criminal sanctions can be applied when, in the course of an enquiry, or during legal proceedings or hearings relating to ML and TF an employee or institution refuses to supply, or supplies false information.

34. Responsibility for implementing sanctions for AML/CFT is shared between the Supervisors and the Ministry of Finance. The Supervisors are responsible for instituting the administrative offence proceedings. The Minister of Finance applies fines and ancillary sanctions (e.g. the prohibition from assuming the management of legal persons) for non-compliance of the duties of Law 11/2004 and Law 5/2002, whilst the supervisors institute and apply the sanctions for breaches of BdP Notices and Instructions, ISP Regulatory Standards and CMVM Regulations. Penalties for administrative offences range from €750,000 to €2,500,000. Criminal sanctions can also be imposed under Article 13 of Law 5/2002. No sanctions have been imposed by the supervisors since the new Law 11/2004 came into effect, although there are some proceedings pending.

35. The various procedures for licensing financial institutions appear adequate to prevent criminals from gaining control or significant influence of these businesses. Market entry for financial institutions is carried out by the supervisors who ensure that fit and proper checks are conducted on those holding management positions in financial institutions. Ongoing supervision for AML purposes is assessed by the regulators who ensure that financial institutions have adequate systems for analysing transactions and detecting those that are suspicious.

36. Only licensed entities are permitted to conduct money value / transfers services. Exchange offices (governed, *inter alia*, by Decree Law 3/94) can only carry out operations involving money transfers to and from foreign countries if they have a specific BdP authorisation for this purpose. All the financial institutions providing a remittance service are subject to the supervisory powers conferred to BdP. The exercise of money transfers operations without the authorisation of BdP and the non-compliance of the rules of special registration of financial entities are considered a serious offence and are punishable by fines and ancillary sanctions.

4 Preventive Measures – Designated Non-Financial Businesses and Professions

37. Most categories of DNFBPs operate in Portugal: casinos, real estate agents, dealers in precious metals and stones, chartered accountants lawyers, *solicitadores*, notaries and statutory auditors and register officials. Most DNFBPs have been required since 1995 to comply with AML requirements. In 2004 these obligations were extended to lawyers and *solicitadores* and all relevant DNFBPs are subject to the duties of Law 11/2004, subsection II.

38. All the general AML duties that are required of financial institutions apply to DNFBPs and are subject to an appropriate adjustment to DNFBPs in accordance with the provisions of subsection II of the law - Articles 22 to 31 of Law 11/2004. The deficiencies in the implementation of Recommendation 5 noted in section 3 of the report apply equally to reporting financial institutions and nominated DNFBPs. For some DNFBPs there are no complementary instructions to add detail to the provisions laid down in law; the absence of such instructions means that CDD obligations are therefore less developed than for financial institutions. There are no specific obligations for PEPs or policies to deal with the misuse of technological developments.

39. As with financial institutions, record keeping obligations are contained in Article 5 of Law 11/2004 and meet the standard of Recommendation 10. Article 6 of Law 11/2004 requires DNFBPs to comply with the general duty to thoroughly examine suspect operations that are likely to represent a risk of ML. However from the time the new reporting obligation came into force in 2005, the FIU had received only 3 STRs from all DNFBPs. There are concerns about the implementation of FATF requirements by DNFBPs given the low number of STRs submitted.

40. There are limited or no requirements for DNFBPs to have internal procedures and controls outside the STR reporting obligation and there are no specific obligations for DNFBPs to pay special attention to business relationships from countries who do not or insufficiently apply FATF Recommendations.

41. Administrative sanctions can be applied to DNFBPs under Articles 45 and 47 of Law 11/2004; these are enforced by the government department or SRO responsible for monitoring the business sector concerned. Sanctions provided by law are proportionate, fines have a wide range of amounts and Article 47 of Law 11/2004 allows the imposition of supplementary penalties. However no sanctions have been imposed yet, except in the supervisory area of the Authority for Food and Economic Security (ASAE). Under Article 32 of Law 11/2004, monitoring authorities are responsible for ensuring the effective monitoring of compliance requirements preventing of ML. It is also important to work with the different sectors (via their professional associations for instance) to improve awareness and the application of AML/CFT requirements.

5 Legal Persons and Arrangements & Non-Profit Organisations

42. A number of types of legal persons exist in Portugal: Of a private nature these can be divided into *associations, foundations* and *unincorporated associations*. The Company Code includes different types of companies – *general partnerships, limited liability companies, joint-stock companies, limited partnerships* and *partnerships limited by shares*. All companies operating in Portugal and organisations representing international legal persons, or those registered under foreign law operating in Portugal must be recorded in the National Register of Legal Persons (RNPC) and in the Commercial Register. Competent authorities do have access to the National Register. However, this does not include all information needed to reveal the beneficial ownership of associations, foundations and cooperatives.

43. Bearer shares are in use in Portugal, although in a minority of joint stock companies (joint stock companies represent only 4% of all companies registered). Non-public companies' owners of bearer

shares have an obligation to inform the company of the number of shares held by them if they represent more than 10%, 33% or 50% of the share capital. In other commercial companies (partnerships, limited liability companies and limited partnerships) all partners are identified in the bylaws which are subject to compulsory commercial registration and publicly available. The transfer of company shares is also subject to compulsory commercial registration. However, there is no obligation to register information concerning the beneficial ownership and the control of the legal persons.

44. The law in Portugal does not recognise the legal concept of a trust; however, foreign trusts can be established in the Madeira Free Trade Zone. Trusts that have been legally constituted under foreign legal regimes, and whose settlor and beneficiaries are non-residents in Portugal, can be recognised and authorised to perform business activities exclusively in that zone, under the provisions of Decree-Law 352-A/88. These must be registered in the Commercial Registry in the Free Trade Zone, and the documents of recognition of the trust and all the mandatory elements, such as the purpose of the trust, the date of creation, the duration period, the denomination and headquarter of the trustee and the facts modifying the trust. The names of the settlor and trust beneficiaries are also recorded. Although these last two items are recorded in the Registry they are not available to the public. Competent authorities may access this information with a judicial order.

45. Portugal has undertaken a national review of its NPO sector and concluded that existing legislation can be applied to TF threats in the sector. Laws 5/2002 and 52/2003 provide regimes for the collection and investigation of evidence in cases of suspected ML or TF. Portuguese authorities should continue monitoring the ML/TF risks with NPOs and consider implementing specific measures required by Best Practices Paper to Special Recommendation VIII and the revised Interpretative Note issued in February 2006.

6 National and International Co-operation

46. Procedures exist in Portugal to ensure that there is co-operation between relevant organisations at a national level. At a policy level Portugal has been diligent in ensuring that EU directives are enforced. Portugal should continue to conduct the review of the current system with all stakeholders involved in its AML/CFT regime in order to identify any weaknesses and shortcomings that need to be addressed.

47. Portugal ratified the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1991, the International Convention for the Suppression of Terrorism Financing in 2001 and the Convention against Transnational Organised Crime in 2004. The country is also party to a number of multilateral conventions containing provisions for mutual legal assistance (MLA), including the Council of Europe Convention on Mutual Assistance in Criminal Matters 1957, and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime 1990.

48. Portugal is in broad compliance with its mutual legal assistance obligations (in particular with respect to the identification, seizure and confiscation of assets). Both ML and TF are extraditable offences. Law 144/99 regulates the forms of international judicial co-operation in criminal matters where international treaties, conventions or agreements that bind the Portuguese State are non existent or do not suffice. Through Article 145 and following of Law 144/99, Portugal is obliged to render the widest MLA in the investigations and proceedings of criminal nature and connected proceedings, in a constructive, effective and timely way. Extradition is one of the forms of MLA and the law provides a simplified procedure for extradition. For EU States Portugal can utilise the procedures set forth in the European Arrest Warrant allowing the efficient processing of extradition actions between Member States without the requirement for dual criminality for certain types of offences, including ML and TF.

49. Mechanisms have been put in place to ensure that Portugal can co-operate internationally, and it as negotiated a number of memoranda of understanding. The FIU has 22 agreements and the BdP, ISP and CMVM also have a number of MOUs either in place, or under negotiation. Other forms of co-operation are available to the various competent authorities in Portugal.

50. As far as statistics are concerned, Portugal should maintain more data. More efforts should be made in collecting figures in the following areas: (1) number of ML/TF investigations, prosecutions and convictions; (2) data on the amounts of property frozen, seized and confiscated relating to money laundering, terrorist financing and criminal proceeds; statistics on whether the request for mutual legal assistance was granted or refused and on how much time was required to respond; (3) number of requests for extradition for ML/TF cases and figures on whether the request was granted or refused and how much time was required to respond.

MUTUAL EVALUATION REPORT

1 GENERAL

1.1 General information on Portugal

51. Portugal covers an area of 92 152 km^2, and is located at the southwest corner of Europe. To the south and west, Portugal borders the Atlantic Ocean and to the north and east it shares territorial boundaries with Spain. Portugal comprises 18 administrative districts on the mainland and two autonomous regions in the Atlantic that have specific administrative and political frameworks; Madeira and the Azores.

52. A republic since 1910 Portugal has a civil law legal system and it is governed by a Constitution that establishes a democratic state of law, in force since April 1976. The four main organs of Portuguese political system are the President of the Republic, the Parliament (*Assembleia da República*), the Government, and the Courts. The Constitution grants separation between these powers. The Constitution establishes the President, who represents the Portuguese Republic. The Parliament (*Assembleia da República*) represents the citizens of Portugal, and the Government and the courts of law administer justice in the name of the people. The courts are organised in accordance with the Law on the Organisation of Courts and Tribunals in Portugal.[4] The President and the Parliament are elected by the people. The age of majority is 18 years[5].

53. As a founding member of NATO, the OECD and of the Community of Portuguese Speaking Countries (CPLP), Portugal participates in a number of different multilateral international fora. Portugal has also been a member of the United Nations since 1955, the Council of Europe since 1976 and of the European Union (EU) since 1986.

54. Since the 1960s, the Portuguese economy has developed and diversified. This has coincided with its membership of major international organisations, reflecting the strategic option of opening-up the economy. Portugal operates a market economy and trades mostly within the EU with Spain, Germany, France, Italy, and the United Kingdom. Since joining the EU the economy has diversified and become increasingly service-based. The service industry has developed rapidly and increasingly contributes towards the country's GDP. In Portugal, various service sectors including tourism, distribution and financial services have developed significantly since entry into the EU. Currently the service sector employs around 57% of the working population, generating 68% of Gross Value Added (GVA), and the primary sectors provide jobs for 12% of the working population and 4% of G.V.A., whilst industry accounts for 31% of jobs and 28% of G.V.A.

55. Economic developments in Portugal were uneven in the 1990s when the country, having coped with the challenges of accession to the EU, set out to prepare for membership in European Monetary Union. In the latter part of the twentieth century and early twenty first century, GDP grew at almost 4% per year and was one of the highest in the EU, exceeding the average rate by 1.2%. An economic slowdown in the years 2001 to 2003 occurred and in 2004 the Portuguese economy grew again, but below the European average. Against a background of gradually improving economic growth, the GDP rate is expected to rise from 0.3% in 2005 to 1.2% in 2006.

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[4] In hierarchical terms, there are county courts (*tribunais de comarca*), appeal courts (*tribunais da relação*) and the high court (*Supremo Tribunal de Justiça*) and constitutional court. Courts are divided into civil courts, criminal courts, labour courts, administrative courts, commercial courts and fiscal courts.

[5] Natural persons are criminally liable with the age of 16 years old.

56. Portugal is a country with a relatively wide income distribution and a large low-wage sector. The unemployment rate was 6.7% in 2004. The current Portuguese administration is committed to increasing the flexibility of working arrangements, expanding market liberalisation, privatisation, deregulation of the economy and simplifying the administrative burden on companies.

57. In accordance with the Portuguese Constitution (specifically Article 276), Public Administration must look after the public interest respecting the rights and interests of citizens. Those who work in public administrations are subordinate to the Constitution and the Law. Public officials in the performance of their tasks should act with respect for the principles of legality, duty to service the public interests, equality, proportionality, justice, impartiality and good faith loyalty, integrity, information and responsibility. The legal framework in Portugal also includes measures to prevent and repress corruption and through a number of international laws.

58. Within the EU the Convention on the on the protection of the Union's financial interests, Convention on the fight against corruption involving officials of the European Communities or of the Member States, have been ratified. The provisions of the Common Action against the Corruption in the Private Sector (98/472/JHA, of 22nd December 1998 and the Council Framework Decision 2003/568/JHA of the Council, of 22nd July 2003) have been transposed into Portuguese Law. Portugal is also engaged within the Council of Europe, with the Criminal Law Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The United Nations Convention against Corruption is currently awaiting ratification.

59. The Criminal Code makes various forms of corruption a criminal offence. Other types of corruption are covered by the law, such as active or passive corruption in the private sector (Law 108/2001). The responsibilities of holders of political offices include norms on corruption (Law 34/87) and Decree-Law 390/91 covers corruption in sports.

1.2 General Situation of ML and Financing of Terrorism

60. Overall, Portugal has a low rate of reported crime per capita in Europe[6], with only Ireland lower[7]. In 2003, compared with the previous year, there was a 6% increase in criminal activity reported to the police (an increase of 23,256 reported crimes). Property-related crimes account for the largest number of cases reported, followed by crimes against persons (both accounting for 81% of crimes reported). Robbery is the most frequently reported crime, with car theft accounting for 25% of this category. The Portuguese authorities' report that such crime is often drug-related by the perpetrator. Serious and violent crime hardly moved in relation to 2002, with a variation of +0.3% (up 60 reported cases).

61. Nevertheless, Portugal provides passage for, and is a point of logistical support in the transit of drugs destined to other countries in Europe. Portugal, as one of the entry points for international drug trafficking into Europe, is therefore vulnerable to the placement of funds from crimes committed outside the country. Its long coastline and vast territorial waters and privileged relationships with South America make it a gateway country for Latin American cocaine. Portugal is also a trans-shipment point for drugs coming from North Africa entering Europe. Portugal's vulnerability to drug related crime is reflected in a relatively high number of drug seizures. In the first three months of 2006 15 tonnes of cocaine were intercepted (this represents 20% of the total number of seizures in Europe). A number of considerable drug seizures have been made over recent years:

[6]Annual Report on Internal Safety, Year 2003 – Ministry of Interior (Relatório Nacional de Segurança Interna, Ano 2003)

[7]Reported crime per 1,000 inhabitants: Ireland 26,6; Portugal 39,3; France 66,5; Austria 80,1; Sweden 140,9

Drugs Interdicted by Portuguese Authorities 2003 - 2005

Type of drug	Quantity Interdicted		
	2003	2004	January-June 2005
Hashish	26,300 kg	29,977 Kg	11,217 Kg
Cocaine	3,020 kg	7,420 Kg	7,151 Kg
Heroin	72 kg	97 Kg	123 Kg
Ecstasy	155,488 pills	107,353 pills	106,295 pills

62. Portuguese authorities have detected criminal funds being placed into the financial system from smuggled commodities (tobacco, alcohol and mineral oils). Other types of crime that have been noted by the authorities in Portugal in generating significant criminal proceeds include: corruption, traffic in works of art and cultural artefacts, extortion, embezzlement, tax offences and aiding or facilitating illegal immigration. Investigations have shown that criminal organisations operating in Portugal are often located in other countries and use Portuguese nationals for logistical support, specifically in terms of unloading, storing and transporting drugs.

63. The number of inquiries made through Europol channels reflects the authorities' detection of criminal activity. Portugal was in 2004, one of the countries that made the biggest use of the Europol channel to exchange operational intelligence. Information in relation to drug trafficking investigations accounted for most of the requests for information sent by the Portuguese authorities to Europol, second were requests for information related to vehicle crimes (46 cases) and third forgery of money with 35 cases. Spain received the most requests from Portugal with 91 new cases, then France (58), Germany (47), the Netherlands (45) and the United Kingdom (42). Europol has also received several requests for information related to new investigations carried out in Portugal, in the areas of forgery of money, terrorism and drugs.[8]

64. In the first half of 2005, property with the estimated value of €2,450,000 was seized, primarily in cash, foreign currency and valuable goods.

65. Drug trafficking remains the primary reason for designated institutions to report suspicious activity and suspicious cases that have been investigated have been mostly linked to domestic operations. There has also been a significant increase in suspicious reporting on tax matters, among these VAT "*carousel*" cases have been seen in suspicious reports involving international transactions. The reports that result in active judicial inquiries originate mainly from credit institutions.

Detected Suspicious Activity, Underlying Offences and Type of ML Operation

Reported Offences (from STRs and CTRs)	2003	2004	2005* (until 3rd quarter)
Economic and financial offences	10	43	7
Tax offences	10	28	56
Tax fraud			36
Embezzlement	2	5	6
Drug-trafficking	5	6	4
Aiding illegal immigration	2	4	1
Criminal organisation			1
TF	1	4	
Corruption			1
Non-authorised banking activity	2	4	2
Offences against Social security			1

[8] http://www.europol.eu.int/index.asp?page=publar2004

	2004- Percentage of cases	2005 (until 3rd quarter) Percentage of cases
Type of operation		
Cash deposits	65%	38%
Exchange of bank notes	12%[9]	35% [10]
Transfers into and out of the country	11%	12%
Domestic transfers	7%	2%
Credit cards, safety deposit boxes, etc	5%	
Payment orders		1%
Check deposits		1%

66. Most of the suspected cases of ML investigated involved the placement of cash; this was followed by operations of exchange of currency (which increased from 12% in 2004 to 35% in 2005). No especially dedicated groups have been detected in ML operations and no changing trends have become visible since the last evaluation. The Portuguese authorities have not noted a significant increase in the risk of ML in domestic terms.

67. Historically Portuguese courts have tried a number of cases relating to domestic terrorist activities. However, there was no evidence of connection with the financing of structures, organisations or international terrorist groupings. Since the end of 2001, competent authorities have undertaken pre-emptive investigations and collected information on this issue within the general framework of prevention and repression of terrorism and TF and new legislation was enacted in 2003, improving the legal framework in the prevention and fight against this type of criminality.

68. There has been no clear evidence in Portugal of the existence of any Portuguese terrorist groups or the use of radical nationalist movements by foreign terrorist organisations. There have also been no significant links to the financing of such groups or organisations. To date there has been no cases of TF investigated or tried by the courts in Portugal (though there have been cases of domestic terrorism).

69. There are some indications that criminal activity has contributed to support political parties or radical organisations active outside Portugal. There is a suspicion, yet to be proven, that money remittance systems or cash couriers have been used to move funds. Investigations so far have led to some indication of involvement of individuals or religious organisations in common criminal activity.

1.3 Overview of the Financial Sector and DNFBP

a. Overview of Portugal's financial sector

70. The Portuguese banking system has undergone a number of changes in the past two decades, associated in large part with accession to the EU, and also, through a consolidation process. The financial sector is made up of a wide variety of different financial service providers. The financial sector comprises of credit institutions (undertakings whose business is to receive deposits or other repayable funds from the public and to grant credit), and financial companies. Banking institutions are the main source of funding for the domestic economy, with banks performing a wide range of financial activities including:

[9] Above all the exchange of low denomination bank notes for higher denomination ones

[10] Above all the exchange of low denomination bank notes for higher denomination ones

a) acceptance of deposits or other repayable funds;
b) lending, including the granting of guarantees and other commitments, financial leasing and factoring;
c) money transmission services;
d) issuance and administration of means of payment, e.g. credit cards, travellers cheques and bankers drafts;
e) trading on their own account or for customers, in money market instruments, foreign exchange, financial futures and options, exchange or interest-rate instruments, goods and transferable securities;
f) participation in securities issues and placement and provision of related services;
g) money broking;
h) portfolio management and advice, safekeeping and administration of securities;
i) acquisition of holdings in companies;
j) trading in insurance policies.

71. Most financial institutions are consolidated within wider banking groups, but stand-alone institutions account for a small part of the banking market share. In 2004, more than 90% of assets in the banking system came from institutions on a consolidated basis. A new type of credit institution – the credit financial institution - was created in 2002 (under Decree Law 186/2002) Credit financial institutions are allowed to operate simultaneously in various markets: undertaking leasing, consumer credit, factoring, brokerage and wealth management operations. Before the licensing of this new type of credit institution a specialised institution (other than a bank) could only perform one of the activities mentioned above.

TYPES OF FINANCIAL INSTITUTIONS TO CARRY OUT FINANCIAL ACTIVITIES IN THE GLOSSARY OF THE FAFT 40 RECOMMENDATIONS	
Type of financial activity (See the Glossary of the 40 Recommendations)	Type of financial institution that is authorise to perform this activity in Portugal
A. Acceptance of deposits and other repayable funds from the public (including private banking)	Banks[11], savings banks, Central mutual agricultural credit bank (CCCAM) and mutual agricultural credit banks.
B. Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	All credit institutions (with different scopes and restrictions according to each category of credit institution), with the exception of electronic money institutions[12] (*i.e.* Banks, savings banks, CCCAM, mutual agricultural credit banks, credit financial institutions, investment companies, financial leasing companies, factoring companies, credit purchase financing companies, mutual guarantee companies) and regional development companies (with restrictions).
C. Financial leasing (other than financial leasing arrangements in relation to consumer products)	Banks, CCCAM, mutual agricultural credit banks with a specific authorization by BdP to perform this activity, credit financial institutions and financial leasing companies
D. The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting	Banks, savings banks, CCCAM, mutual agricultural credit banks, credit financial institutions, exchange offices with a specific authorization by BdP to perform this activity and the postal service-CTT.

[11] The reference to "Banks" includes "Caixa Económica Montepio Geral" which is allowed to perform the same activities.

[12] This category of credit institution is foreseen in the legislation but no institution has applied for it.

funds)	
E. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	Banks, CCCAM, mutual agricultural credit banks with a specific authorization by BdP to perform this activity, credit financial institutions, electronic money institutions[2], credit card issuing or management companies.
F. Financial guarantees and commitments	Banks, savings banks with a specific authorization by BdP to perform this activity, CCCAM, mutual agricultural credit banks with a specific authorization by BdP to perform this activity, credit financial institutions, investment companies, credit purchase financing companies, mutual guarantee companies, regional development companies (with restrictions).
G. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading	Banks, savings banks with a specific authorization by BdP to perform this activity, CCCAM, credit financial institutions, investment companies, dealers[13], brokers and foreign exchange or money-market mediating companies.
H. Participation in securities issues and the provision of financial services related to such issues	Banks, CCCAM, credit financial institutions, investment companies, mutual guarantee companies and dealers. With several restrictions: mutual agricultural credit banks, brokers and venture capital companies.
I. Individual and collective portfolio management	Banks, CCCAM, mutual agricultural credit banks with a specific authorization by BdP to perform this activity, credit financial institutions, investment companies, dealers, wealth management companies, investment fund management companies. See K, in what regards pension funds management companies, venture capital management companies, regional development companies and credit securitisation fund management companies.
J. Safekeeping and administration of cash or liquid securities on behalf of other persons	Banks, CCCAM, mutual agricultural credit banks, savings banks with a specific authorization by BdP to perform this activity, credit financial institutions, investment companies, dealers, brokers.
K. Otherwise investing, administering or managing funds or money on behalf of other persons	Pension funds management companies, which are allowed to manage pension funds, venture capital management companies and regional development companies (which are allowed to manage venture capital funds) and credit securitisation fund management companies (which are allowed to manage credit securitisation funds).
L. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers))	Life Insurance companies, Insurance intermediaries
M. Money and currency changing	Banks, CCCAM, mutual agricultural credit banks, savings banks with a specific authorization by BdP to perform this activity, credit financial institutions and exchange offices.

[13] Dealers may grant credit and provide money currency exchange services and safe custody services in connection with the investment services provided.

72. There were 246 credit institutions licensed to operate in Portugal in 2004; however, the Portuguese banking system remains reasonably concentrated within five big banking groups. During the last few years, concentration has remained above 75%, whether seen in terms of assets, credit or deposits. In recent years internationalisation has become more evident and, in 2004, foreign banking institutions amounted for almost 20% of the banking market share. Activity in the banking sector has remained dynamic (even during economic downturns). Total assets grew 7.5% in 2003, while GDP fell by 1.1% (in 2004, the growth rates were 3.4% and 1.1. % respectively). In 2003, in terms of assets, the market share of Portuguese credit institutions in the EU was slightly above 1.3%.

73. Insurance companies operate exclusively in insurance and reinsurance, along with connected or complementary activities. Life insurance companies can also manage pension funds and insurance mutual funds are widely available as investment products in Portugal. At the end-2004, there were 69 insurance and reinsurance companies operating in Portugal. The Portuguese insurance sector in 2005 accounted for 1.1% of the EU total for the life branch and 1.2% in non-life branches. The five biggest companies have more than 75% of market share (life) and around 60% (non-life). The trend since 2004 has been towards more concentration. Pension fund management companies are set up exclusively to ensure the management of pension funds; these are made up of autonomous set of assets geared solely to creating and building one or more pension plans.

74. In 2004, there were 13 entities registered with the ISP as pension fund management companies and were responsible for 68.8% of the total number of pension funds and 96% of the total amount of pension funds managed. The top four pension funds management companies were responsible for the management of 38.5% of the total number of pension funds, corresponding to 69.1% of total assets. The top eight pension fund management companies are also responsible for the management of 52.4% of the total number of pension funds, corresponding to 92.8% of total assets.

75. Since 1995 the Portuguese Future and Options Exchange has operated under an agreement with the Lisbon Stock Exchange, it introduced the PSI-20 index as an underlying for futures and options contracts. The PSI-20 mirrors the price dynamics of 20 leading Portuguese stocks that together represent more than three quarters of the Portuguese market capitalisation.

Financial Institutions subject to AML/CFT requirements in Portugal (2002-2005)

Credit Institutions	**2002**	**2003**	**2004**	**2005**
Banks, including:	64	68	68	61
Branches of banks from other EU member countries	*19*	*22*	*24*	*22*
Branches of banks from third countries	*1*	*1*	*1*	*1*
Savings Banks	8	8	8	8
Central and Mutual Agricultural banks	135	128	128	121
Credit financial institutions	0	3	10	15
Investment companies	4	3	3	3
Financial leasing companies	16	12	6	4
Factoring companies	9	6	4	3
Credit purchase financing companies	14	10	4	4
Mutual guarantee companies	2	3	3	3
Branches of other foreign credit institutions	14	13	12	13
Subtotal (A)	**266**	**254**	**246**	**235**
Of which are financial intermediaries in securities (A1)	45	45	41	39
Financial companies				
Investment firms:	51	43	40	32
Dealers	*8*	*7*	*7*	*4*

Brokers	*16*	*11*	*10*	*10*
Foreign-exchange or money market	*1*	*1*	*1*	*1*
Wealth management companies	*26*	*24*	*22*	*17*
Investment fund management companies	47	47	45	44
Credit card issuing or management companies	3	3	3	2
Risk capital companies	8	0	0	0
Group purchase managing companies	18	17	13	12
Exchange offices	20	21	22	20
Credit securitisation fund management companies	2	3	4	4
Other companies	2	2	2	2
Subtotal (B)	**151**	**136**	**129**	**116**
Of which are financial intermediaries in securities (B,1)	*88*	*86*	*78*	*72*
Other financial intermediaries in securities				
Investment firms – EU branches	3	4	4	4
Subtotal (C)	**3**	**4**	**4**	**4**
Other financial institutions				
Venture Capital Companies	0	11	18	18
Securitisation Companies	2	2	2	4
Subtotal (D)				
Insurance companies and pension funds management companies				
Life insurance companies, including:	28	26	24	24
Branches of insurance companies from other EU members	11	11	9	9
Branches of insurance companies from third countries	2	1	1	1
Mixed Insurance Companies, including:	5	6	6	6
Branches of insurance companies from other EU members	0	1	1	1
Branches of insurance companies from third countries	0	0	0	0
Subtotal (E)	**46**	**45**	**43**	**43**
Financial Institutions subject to AML requirements (A+B+C+D+E)	**468**	**452**	**442**	**420**
Financial Institutions supervised by the BdP (A+B)	**417**	**390**	**375**	**351**
Financial Institutions supervised by CMVM (A,1+b+b,1+C+D)	**138**	**148**	**143**	**137**
Financial Institutions supervised by ISP (E)	**46**	**45**	**43**	**43**

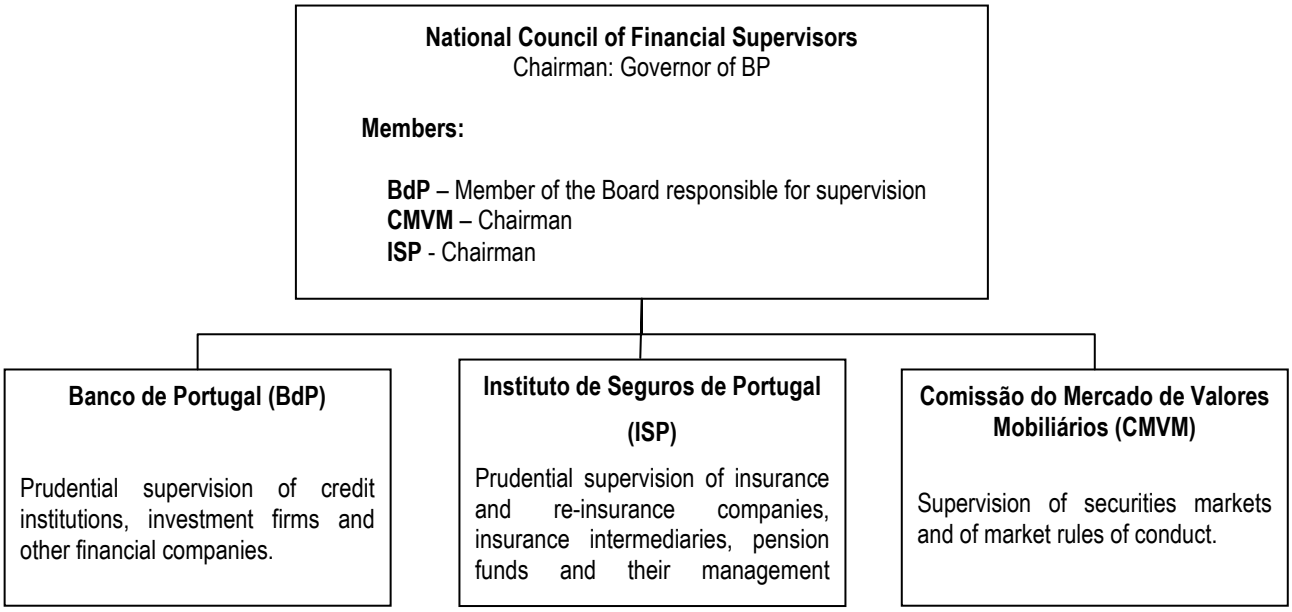
Regulation

76. The Portuguese financial system is supervised by three main regulators: The Bank of Portugal (BdP), the Portuguese Insurance Institute (ISP) and the Portuguese Securities Market Commission (CMVM). The prudential supervision of credit institutions, investment firms and other financial companies and other defined institutions is undertaken by the BdP; the regulation and supervision of insurance, reinsurance and pension funds is the responsibility of the Insurance Institute (ISP). The Securities Market Commission (CMVM) regulates and supervises the securities markets, including public offers, the activities of all the market operators and securities issuers; financial intermediaries in securities and collective investment institutions.

77. Since 2000, the National Council of Financial Supervisors (*Conselho Nacional de Supervisores Financeiros*) (set up by decree law 228/2000) has been an integral part of the supervisory system aimed at institutionalising and organising co-operation among the three

supervisors, facilitating exchange of information, promoting development of supervisory rules and mechanisms for financial conglomerates, adopting of co-ordinated policies with foreign entities and international organisations.

National Council of Financial Supervisors



78. Co-ordination efforts in relation to financial supervision are managed by the National Council of Financial Supervisors that aims to provide consistency where issues affect all areas of supervision; this includes ML.

b. Overview of the Designated Non-Financial Businesses and Professional (DNFBP) sectors

A number of DNFBPs operate in Portugal:

79. **Lawyers:** There were 23,434 lawyers operating in Portugal in 2004. Under the provisions of Law 49/2004, lawyers have exclusive powers of attorney and to provide legal advice. Services provided exclusively by lawyers include: The writing contracts and performing the tasks needed to prepare for the setting up, amending or finalising of legal acts (specifically those performed at registry offices and notaries); credit recovery operations or claims or appeals against administrative or tax decisions; all acts resulting from citizens exercising their right to be accompanied by a lawyer in dealings with any authority (judicial or of different nature).

80. In cases where the criminal process demands that the defendant be accompanied by someone acting in their defence, this task must, by law, be carried out by a lawyer. Apart from the acts considered to be specific to lawyers, as defined in Law 49/2004 lawyers may perform all kind of legal activities including financial activities on behalf of a client or on their own behalf, in accordance with Law 11/2004:

a) sale and purchase of real estate, commercial premises and holdings;
b) management of funds, securities or other assets belonging to clients;
a) opening and administration of bank accounts, savings accounts and securities accounts;
b) setting up, administering or managing companies, fiduciary funds or similar structures;

c) financial or real estate operations on behalf of clients;
d) disposal or acquisition of rights over sporting professional agents.

81. ***Solicitadores*:** Operate as independent professionals in Portugal and have a legal mandate to exercise specific responsibilities to carry out contracts and procedures covering all legal areas which are not restricted to lawyers. This can involve representing people in dealings with central or local authorities and other public services, notaries and registry offices. 2,644 *Solicitadores* were registered to practice in Portugal in 2004.

82. **Notaries:** Provide legal form and public faith to private acts and contracts; they are responsible for the wording of public instruments according to the will of the parties. The work of notaries can also involve a variety of other situations where legal documents are involved and the wishes of the parties can only be carried out with the agreement of all concerned. As soon as the agreement comes into effect, the function of the notary can be to recognise and authenticate specific documents issued by the notary's office. There are two types of notary who practice in Portugal: public and private; in 2004 543 were registered, of whom 170 were registered in a private practice.

83. **Statutory auditors (ROCs:** *Revisores Oficiais de Contas*)**:** There are 893 ROCs practicing in Portugal, 360 are in individual practice and 469 are integrated in companies of ROCs. ROCs have exclusive legal authority to monitoring accounts when auditing corporations' accounts and other related services carried out according to the rules approved by their Professional Order and in compliance with the applicable legal requirements relating to the auditing of accounts. The provision of professional services by ROCs including the auditing of accounts requires the legal certification of accounts. Under the provisions of the Statutes of Statutory Accountants and the Company Code, enterprises must work with a Statutory Accountant when they have accounts organised according to official accounting plans and for two successive years, overcome two of the three following indicators:

a) total balance sheet of €1,500 000;
b) total net sales of more than €3,000.000;
c) an average of 50 employees during the fiscal year.

84. **Chartered accountants (**TOCs: *Técnicos Oficiais de Contas*)**:** Perform the planning, organisation and co-ordination of the accounts of entities subject to corporation tax who have, or should have accounts organised according to official accounting plans. They also accept responsibility for the accuracy of the accounting and fiscal information of these entities and sign tax declarations, financial statements and appendices, together with the entities being audited ensuring their standard, within the terms and conditions defined by their Chamber. In 2004 there were 76,755 registered TOCs in the Chamber, with 31,485 in practice.

85. **Real estate agents, Real estate intermediaries and Real estate dealers:** 3,393 operate in Portugal; searching for and collecting information on a property or promoting property for business use. Promotion can involve advertising, publicising or auction. Estate agencies can also supply services obtaining documentation and information needed to finalise business where such tasks are not the exclusive responsibility of other professions (the contract itself must be concluded by a Public Notary). A licence issued by Institute of the Market of Public and Private Works and Real Estate (IMOPPI) is required to do business in real estate. A registration card is issued to administrators, managers or directors of companies with a licence and should be presented at every official act. Since 1995 the General Inspectorate for Economic Activities (IGAE) has had responsibility for monitoring and overseeing the ML requirements for real estate agents and was replaced starting from 1 January 2006 by the ASAE (Authority for Food and Economic Security).

86. **Casinos**: Under Decree-Law 422/89 casinos are private establishments that are owned by or can revert to the State. The right to operate gambling amenities is reserved for the State and can only be run by joint-stock companies to which the Government awards a concession to operate through an

administrative contract. The government can offer concessions for a period, after hearing the opinion of the office of the General Inspectorate for Gambling and the office of the Director General of Tourism. The concession for gambling areas in casinos is awarded following a public tender. The provisional award for concession is subject to approval by the Council of Ministers and the definitive concession is valid after publication in the Official Gazette. Existing AML legislation is applicable to those who hold casino concessions. The General Inspectorate for Gambling is the competent authority for ensuring compliance with these legal and contractual duties.

87. **Dealers of precious metals and stones:** No licence or authorisation is needed for dealers of precious metals and stones, or for dealers of high-value goods such as vehicles, boats or aircrafts, antiques or works of art. They are, however, subject to AML duties and the ASAE has been the authority responsible for monitoring and overseeing these professions since 1 January 2006. Dealers of precious metals and stones have been subject to AML duties since 1995 and were monitored and overseen by the IGAE (which was replaced by the ASAE on 1 January 2006).

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

88. Under the Civil Code arrangements in Portugal, legal persons of a private nature can be divided into **associations, foundations** and **unincorporated associations**. **Associations** are of personal nature and function as a guild requiring an agreement between the founding members, integrated in a deed. The act of setting-up, the statutes and subsequent amendments must be published in the Official Gazette (Series III). Notaries must inform the Public Prosecution of the setting-up of an association and send in the statutes for the legality of the association to be established. The Public Prosecutor can demand that the association be declared null and void and be closed down (Articles 158-A, 168 and 280 of the Civil Code) when the association has a legally impossible object, violates rules and prohibitions determined by law, as a content that cannot be ascertained or contravenes the public order or principles of morality.

89. Under Article 4 of Decree-Law 594/74, associations can only be deemed to have legal status and personality after the Civil Government Office receives a copy of the public contract and the statutes and after publication of authentication by a notary of its statutes in the Official Gazette and in one of the most widely-read newspapers of the area. No special form is required for this contract; partners are responsible separately and jointly for the debts of this enterprise. The enterprise is also held responsible for unlawful acts by the partners. Trading companies are governed by the relevant part of the Company Code, according to the form they adopt.

90. **Co-operatives** are legal persons in the private sector and are not considered to be commercial corporations to the extent that the profit motive does not guide their operations. Co-operatives are governed by the Co-operative Code (Law 51/96) and are defined as autonomous legal persons, freely set up, with variable capital and structure. They are non-profit making and pursue satisfaction of the economic, social or cultural needs and aspirations of their members. They are ancillary governed by the Company Code, especially by the requirements applicable to joint-stock companies. The setting-up of a cooperative must be recorded in the Commercial Register.

91. **Public legal persons** can take the forms of associations or foundations. **Associations** in the public domain are legal persons created by groups of people, authorised by the State to foster specific public interests. There are professional associations – for example lawyers and doctors – where the State hands over the right to govern the activities of the profession.

92. **Public institutes** are non-profit making entities in the public domain created by the State to ensure specific interests. There is no specific general regime to cover their activities, so each institute has its own status, conferred through a Decree-Law or Regulatory Decree. **Public foundations** are institutes in the form of foundations, consisting fundamentally of assets allotted to a

specific purpose. **Personal services and establishments** are services in the public domain which have legal personality, an example, being public hospitals. **State-owned companies** receive public money, they are administered by public-sector managers and are subject to oversight and control by the State or regional or local bodies.

93. There are several types of **commercial companies** that can be established in Portugal according to commercial law: General partnerships; limited liability companies; sole owner trading companies; limited companies per shares and joint stock companies. Joint-stock companies in Portugal, amount to only 4% of the total companies (25,933 in 2002). This group includes also public companies limited by shares which are subject to specific mechanisms of shareholders' identification by CMVM. The vast majority of companies are limited liability companies (489,214 in 2002).

The National Register of Legal Persons

94. There is a national register of legal persons in Portugal (the RNPC) that acts as a central database of legal persons. Under the provisions of Article 6 of this Decree-Law 129/98, the following information relating to associations, foundations, unincorporated associations and trading companies, co-operatives and state enterprises must be registered on the central database of the RNPC:

a. details of the set-up;
b. any amendments relating to the business name or name;
c. change of purpose or capital;
d. change of registered office or postal address;
e. merger, de-merger or transformation;
f. winding-up;
g. liquidation or restart.

95. Also subject to registration at the RNPC are public services and entities of a personal nature, organisations representing international legal persons or those registered under foreign law operating in Portugal (Articles 1 and 7 of Decree Law 129/98). A unique number is given to every entity registered at the RNPC, its national registration number (NIPC) under Article 13 of Decree-Law 129/98. The General Directorate of Registries and Notaries is responsible for managing the RNPC database, within the terms of the Protection of Computerised Data Law (Article 30) and this database is available to competent authorities. The RNPC can issue a certificate corroborating that business names and names are eligible, if this is requested by those concerned (Article 45 of Decree-Law 129/98).

1.5 Overview of strategy to prevent ML and TF

96. Since the last FATF mutual evaluation in 1998 Portugal has progressed efforts to combat ML and TF at the domestic and the international level to meet its international legal obligations; to update an integrate legislation and to promote AML efforts outside Portugal, namely in the framework of the Portuguese Speaking Countries Community (CPLP). The Portuguese Government believes that there needs to be an interconnected, interdisciplinary and integrated approach relating to security and criminality in the public and private sectors. Security is seen in constitutional terms as a fundamental right for all citizens, inextricably tied to freedom and such, it must be guaranteed by the State.

97. The strategy on ML and TF has involved adapting the country's legal and regulatory system to obligations expressed in the United Nations Conventions, FATF Recommendations and the second EU Directive 2001/97/CE on ML and enhancing the co-operation between all the authorities involved in the prevention and repression of ML and TF, such as the FIU, AG, DCIAP, supervisory authorities in the financial sector and monitoring authorities of DNFBPs, Ministries of Finance, Justice and Economy.

98. The XVII Constitutional Government's Programme, specifically in the area of justice, where the political objectives are to ensure effective combat against crime, the Portuguese authorities believe that combating organised crime will be better addressed with policies focusing on the factors underlying the ML problem, emphasising integration over exclusion while being aware that it is essential to guarantee adequate means for investigation and repression.

99. To prevent terrorism, the Portuguese intend to continue strengthening co-ordination between the intelligence services and ensure effective collaboration between intelligence services and the police. The law enforcement authorities are also seeking to deepen co-operation with foreign counterparts and continue to raise awareness in the financial and non-financial sectors. Portuguese authorities intend to utilise enhanced functional interconnection between databases in the public domain, electronic surveillance and create a genetic database for civil identification procedures, as r tools for criminal investigations. Improvements will also be made to the SIIC, the Integrated System for Criminal Information - as a way for ensuring co-ordination within the police and success in investigating crime.

100. A task force under the Ministry of Justice (*Unidade de Missão para a Reforma Penal*) has been created to revise the Criminal Code, the Code of Criminal Procedure and other criminal legislation. Part of this mission will be to improve some of the existing legislation and come into line with EU and other international standards.

101. Measures for the prevention and repression of ML/TF have been applied as part of the policy of control. The Government has focused on raising awareness and also on increased training for those who work for and with the State, including the police and the judiciary. There is also a focus on raising awareness among various non-financial businesses and professions where there is considered to be a risk of ML and TF.

The institutional framework for combating ML and TF

102. **Ministry of Finance and Public Administration:** Under the terms of its Organic-Law approved by Decree-Law 47/2005 the Ministry of Finance and Public Administration is responsible for defining and executing the State's financial policy. It also co-ordinates the financial policy of a number of subsections of general government. It also carries out and checks the policy for Public Administration.

103. The Ministry ensures the government's relationship with the Audit Court (*Tribunal de Contas*), tax courts and the BdP (these are independent institutions). Its remit covers the definition and control of the State's financial policy ensuring economic stabilisation and economic development within the framework of economic policy set out by the national Parliament and the Government. The Ministry sets and carries out fiscal policy, directs management of the financial instruments of the State, including the budget, the treasury and state assets. It co-ordinates financial relations between the State and the EU, other states and international organisations and supervises the public enterprises, the local administration and the public administration. It plays its part in the control of the community's outside borders, in fiscal and economic fields and it governs customs and excise operations.

104. **The General Directorate for European Affairs and International Relations** (*Direcção-Geral dos Assuntos Europeus e das Relações Internacionais)* operates under the Ministry of Finance and is responsible for co-ordinating external relations and co-operation in the area of Finance providing support for the Minister of Finances and Public Administration in defining and carrying out policies with the EU, other governments and international organisations. This department is responsible for disseminating the lists of individuals suspected of links to the financing of terrorism issued by the EU and the UN Security Council, to the BdP for onward dissemination to the banking and financial entities and for receiving data related to the assets and funds to be frozen.

105. **Ministry of Justice:** According to its Organic Law, as approved by Decree-Law 146/2000 the Ministry of Justice is the government department responsible for conceiving, conducting, carrying out and assessing the policy for justice defined by the Parliament and the Government. The Ministry is responsible, *inter alia*, for guaranteeing adequate means to combat crime, to investigate criminal activity, to apply penalties and to rehabilitate those who have served a custodial sentence. In addition, the Ministry ensures that adequate measures are adopted in pursuit of the policies defined by Parliament and Government and that judicial decisions are prepared, set down and followed through, ensuring relationships with the EU, other governments and international organisations in the field of justice.

106. The Ministry is the competent authority for domestic judicial legislation and the definition of policies relating to the prevention and repression of criminal behaviour, including organised crime, terrorism and TF, corruption and ML. Within the ministry there is a specialized service, the **Office for Legislative Policy and Planning** (*Gabinete de Política Legislativa e Planeamento*), which is responsible for formulating, following up and assessing the measures set out in policy, formulating or giving specialist support for legislation ensuring the collection, use, treatment and analysis of statistical information in the area of justice, along with ensuring the dissemination of results.

107. The **Office for Co-operation International and European Relations** (*Gabinete para as Relações Internacionais, Europeias e de Cooperação*), is responsible, *inter alia*, for co-ordinating external relations and co-operation in the area of International justice. It provides support for the Minister of Justice in defining and carrying out policies with the EU, other governments and international organisations and monitors and supports the international side of State policy in the area of justice conducting policy and co-ordinating co-operation with special emphasis on countries where the official language is Portuguese. It also fosters co-ordinates and supports measures regarding judicial co-operation with other countries.

108. The **General Directorate for Registries and Notaries** (*Direcção-Geral dos Registos e Notariado*) is responsible for policies relating to identification, civil records, nationality, land registry, commercial and property records and notarial affairs. It supports, co-ordinates, assesses and oversees the activities of land registry offices and notaries.

109. **The General Directorate for Multilateral Affairs** (*Direcção-Geral dos Assuntos Multilaterais*) department comes under the Ministry of Foreign Affairs and according to the Organic Law of the Ministry, is responsible for participating on the preparation of the lists of individuals suspected of links to the TF by the EU and the UN. The General Directorate is also responsible for transmitting the legal instruments containing the lists to the Ministries of Finance and Justice and receiving all the information concerned to the application of those lists from this Ministry, for international purposes.

Law Enforcement and Prosecution authorities

110. **Public Prosecution:** Public Prosecution is directed by the Attorney Generals' Office which is headed by the Attorney General *(Procurador Geral da República).* The Public Prosecution represents the State and defends such rights as determined by law and takes part in the execution of criminal policy as defined by sovereign organs, pursues criminal action according to the principle of legality and upholds democratic legality, according to the Constitution, the Law and its Statute, the Law 60/98. The Public Prosecution enjoys full autonomy regarding all other organs of executive and legislative power at central, regional or local level.

111. Under the provisions of the Code of Criminal Procedure, the Public Prosecution has exclusive authority to initiate criminal proceedings. In accordance with the principle of legality it is the duty of

this body to prosecute crimes to the full extent of the Law, unless the criminal proceedings require a complaint (Article 49) or a private prosecution (Article 50)[14].

112. The Public Prosecution has the competence to oversee and direct the criminal investigations, even when pursued by other authorities, cooperate with Courts in discovering the truth and apply the Law objectively, receiving complaints and denunciations. They can direct the enquiry, prosecute in the enquiry and in the investigation, present appeals, and promote the execution of all the penalties applicable. The Public Prosecution are competent to other actions incumbent upon them through the Code Criminal of Procedure or special legislation including the seizure of goods, breach of secrecy or control of bank accounts (Articles 3 and 4 of Law 5/2002).

113. Within the remit of the AG the **Central Department for Criminal Investigation and Prosecution (DCIAP)** was established by Law 60/98. The DCIAP is composed of a Deputy Attorney General who leads the Department and senior Public Prosecutors, assisted by justice officers and by criminal police organs. This department co-ordinates and controls the investigation and prevention of violent crime, highly organised or extremely complicated crime. The DCIAP has authority, *inter alia*, to investigate crimes involving terrorist organisations, terrorism, corruption and ML. It has also the authority to carry out operations to prevent ML and corruption. Within its territorial competence the DCIAP carries out enquiries and promotes criminal proceedings when the criminal activity takes place in areas pertaining to different judicial districts or following a decision by the AG, when any particularly serious or extremely complex crime or territorial dissemination of the criminal activity across the country requires central co-ordination.

114. Under the provisions of Law 60/98[15] requests for Mutual Legal Assistance (MLA) should be addressed in judicial affairs, whether the matter is considered in multilateral or bilateral conventions, agreements or treaties. Article 21 of Law 144/99 indicates that the Attorney General's Office is the designated central authority for receiving and transmitting co-operation requests.

115. **The Financial Intelligence Unit (UIF):** Was created in 2002 through Decree-Law 304/2002, which modified the Organic Law of the Criminal Police (Decree-Law 275-A/2000). It was given autonomous status and replaced the ML Investigation Squad (BIB - *Brigada de Investigação do Branqueamento*). The unit has authority to *"(...) collect, centralise, process and disseminate nationwide the information relating to ML and tax-related offences, ensuring domestically the co-operation and articulation with the judiciary, the supervisory authorities and economic and financial players (...) and internationally, the co-operation with financial information units or similar structures*" under Article 33-A of Decree-Law 275-A/2000 added by Decree Law 304/2002.

116. **Criminal Police:** Under the provisions of Decree Law 275-A/2000, the Criminal Police performs its duties in conjunction with the judiciary. Its role is to assist the judicial authorities in the investigation, pursuit and charging of individuals within their remit or under any jurisdiction given by competent legal authorities, proceeding in these cases under the supervision of these authorities. The Criminal Police has the exclusive responsibility to investigate serious, violent and organised criminality, including, *inter alia*, terrorism and crimes committed by terrorist organisations, TF, corruption, criminal association and ML. The force can maintain, within existing international police co-operation tools, co-operation across the range of areas where it functions. The following three Central Departments are found in the Criminal Police – DCITE, DCCB and DCICCEF.

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[14] In the first case and regarding the nature of the offence, the Code of Criminal Procedure requires a mandatory and previous complaint by the victim or a denunciation by an authority to initiate criminal proceedings. In what are known as private offences (depending on a complaint) (Article 50) the Public Prosecutor criminal proceedings may only be initiated after a plaintiff or a legitimate individual specified in the law have presented a complaint, put themselves forward as defendants and provide its particular prosecution. If those conditions are not met the Public Prosecution cannot take action.

[15] Law 144/99 of 31 August, amended by Law 104/2001 and Law 48/2003.

117. **The Central Department for the Combating of Terrorism** (*Direcção Central de Combate ao Banditismo - DCCB)* is responsible for the prevention, criminal investigation, and co-operation and assistance of the judicial authorities related to certain crimes against peace and humanity. These include slavery, kidnapping or hostage-taking; attacks on the security of the State; hijacking or attack on the safety of air, sea, rail or road transport, where applicable, and terrorism and terrorism financing.

118. **The Central Department for Drugs Trafficking Investigation** (*Direcção Central de Investigação do Tráfico de Estupefacientes - DCITE)*) is responsible for the prevention, criminal investigation and co-operation and assistance of the judicial authorities in matters related to crimes of drug trafficking as well as related crimes of ML.

119. **The Central Department for the Investigation of Corruption and Economic and Financial Crime** (*Direcção Central de Investigação da Corrupção e Criminalidade Económica - DCICCEF*) is responsibility for the prevention and criminal investigation and co-operation and assistance of the judicial authorities in matters related , *inter alia*, with corruption; ML; embezzlement of public money and financial participation in a business; trafficking of influence; fraudulent procurement or diverting subsidies and fraudulent procurement of subsidized credit.

120. **General Directorate of Customs and Special Tax on Consumption** (*Direcção-Geral das Alfândegas e dos Impostos Especiais sobre o Consumo - DGAIEC)*) is a Department integrated in the Ministry of Finance. It does not have specific authority in the combat against ML and TF but it plays an important role in border control, in terms of the movement of goods, including goods carried in or out by travellers, and means of transport.

121. **General Directorate for Taxes (***Direcção Geral dos Impostos***):** According to the Organic Law of the Ministry of Finance approved by Decree-Law 47/2005 this Directorate is responsible for applying and manage taxes on income, wealth and the general taxes on consumption, according to the policies defined by the Government on tax issues.

Financial sector bodies

122. **Bank of Portugal (BdP):** Is the central bank for Portugal. It is an integral part of the European System of Central Banks (ESCB), created within the terms of the Treaty establishing the European Economic Community (Article 107). The BdP performs its functions as an independent authority, within the remit of the ESCB (Article 7 of the ESCB Statutes and Article 3 of the BdP Organic Law).

123. The BdP is responsible for the stability of the financial system, managing the foreign assets of the country, acting as intermediary in the State's international monetary relations and to advising the government on economic and financial matters (Article 12 of the BdP Statutes). To carry out these functions, the bank has powers, specifically in relation to supervision of credit institutions and financial companies. It also regulates the payment system and monitors the foreign exchange and monetary markets, stemming from its participation in the ESCB.

124. It is the responsibility of the BdP, as set down in its statutes and the Legal Framework of Credit Institutions and Financial Companies - Decree-Law 298/92 - to supervise credit institutions and financial companies having their head office in Portugal. The Bank has considerable powers to carry out its obligations, including:

a) the power to obtain information and reports so as to monitor the activities of credit institutions and financial companies (Article 120 of the Decree Law 298/92);
b) the power to inspect credit institutions and financial companies, in what regards the statements, books, data, ledgers and records, along with all those elements that it deems necessary to ensure compliance with laws, regulations and recommendations (Article 120);

c) the power to obtain copies and transcripts of all the documentation it needs for its inspections (Article 120);
d) the power to call in the police whenever necessary to carry out its supervisory duties (Article 127).
e) the Bank also has the power to inspect unauthorised entities that perform financial operations(Article 126).

125. The BdP has also regulatory competence and may publish Instructions, Notices and Circulars in its Official Bulletin aiming to regulate the activities of the supervised entities, within the provisions of the law (Article 17 and 59 (3) of the BdP Statutes). Since 1996, the BdP has issued Instructions to regulate the provisions of the legislation on ML, the activity of credit institutions and financial companies subject to the supervision of the BdP and supervising their respective application by supervised entities, starting administrative proceedings when the law or regulatory norms are breached.

126. BdP regulations are aimed at providing more detailed criteria on applying the duties which are incumbent on the supervised entities. Apart from Instructions specifically aimed at regulating the duties of the supervised entities concerning the prevention of ML and providing, revising and enlarging a list of potentially suspicious operations, the BdP has also published regulations on how to prevent this risk, specifically BdP Instruction 72/96, published in the Bank's Bulletin, which regulates the internal control system of supervised entities[16]

127. **The Portuguese Insurance Institute (ISP)**: Is the authority responsible for supervising insurance companies and pension fund management companies and has administrative and financial autonomy under the authority of the Minister of Finance (Articles 1 and 2 (1) of its statutes[17]). The ISP has the power to regulate, inspect and supervise insurance activity, this covers insurance, reinsurance, insurance intermediaries and pension funds (Article 4 (1) a)). The ISP supervisory authority covers all activities performed by those companies within its remit, including activities connected with or complementary to their main business and supervision is carried out in line with Portuguese and EC legislation in force and in manner to ensure the proper working and protection of the market, ensuring the interests of insurance specific creditors (Article 4 (2)).

128. The Institute's statutes also endow it with a vast array of powers to carry out its duties, specifically Articles 10 and 16. Article 157 of Decree Law 4-B/98 lists of some of the powers and means that the ISP has at its disposal in its supervisory functions. The ISP can issue instructions aimed at remedying any known irregularities in entities subject to its supervision. It can also issue regulations binding entities subject to its supervision, which are published in the Official Gazette (Article 4 (3) of its Statutes). In the insurance and pension fund sectors, the ISP is the authority responsible for overseeing legal duties in matters of ML (Article 19 (1) of Law 11/2004). Under the provisions of Article 4 (3) of its Statutes, the ISP issued Norm 16/2002, published in the Official Gazette, II series, on 29 June. The aim of this norm was to apply to the insurance companies and pension fund management companies, the law then in force to prevent ML (Decree-Law 313/93).

129. **The Securities Market Commission (CMVM):** Operates under the authority of the Ministry of Finance (Articles 1 and 2 of its Statutes – Decree-Law 473/99). The CMVM statutes set out its main powers. Intermediaries in securities are subject to the supervisory remit of CMVM (notwithstanding the competence attributed to other authorities) including:

[16] Subsequently to the on-site visit, Instruction 72/96 on the internal control system was replaced by the Notice 3/2006 of 3 May. This Notice maintains the provisions established by Instruction 72/96, adding some more requirements, namely specific requirements concerning the internal control system of the financial groups and the report on the internal control system of the whole group (including of each entity subject to supervision on a consolidated or sub-consolidated basis).

[17] The statutes were approved in Decree Law nº 289/2001 of 13 November with the amendments introduced by Decree Law 195/2002 of 25 September.

- market management companies and settlement systems and centralised systems companies,
- financial intermediaries and independent investment advisers,
- security issuers, institutional investors and holders of qualifying holdings in public limited companies,
- sinking funds and investor compensation schemes and their respective managing entities,
- auditors and risk rating companies registered with CMVM, and other persons that carry out, as principal or secondary, activities related to the issue, distribution, trading, registration or deposit of securities(Article 359 of CdVM – the securities code).

130. Law 11/2004 establishes the CMVM as the supervisory authority for the securities market and oversight of financial entities under its supervision subject to the preventive regime on ML and providing an enlargement of subjective areas where it can act. The CMVM has the power to start administrative proceedings, to investigate possible criminal activity and cooperate at international level.

131. The CMVM does not undertake autonomous criminal investigations in cases where there might be evidence of ML, but has powers to oversee the application of the law by the entities under its supervision, in situations where the breach of law and regulations breach administrative proceedings. This includes notification to the AG of any facts suspected of being linked to ML (under Articles 19 (2) and (3) of the Law 11/2004) as well as the limitation of CMVM powers to investigate crimes involving insider trading and market manipulation (Article 383 (1) of the CdVM).

132. The CMVM can initiate administrative proceedings for the breach of duties to prevent ML (Article 48 (1) of Law 11/2004), though it is the responsibility of the Minister of Finance to apply the sanctions (Article 48 (2) a) of Law 11/2004).

Designated non financial businesses and professions (DNFBPs)

133. DNFBPs are overseen by different entities, according to their activity: the General Inspectorate for Gambling (IGJ), the General Inspectorate for Economic Activities (IGAE, replaced since 1 January 2006 by ASAE), and the General Directorate for Registries and Notaries (DGRN), the Professional Order of Statutory Auditors (ROCs), the Chamber of Chartered Accountants (TOCs). The Bar Association and the Chamber of Solicitadores are legally constituted self-regulatory professional bodies, according to Law 11/2004.

134. **The IGJ** is responsible for overseeing and supervising gambling operations, including casinos. It oversees the legal compliance that governs this activity, carries out inspections of all activities involved in gambling, verifying the special accounting procedures and book-keeping of concessionaries, and adopting measures preventing illicit gambling and initiating administrative proceedings where breaches of the law may occur (Organic Law approved by Decree-Law 422/1989). Under the provisions of Article 32 of Law 11/2004, on the prevention of ML, it is incumbent on the IJG to monitor compliance with the legal duties of identification of customers and other duties to which casino operators are bound by the mentioned Law. It must also oversee the duty of identifying clients of operators awarding betting or lottery prizes which amount equals to or more than €5,000.

135. **The IGAE** was a department under the Ministry of the Economy and Innovation and had responsibility, from 1995, to oversee compliance with the duties applicable to real estate business and the purchase and sale of properties, to dealers in goods of high unit value, companies providing money transport services and companies operating on behalf of a client performing the operations in Article 20 f) of Law 11/2004. Since 1 January 2006 the duties previously performed by the IGAE were transferred to the Authority for the Food and Economy Security **(ASAE)**. The ASAE is the national authority for the co-ordination of official of food stuffs and the national point of contact with other European Member States, also with the responsibility for the evaluation and communication of

risks in the food chain, with regards to the discipline of the exercise of economic activities for the food and non-food sectors by the prevention and inspection of complimenting regulating laws.

136. **The Bar Association** (*Ordem dos Advogados*) in accordance with Article 20 (1) f) of Law 11/2004 oversees lawyers who intervene on behalf of their clients, or collaborate with them in operations specified in this legislation and are obliged to identify their clients and the object of the contract and of the referred operations whenever the amounts involved are equal to or more than €15,000. The Bar Association has responsibility for starting disciplinary proceedings and applying any sanctions against lawyers who fail to comply with the duties incumbent on them under the provisions of Law 11/2004.

137. **Solicitadores:** The Chamber of Solicitadores are also governed under the provisions of Article 20 (1) f) of Law 11/2004, which sets out the regime for prevention and repression of ML, solicitadores who intervene on behalf of their clients or collaborate with them in operations specified in of Article 20 (1)) of law 11/2005. The Chamber has responsibility for starting disciplinary proceedings and applying sanctions on solicitadores who do not comply with the duties incumbent on them under the provisions of Law 11/2004.

138. **Notaries and Registry officials:** The overwhelming majority of notaries in Portugal are public officials and are therefore duty bound to notify the authorities of all crimes they become aware of during their work. The General Directorate for Registries and Notaries is responsible for overseeing compliance of the duties to which notaries and registry officials are bound.

139. **The Professional Order of Statutory Auditors (ROCs):** is, according to Article 32 (1) e) of Law 11/2004 the entity with responsibility for overseeing compliance with the duties set down in the law, for initiating disciplinary proceedings and imposing sanctions on statutory accountants whenever they do not follow their duties in this matter. The application of the corresponding sanction is incumbent upon the Ministry of Finance, according to Law 27/2004 which amended Article 48 of Law 11/2004.

140. **The Chamber of Chartered Accountants (TOCs):** Is the entity which, according to Article 32 (1) e) of Law 11/2004, is responsible for overseeing compliance with the duties set down in Law 11/2004 relating to prevention of ML and for initiating disciplinary proceedings, when there is a breach of the law. The application of the corresponding sanction is incumbent upon the Ministry of Finance, according to Law 27/2004 which amended Article 48 of Law 11/2004.

Other matters

Approach concerning risk

141. The Portuguese AML/CFT system is not based on risk assessment in the manner contemplated in the revised FATF 40 Recommendations However, before the enactment ,and in line with the 2nd EU ML Directive, Portugal extended AML/CFT obligations to certain DNFBP sectors. Risk analysis in matters of ML is implicit in the legal framework, particularly in Law 11/2004 and the regulatory instruments used by the supervisory authorities and inspectorates in their respective sectors. Nevertheless, no sectors or entities are exempt from the basic requirements for the prevention of ML based on a lesser risk involved in their activities or operations.

142. Concern with risk has been a factor in the solutions adopted by the Portuguese authorities and the legislative. This can be seen by reference to the levels below which the financial entities do not have to identify their customers (Article 3 (4) or Article 6 (2) of Law 11/2004); or the norm in Article 16 (3) of Law 11/2004, which exempts financial entities with its head office in the EU from identifying similar financial entities with head office in other EU member state when performing operations with them, or the norms in Articles 17 and 18 (2) of the same Decree-Law, relating to places where the risk of ML is greater.

143. Law 11/2004 establishes a preventive regime that is based on a range of duties required when identifying customers and examining suspicious operations. These depend on the potential risks of the operations. However, if any operation appears as potentially involving ML, the fact must be reported immediately to the competent authorities whatever the amount involved.

144. Portuguese legislation does not exclude any sector or any entity from the norms relating to the prevention of ML simply on the basis of less likelihood of risk, inherent in their activity. Exclusion relates to the thresholds where certain operations are, or are not, considered. The duties incumbent upon financial and non-financial entities vary according to the risk involved in the operations (e.g. Article 16 (3) of Law 11/2004), jurisdiction (e.g. Articles 17 and 18 (2) or amounts involved (e.g. Article 3 (4) and Articles 22, 23 and 24).

D Progress since the last mutual evaluation

145. Portugal was the twenty fifth FATF member country to be reviewed during the second round of mutual evaluations. The main deficiencies/difficulties identified in the second FATF Mutual Evaluation Report in 1998 were: (a) there was a need for harmonization between drug trafficking and other primary offences with regard to both criminal conspiracy and ML. (b) that it was not possible to conduct confiscation independent of prosecutions and (c) that was a need to link the predicate offence for a successful prosecution of ML. (d) That improvements could be made to the STR reporting system – both in the number of STRs made and the processing of STRs once submitted. (e) That a tradition of banking confidentiality resulting in a reluctance to submit STRs. (f) That regulators should re-enforce monitoring systems for detecting STRs.

146. In 1998 it was also noted that although the Portuguese system complied with FATF Recommendations, its real effectiveness is difficult to determine, especially in terms of the number of STRs. This also applies to the amount of funds finally confiscated under court judgments compared to provisional seizures of assets and funds. Since the last mutual evaluation it should be noted that:

(a) There is now a definition of ML in the Criminal Code (Article 368-A, amended by Law 11/2004) and has been enlarged the set of predicate offences for ML which includes in a single provision the ML definition set forth in Article 23 of Decree-Law 15/93 (ML related to drug trafficking) and in Article 2 of Decree-Law 325/95 (ML related to other predicate offences). General provisions for the confiscation of goods and products or of the payment of an equivalent sum are set out in Articles 109 to 111 of the of the Criminal Code and the special provisions on confiscation are set out in Law 5/2002, which foresees that upon conviction the holder of the assets should prove their licit origin. According to Portuguese Penal Law, confiscation of assets originating from criminal facts depends upon conviction. Nevertheless, generally, all assets which are directly or indirectly acquired by their agents and which consist of any form of property are considered originated from the criminal fact.

(b) The proceeds of crime can be confiscated where an illicit act has been committed and the law does not require a previous criminal conviction of an individual as set forth in Article 109 (2) of the Criminal Code.

(c) Through the implementation of Law 11/2004, it is not be necessary that a person be convicted for a predicate offence. Jurisprudence of the Supreme Court of Justice provides support for this legislation: "*the relationship between the offence of drugs trafficking and the offence of ML perpetrated by the same person, is indeed concurrence of offences*" (Decision of 20/06/2002).

(d) The Portuguese authorities acknowledge that a two-fold system operates: the informal approach of financial entities towards the FIU, considered being indispensable for the communication of suspicious facts and operations; and the formal written notification. The numbers of these formal communications has risen and are now done on a special form.

At the time of the second FATF mutual evaluation the structure and responsibility for the collection of information and investigation of ML was in the hands of the BIB which reported to the Central Department for Drugs Trafficking Investigation in the Criminal Police. Since the FIU commenced functions in 2003 the FIUs capacity to respond has increased in terms of enhanced analysis of communications and strengthened its operational capacity in assessing STRs.

The FIU benefits also from the knowledge in the financial field of the experts of the Criminal Police and also has accessing to more data bases (on taxes and from economic activities and special taxes on consumption) than had the BIB. This has enabled improved analyses and assessment of suspicious operations.

(e) The number of STRs reported in Portugal still remains relatively low. It was not completely clear to the evaluation team why this might be. It could, in part, be due to the culture in financial institutions (that leans towards banking secrecy) (see comments on Recommendations 11, 13, 15 and 16). A CTRs reporting system, for DNFBPs, has, however, been introduced.

(f) Portuguese regulatory authorities have made a number of targeted AML/CFT inspections and have evaluated the effectiveness of supervisory laws and regulations that oblige financial institutions to submit STRs (see comments on Recommendations 23 and 31).

147. Portugal also indicated that progress had been made by the implementation of Law 11/2004 that enlarged the set of predicate offences for ML foreseen in the conception of the crime by amendment of the Criminal Code (Article 368-A). Law 11/2004 also brought together a legislation previously found in different acts. Law 5/2002 contained a new array of measures on organised financial and economic crime and allowing bank accounts to be controlled and movements suspended (frozen) and setting out a special regime for confiscation of assets for the State.

148. Responsibilities for criminal investigation have been updated and the Criminal Police have been given the exclusive remit for ML issues under Law 21/2000; the prevention and repression of terrorism and TF (Law 52/2003) has introduced a new framework for the investigation of terrorist and TF related cases. Decree Law 304/2002 established, an FIU (*Unidade de Informação Financeira*- UIF) as an autonomous department in the Criminal Police.

149. Law on international co-operation on criminal matters has been reviewed and broadened on extradition of Portuguese citizens to other countries within the EU. Law 144/99 extended to joint investigation teams and recourse to a number of special investigation techniques that were previously only admissible in cases of drug trafficking. Law 65/2003 approved the European Arrest Warrant (EAW) and Law 11/2002 establishing the sanctioning regime applicable to infringements of sanctions established by UN Security Council Resolutions and EC Regulations. Decree-Law 295/2003 governs the import, export and re-export of currency and bearer securities, which global amount equals or exceeds €12,500.

150. In addition, Portugal has become a member of several multilateral legal instruments: the Palermo Convention against Transnational Organised Crime and the International Convention for the suppression of TF. The procedure for ratification of the Convention against Corruption is underway. Bilaterally co-operation Portugal has developed and deepened relations with other countries, including specific clauses in agreements relating to combating ML and TF. Portugal has observer status in the FATF-Style Regional Body for South America - GAFISUD, since its creation, taking an active part in its activities. It has also been an observer in GIABA since 2005.

151. Portugal has a common language with seven other countries around the world - Angola, Brazil, Cape Verde, East-Timor, Guinea-Bissau, Mozambique and St. Tome and Prince - and has found the Portuguese Speaking Countries Community (C.P.L.P.). This has led to greater co-operation with these countries, in some cases through support for legislation and the translation of international instruments, support for the creation of financial intelligence units, video conferences and seminars

for various groups such as public prosecutors, court officers and the police as well as specialists in the financial sector supervisory departments.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of ML (R.1 and 2)

2.1.1 Description and Analysis

Recommendation 1:

152. Portugal has ratified the 1988 Vienna Convention (1991) and the Palermo Convention (May 2004). The offence of ML in Portugal has been built in accordance with the material and subjective elements of these two conventions. Articles 368-A (2) and (3) of the Criminal Code fulfils paragraphs (1) -b- (i) and (ii) of Article 3 of the Vienna Convention and at Articles 6-(1)-a- (i) and (ii) and the obligations of the Palermo Convention. The ML offence satisfies all the physical and material elements of the offence as required in the Vienna and Palermo Conventions. Article 368-A (4) of the Criminal Code also provides the criminalisation of ML if the predicate offence has been committed outside the national territory.

153. ML has been an autonomous offence in Portugal since 1993. Article 23 of Decree-Law 15/93 established a ML offence in relation to the trafficking and consumption of narcotic drugs and psychotropic substances. In 1995, Decree-Law 325/95 established preventive and repressive measures against ML and other proceeds from crime, and a number of predicate offences for ML were listed and new financial and DNFBP have been included in the obliged entities. In 2002 Decree-Law 325/95 has been amended (Law 10/2002) in order to include new predicate offences for ML and new other DNFBP, like auditors and accountants, public notaries and registers officials and other independent legal professions.

154. Since the FATF 1998 second round mutual evaluation Portugal has made significant progress updating its legal framework against ML. The ML offence was broadened by Law 11/2004[18] that included an amendment to Article 368-A in the Criminal Code. The new Article 368-A provides the basis for the current ML offence establishing the regime for prevention and repression of the laundering of benefits of illicit origin: The list of predicate offences for ML was again enlarged (under Article 368-A (1)) and self laundering was criminalised (Article 368-A (2)).

155. The current offence of ML as defined by Law 11/2004 extends to any type of property. Property is considered the proceeds of crime that have been derived from an unlawful act. The range what can be considered as "proceeds" is broad and can be read in connection with the description of Article 7 (3) of the Law 5/2002 as "*Interest, profits and other benefits derived from assets under the conditions set out in Article 111 of the Criminal Code, are always considered as benefits from criminal activity*". In addition Article 111 (2) and (3) considers that proceeds of crime can be "*things, rights or advantages derived from an offence that represents any kind of patrimonial advantage, and thing or right obtained by an exchange or transaction from the things or rights derived from an offence*".

156. ML is considered a wilful offence in Portuguese law. It is possible to admit the different forms of "wilfulness" (direct, necessary or eventual), as provided for in Article 14 of the Criminal Code. According to the penal law, as referred to in Article 13 of the same Code, only typical facts

[18] For a full copy of law 11/2004 see Annex 3

committed with wilfulness or with negligence in cases specially provided for in the criminal law, are punishable. At the time when the offence of ML was defined, the legislator only referred to wilful ML, in accordance with the general principle of the Criminal Code.

157. Under Article 14, a person acts with wilfulness when, conceiving a fact that corresponds to an offence, he/she acts with the intention of committing it (direct wilfulness); shall also be deemed to have acted with *dolus* the person who mentally anticipated that, as a necessary consequence of his/her conduct, an act will occur that amounts to a legally typified criminal behaviour (necessary wilfulness); Where an act occurs that amounts to a legally typified criminal behaviour and that act was mentally anticipated as a possible consequence of the conduct, if the perpetrator acted tolerating the occurrence of such an act, *dolus* shall be deemed to characterise the conduct (eventual wilfulness).

158. Therefore wilfulness cannot exist without the willing element as well as the intellectual element. The offence of ML under the form of negligence was not provided for but almost the same subjective elements of negligence can be found in the eventual wilfulness.

159. Regarding the predicate offence for ML, Portugal uses a mixed criterion based both on a catalogue of offences in association with the criterion of the threshold of the applicable sanction of the predicate offence. Some of the predicate offences for ML are expressly included in the crimes listed in Article 368A (1):

- 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 of influences,
- corruption and other offences referred to in Article 1(1) of the Law 36/94.

160. ML is also an offence if the proceeds are generated from predicate offences that have a combination of a minimum penalty of more than 6 months imprisonment or a maximum penalty of more than 5 years. All those crimes that are punishable with a minimum penalty of more than 6 months imprisonment, regardless of the maximum limit, as well as those punishable with a maximum penalty of more than 5 years imprisonment, regardless of the minimum limit, are all considered predicate offences to ML.

161. From a combination of "minimum penalty of more than 6 months' imprisonment and a maximum penalty of more than 5 years' imprisonment", almost all the other designated categories of offences are considered predicate offences for ML:

- participation in an organised criminal group (1 to 5 years – Article 299 of the Criminal Code) and racketeering (6 months to 15 years – Article 223 of the Criminal Code;
- terrorism (2 to 20 years – Articles 2 to 5 of Law 52/2003); TF (8 to 15 years – Article 1 of Law 52/2003,);
- trafficking in human beings (2 to 8 years – Article 169 of the Criminal Code; when trafficking of minors – 1 to 10 years – Article 176 of the Criminal Code);
- migrant smuggling – 1 to 8 years – Articles 134 and 135 of Law 34/2003, of 25th February;
- qualified fraud (2 to 8 years – Article 218 of the Criminal Code); counterfeiting currency (2 to 12 years – Article 262 of the Criminal Code);
- forgery, counterfeiting and piracy of products (1 to 8 years - Articles 282 of the Criminal Code - only to alimentary and medical products); environmental crimes (1 to 8 years – Articles 278 to 280 of the Criminal Code);

- kidnapping and illegal restraint and hostage taking (2 to 16 years – Articles 158 to 161 of the Criminal Code); robbery (1 to 16 years – Article 210 of the Criminal Code) and qualified theft (2 to 8 years – Article 204 of the Criminal Code).

Other two designated offences are considered as predicate offences to ML by a combination of laws, as of:

- insider trading and market manipulation – Article 378 of the Securities Code – Decree-Law 486/99, included as an economic crime by Article 1 (1) of Law 36/94 of 29 September, as seen in the Article 368-A (1) of the Criminal Code.
- smuggling – (up to 5 years: Articles 92 to 94 and 97 of Law 15/2001 and Article 1 (1) d) and e) of Law 36/94, where committed through organized crime or if they have a transnational or international dimension), falling also under Article 368-A (1) of Law 11/2004. All special measures set forth in Law 5/2002 are applicable to smuggling where committed in an organised way.

162. A definition of self laundering is contained in Article 368-A (2) of the Criminal Code as "*A person who converts, transfers, assists or facilitates, on behalf of himself or of a third person*". Article 368-A (4) provides for the criminalisation of ML if the predicate offence has been committed outside the national territory.

163. Pursuant to Law 11/2004, it should not be necessary that a person be convicted for a predicate offence (they can be convicted for a ML offence only), and the law provides for the punishment of concurrent offences. Before the enactment of Law 11/2004 jurisprudence of the Supreme Court of Justice provides for example, such as these: "*the relationship between the offence of drugs trafficking and the offence of ML perpetrated by the same person, is indeed concurrence of offences*" (Decision of 20/06/2002) or that "*the drug dealer himself can, later on, commit ML, in concurrence of offences*" (Decision of 10/08/1997).

164. Prior to Law 11/2004 (that add Article 368-A to the Criminal Code) the evaluation team was informed that some county courts (despite the cases of jurisprudence) were not agreed on what was required for evidence of self laundering. Some decisions indicated that the offender can be convicted by both crimes "*concurso real*" and others indicated that the author of the predicate offence could not be punished also for the offence of ML "*concurso formal*"[19]. The new Article 368-A clarifies the matter more clearly, stating that the offender could be convicted by self-laundering.

165. Article 231 of the Criminal Code provides a definition of the offence receiving benefits derived from the commission of offences against property and Article 232 provides for and punishes any material assistance to the agent of offences of the same nature. According to the Portuguese authorities these two offences could be considered as ancillary offences of ML. The first one because it includes some of the elements of the ML offence as set for in the Vienna Convention - the possibility of dissimulation, concealment, acquisition, receiving or possession of the item obtained by an offence, and the second because it is precisely connected with the meaning of aiding.

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[19] Example of *concurso formal* (the author of the predicate offence could not be punished also for the offence of ML): Decision of 23-March-2000 of the Supreme Court of Justice and Decision of 22-October-2002 of the Appeal Court of Lisbon. (See annex and http://www.dgsi.pt/jtrl.nsf/ 33182fc732316039802565fa00497eec. Example of *concurso formal* (the author of the predicate offence could not be punished also for the offence of ML): Decision of 23-March-2000 of the Supreme Court of Justice and Decision of 22-October-2002 of the Appeal Court of Lisbon. (See annex and http://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/4344a907b8d0727c80256c950036ff1a?OpenDocument). An example of *concurso real* (the author of the predicate offence could be punished also for the offence of ML): Decision of 20-June-2002 f the Supreme Court of Justice: (See annex and http://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/e6930b0a495d9aec80256bea003493da?OpenDocument); Decision of 13-May-2004 of the Supreme Court of Justice and Decision of 22-September-2004 of the Constitutional Court (See annex and http://w3.tribunalconstitucional.pt/acordaos/acordaos04/501-600/56604.htm).

Additional Elements

166. According to the provisions of Article 368-A (4), of the Criminal Code even if the conduct generating the proceeds of crime occurred in another country where it is not considered as an offence, if the proceeds of that conduct (which is considered a predicate offence in Portugal) are converted, transferred, or, if someone tries to conceal or dissimulate its origin, nature, whereabouts, layout, movement or entitlement in Portugal, it is considered a ML offence.

167. Article 368-A (4) also provides for punishment for the ML offences that take place even if the facts integrating the predicate offence have been committed outside the national territory or even though the place or the identity of the authors is unknown. It is not mandatory that the facts that have occurred in other countries are predicate offences there and would have constituted a predicate offence had they occurred in Portugal.

Recommendation 2:

168. Article 36 (c) of Law 11/2004 holds that natural persons who are members of the legal persons referred to in the preceding subparagraphs or those holding office as director, manager or head of department or similar in such legal entities, as well as those acting, legally or voluntarily, on their behalf and, in the event of the duty laid down in Article 10, their employees and other persons providing services on a permanent or occasional basis are responsible for the commission of the offences set forth in mentioned Law.

169. According to Article 11 of the Criminal Code, except where otherwise provided, only natural persons can be liable for criminal law. Legal persons are not criminally liable for ML offences. Therefore, legal persons are only subject to administrative and civil liability for non-compliance with the duties provided for in Law 11/2004.

Legal persons

170. According to the rule provided for in Article 11 of the Criminal Code, legal persons are not criminally liable for ML, because Article 368-A of the Criminal Code does not include a provision on the liability of such persons. However, by the commission for some of the predicate offences for ML, legal persons can be criminally punishable for offences such as corruption, the fraudulent procurement of a subsidy, tax fraud or tax-related offences. Article 6 of Law 52/2003 (Law on combating terrorism), and by Article 104 of Law 15/2001 (Law on General Regulation of Tax infractions) provide that legal persons can be criminally liable for ML derived from terrorism and tax related offences.

171. Within the Ministry of Justice a Task Force for the Revision of the Criminal Code, the Code of Penal Procedure and other criminal legislation was at the time of the on-site visit preparing a draft for the amendment of the Criminal Code where punishment for the commission of all ML offences will be extended to legal persons. Criminal liability of legal persons for the commission of various offences, including ML, may be provided for in the near future. The Minister of Justice was due to submit the proposals of the Task Force for approval to the Council of Ministers, in order to present a draft bill for discussion in the Parliament. .

172. Article 127 of the Code of Penal Procedure allows that the evidence or the assessment of facts is weighted according to the rules of experience and free judgement of the Judge. Therefore, pursuant to the general principles of evidence assessment (according to Article 124 of the Code of Penal Procedure), all the relevant factual circumstances of the case can be studied by the judge, to reach the "*factual truth*" to determine whether an offence has been committed. The intentional element of the ML offence can therefore be inferred from objective factual circumstances.

173. Legal persons are subject to civil liability and to the *contra-ordenações* regime (through the application of "*coimas*", monetary sanctions having penal nature – Article 34 and following) for non-compliance with the duties provided for in Law 11/2004. Article 37 establishes that legal persons can be liable by acts of members of their organs, the persons holding office as directors, managers, heads of department or similar, by any employee, if the acts are committed in the course of their duties, as well as for the offences committed by the representatives of the legal person whilst acting on their behalf and in their interest. It was noted that by Article 38 the offences committed with negligence are also subject to administrative, civil and "*contra-ordenacional*" liability.

174. Natural persons who commit a ML offence are subject to a penalty of 2 to 12 years imprisonment according to Article 368-A (2) and (3) of the Criminal Code. However, a penalty applied under the Article 368-A may not exceed the maximum penalty described for the predicate offence. The natural and legal persons that violate the duties prescribed in the Law 11/2004 are subject to fines from €500 (Euros) to €1,000,000 for natural persons and from €1,000 to €2,500,000 for legal persons depending on the dimension of the violation. Natural persons can also be submitted to ancillary penalties, as of prohibition of acting in functions of direction of legal persons, in Article 47 of the Law 11/2004.

175. Receiving (Article 231) and material assistance (Article 232) of the Criminal Code are punishable by a penalty of 5 years or to 1 to 8 years (when committed as a way of life) imprisonment or a fine up to 600 days, or, a penalty of 2 years imprisonment or fine up to 240 days should apply respectively. The assistance and facilitation of ML are punishable by Article 368-A (2) and also with a wide range of criminal co-partnership provided by Articles 26 and 28 of the Criminal Code. Additionally, natural persons are punished by fines and legal persons may be disqualified by Law 11/2004.

176. As noted in the second round mutual evaluation the basic legal framework provides the law enforcement authorities with a strong base from which to combat ML. The fact that criminal liability does not extend to legal persons is not precluded as a "*fundamental principle of domestic law*" since Article 11 of the Criminal Code states that "*Except where otherwise provided, only natural persons can be liable for criminal law*". This exception was circumvented in other circumstances notably in the criminalization of terrorism and TF (see Article 6 (1) of the Law 52/2003 and Special Recommendation II of this report). Despite this, the "*contra-ordenações*" regime stated in Law 11/2004 provides for sanctions that already ensure the effectiveness of the system in place.

Statistics

Suspected Incidents of ML sent for investigation from the FIU 2002 - 2005

	2002	2003	2004	2005- until 3rd quarter
Sent for investigation	32	32	94	131
Percentage of STRs submitted to the FIU	19,8%	17,6%	29,9%	55%

Enquiries, charges and convictions for ML under Article 368-A - 2000-2005

	2000	2001	2002	2003	2004	2005
Enquiries	10	8	8	61 (*)	134 (*)	13
Cases in court	3	5	2	3	4 (26	5 (10

					defendants	defendants
Final Convictions (no appeal admissible)	1	2	-	6-	4	2
Number of convicted persons	2	2	-	6	4	2
Criminal sanctions applied	4 1/2 imprisonment 4 years 3 months imprisonment	6 1/2 years imprisonment 1 year imprisonment		3 years imprisonment 2 years imprisonment 2 years 9 months imprisonment and 3 years of interdiction of police functions	2 years imprisonment 8 ½ years imprisonment 7 ½ years imprisonment 7 years imprisonment	3 years imprisonment (suspended by 5 years) 3 years imprisonment
Predicate Offence	Drug Trafficking	Drug Trafficking		Drug Trafficking	Drug Trafficking, incitement to prostitution,	Drug Trafficking customs and tax crimes

(*)This was untypical and derived from indiscriminate reports by notaries, following the entry in to force of Law 11/2004 of 27th March

177. The wide range of the predicate crimes that are listed by Law 11/2004 and the increasing number of reports submitted to the Portuguese authorities by financial institutions and DNFBPs it could reasonably be expected that there might be an upward trend in investigated cases and convictions. This does not appear to be the cases. Indeed it appears that despite the broadening of the ML offence since 1993 drug trafficking related offences are most likely to result in a ML conviction. The team also noted that the STRs (which represent a primary source of intelligence on potential ML cases) were comparatively low. This would inevitably result in fewer ML investigations.

178. However during the on-site visit it became clear that the apparently low number of ML prosecutions under Article 23 of Decree-Law 15/93, Article 2 of Decree-Law 325/95 and Article 368-A of the Criminal Code may, in part be, due to the manner in which criminal conviction statistics are maintained. The team were informed by the Ministry of Justice Office of Legislative Policy and Planning that in cases of multiple offences only one conviction statistic is kept: the one concerning the most serious offence. Significant efforts were made by Portugal to assist the evaluation team in the provision of accurate statistics on ML prosecutions and convictions by conducting a retrospective search on criminal cases to verify the precise number of criminal cases that contained a ML element (even though this may not have been initially recorded in the official statistics). The results of this exercise are included in the table above.

179. The Portuguese authorities provided the evaluation team with statistics on the number of convictions on receiving and material assistance and asserted that these could be seen as evidence of detection of some ML cases and should counted among the convictions on ML. The team did not accept this argument. Receiving and material assistance are offences connected with offences of other persons, meaning that they don't admit the self receiving or self material assistance. Also, both offences are connected to offences against property, meaning that the predicate offence for receiving and material assistance are only the offences listed at Title II "Offences against property" of the Criminal Code. Under Articles 203 to 235, most of them could not be considered as predicate crimes for ML, even when applying the minimum term of imprisonment of six months or the maximum term exceeding five years as considered in Article 368A of the Criminal Code (e.g. Theft, Article 203; Trust abuse, Article 205, Automobile Theft, Article 208, Damage, Article 212 etc.). So, the

offences of receiving and material assistance would also not include almost all the designated categories of offences.

2.1.2 Recommendations and Comments

180. Portugal has a ML offence and regime that fulfils all the physical and material elements of the offence as referred on the UN Conventions and has generally implemented the requirements of Recommendations 1 and 2. However, the current offence does not establish criminal liability for ML for legal persons. Portugal should, establish the criminal liability for ML of legal persons despite of the regime of "*contra-ordenações*".

181. Overall, the numbers of ML convictions in Portugal are relatively low – when compared with other FATF countries. The evaluation team suggest that Portugal should consider reviewing the effectiveness of the current legislation and keep more comprehensive statistics in relation to ML cases and consider reviewing the effectiveness of current legislation.

2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating
R.1	**LC**	• The statistics that are available suggest doubts as to the effectiveness of the ML offences in Portugal given the low number of convictions.
R.2	**LC**	• Criminal liability for ML does not clearly extend to legal persons. However, law 11/2004 foresees a range of proportional and dissuasive sanctions that can be applied to legal persons. • The statistics that are available suggest doubts as to the effectiveness of the ML offences in Portugal given the low number of convictions.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and Analysis

182. The offences of terrorism and TF and terrorism organization are criminalised in Portugal since 1982 by Articles 300 and 301 of the Criminal Code. Law 52/2003 (Law on Combating Terrorism) that transposed into the Portuguese legal system EC Framework Decision 2002/475/JHA revoked such articles and provided for the punishment of terrorist acts, terrorism groups and terrorist organisations, and defines the offences of a terrorist organisation (Article 2), terrorism (Article 4) and international terrorism, terrorist group or organisation (Article 5). TF is also a predicate offence of ML that is punishable with 8 to 15 years' imprisonment (Law 52/2003, Article 2 (2)), according to the provisions laid out in Article 368-A (1) added to the Criminal Code by Law 11/2004.

183. TF is criminalised in Article 2 (2) of Law 52/2003 which states "*Whoever promotes or founds a terrorist group, organisation or association, or adheres to or supports them, including (...) by funding in any way their activities, shall be punished with a penalty of 8 to 15 years' imprisonment.*" The broad wording of the TF offence ensures that the legal or illicit origin of the funds are both considered in the case of TF, as well as the way they have been gathered or provided. Within the definition of a TF offence in Portugal it is not necessary that the funding is meant for a specific act or acts that it has indeed occurred. Criminal Code, Article 22 (2) (c), combined with Law 52/2003, Article 2 (2)states that if the funds are collected with the aim of financing terrorism, then they constitute an attempt or preliminary form of attempt (also under Law 52/2003, Article 2 (4), and Criminal Code, Article 22). Preparatory acts are also punishable according to the provisions clearly

expressed in Law 52/2003, Article 2 (4), pursuant to Article 21 of the Criminal Code. According to the same law and the general principles of the Criminal Code, attempts (Article 22), complicity (Article 27) and co-participation (Article 28) are punishable for TF as well.

184. Terrorist funds are defined according to the definition set forth in Article 1 (1) of the UN Convention for the Suppression of Terrorism Financing. Article 8 (2) of the Constitution of the Portuguese Republic allows that: "Rules provided for in international conventions duly ratified or approved, shall apply in the national legal order, following their official publication, so long as they remain internationally binding with respect to the Portuguese State".

185. Article 8 (1) of the Law 52/2003, establishes that unless otherwise provided for in any international treaty or convention, the Portuguese penal law shall apply to facts committed outside the national territory: Where the facts incorporate the offences provided for in Articles 2 (terrorist organizations) and 4 (terrorism); and where the facts incorporate the offences provided for in Articles 3 (other terrorist organizations), and 5 (international terrorism).

186. TF is a wilful offence, as described in Articles 13 and 14 of the Criminal Code and individual liability of natural persons and criminal liability of legal persons is provided for in Law 52/2003.

187. Law 52/2003 clearly provides for criminal liability of legal persons, companies or mere *de facto* associations for TF, where committed on their own behalf and in the collective interest by their governing bodies or representatives or by a person under their authority, and whenever the commission of the offence has been made possible due to wilful failure to comply with their supervision and control duties. Liability of the above-mentioned entities does not exclude the individual liability of the respective offenders. The main sanctions applicable to legal persons are a pecuniary penalty or a winding-up. Some ancillary sanctions can be applied: judicial injunction, temporary disqualification from the practice of an activity; exclusion from entitlement to public benefits or grants; or publicity about the judgment of conviction.

Statistics

Terrorism and terrorism organisation – ongoing cases[20]

	2000	2001	2002	2003	2004	2005
Enquiries	1	11	3	5	7	1
Cases in court	1	2	2	1	-	-
Convictions	-	20	-	-	-	-

Note: These are enquiries and convictions against terrorism and not TF.

2.2.2 Recommendations and Comments

188. The Law 52/2003 provides Portugal with a satisfactory criminalisation of the offence in line with the UN Convention on TF. However, the data provided to the Team shows that the number of enquiries on terrorism and terrorist organisations is not significant, possibly signifying that Portugal is currently not a target for the commission of such crimes.

189. The offence provision does not extend coverage to the provision of funds to a single terrorist. Whilst it is true that, if it can be shown the funds are or may be intended for use by an individual terrorist to commit a terrorist act, then the offence may be established, there may be cases where this will not be possible or cases in which the funds are provided not for the commission of terrorist acts

[20] The Portuguese authorities consider should be borne in mind that some prosecutions of terrorism or terrorist organisations refer to crimes connected with the trafficking of human beings using violence, which the Public Prosecution considers classifiable in this category

but for other purposes such as general maintenance and living costs. It is recommended that the Portuguese authorities give consideration to amending the TF offence provision at an appropriate time so as to make it applicable not only to terrorist organisations but also applicable to individual terrorists, in order to achieve full compliance with Special Recommendation II.

190. Portugal has not yet (dependant on verification of the statistics) prosecuted any cases of TF, although a number of investigations have been undertaken. It is currently too early to assess whether the current TF provisions are effective.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**LC**	• The TF offence does not extend to the provision or collection of funds for the benefit of a single terrorist. • It is too early to assess the effective implementation of the TF offence provisions.

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and Analysis

191. In general, all property originating in a criminal activity or having been acquired with its proceeds can be subject to confiscation in case of a conviction within the framework of a criminal proceeding, as long as it does not belong to bona fide third parties. Chapter IV of Law 5/2002 requires the defendant, in case of a conviction, can prove the legal origin of the confiscated assets, which represents a mitigated form of inversion of the burden of proof.

192. Provisions relating to the confiscation of the proceeds of crime are outlined in the Criminal Code, Articles 109 to 111 and in the Code of Criminal Procedure, Articles 178 to 186. According to these procedures, "*the proceeds, things, benefits or objects that have been used or were meant to be used for the commission of an illicit act or that constitute the proceeds of that illicit act*", are all subject to confiscation. Confiscation can also be applied to things, rights or benefits or assets of equivalent in value where the earlier mentioned cannot be seized in goods that, through the illicit act, have been directly acquired by the offender to himself or to a third person and represent property of any kind (Article 111 (2)). Similar provisions are available to the Portuguese authorities through Decree-Law 15/93, Articles 7 (2) and 35 to 37, but are limited to the proceeds from trafficking in narcotic drugs and psychotropic substances.

193. Article 111 (3) and (4) of the Criminal Code also states that the confiscation of benefits can include things or rights obtained with the transaction or exchange of things or rights derived directly from crime. They also provide for the possibility of assets of equivalent value to be confiscated by the state of the rights, things or benefits that cannot be confiscated in goods, being replaced by payment to the State of the respective value. Both situations are applicable regardless of whether the offender is in the possession of the benefits or not. Articles 35 and 36 of this Decree-Law 15/93 provides for the confiscation to the State of objects and things or related rights; if the rewards, objects, rights or benefits have been transformed or converted, or even mixed, they can be confiscated in their place or up to the estimated value of the ones that were mixed.

194. Article 109 of the Criminal Code, states: "*It should be declared lost to the State all the things that has been used or were intended to be used for the commission of a criminal offence, or that have been produced by the offence, when by its nature or the circumstances of the case, could involve a risk to the security of persons, to the public order or moral or could present a risk of being used for*

the commission of new offences". Article 109 of Criminal Code must be read in connection with the Articles 178 to 181 of Code of Criminal Procedure. The statement "all the things that have been used or were intended to be used" contained in Article 109 of the Criminal Code enables the instrumentalities used in, or intended for use in the commission of a ML or TF offence; these can subsequently be confiscated.

195. Law 5/2002 provides for a special confiscation regime (Article 7) which applies to a set of offences including ML. Chapter IV provides for confiscation for the State of goods derived from the commission of a ML offence. In case of conviction the benefit from a criminal activity is considered the difference between the value of the defendant's actual property and one that is consistent with their lawful income. Without prejudice of the court can take into account of any evidence in the proceeding that the defendant can prove the legal origin of the assets referred to in Article 7 (2).

196. The Code of Criminal Procedure, Chapter III (Articles 178 to 186), allows the seizure of "*objects that were meant to serve for the commission of an offence or that constitute the proceeds, profit, price or reward of it*". Article 178 (2) states that, where possible, seized objects should be attached to the proceedings. Where this is not possible, in order to avoid its conveyance, transfer or disposition, they are entrusted to a court official linked with the proceeding or to a custodian (see also Article 249 (1) and (2) for protective orders for means of evidence). Where money, securities, gold or precious stones are seized, they are usually deposited in a banking entity (*Caixa Geral de Depósitos*) to the order of the Portuguese judicial authorities.

197. Law 5/2002, Article 4, provides for the possibility of a judge, *ex-parte,* authorising or ordering the stay of execution of movements in the bank account (freezing), where necessary in order to prevent a ML offence. This Law provides for the possibility of staying the execution of movements in the bank account (freezing) and, in case of conviction, the defendant can impugn the confiscation and prove the legal origin of the confiscated assets. This is a mitigated form of inversion of the burden of proof. The Code of Criminal Procedure, Article 178, provides for the possibility of criminal police bodies in the framework of a criminal investigation seizing objects used or meant to be used for the commission of an offence, as well as those that may constitute the proceeds, profit, price or reward (see also Article 249 (2) c).

198. The law does not require prior notice to allow the initial application to freeze or seize property subject to confiscation. The Code of Criminal Procedure and special legislation only require rules of active legitimacy as far as the intervention of the competent judicial authority is concerned. The Law on the Organisation of Criminal Investigation (Law 21/2000 amended by Decree-Law 305/2002) allows the Criminal Police to investigate among others the offences of ML, terrorism and terrorist organisations. Law 103/2001 added an element to the organisation law of the Criminal Police (Article 11-A), stating that this police force is especially competent to carry out searches and seizures. Law 101/2001 provides for the possibility of under cover actions where in presence of offences such as ML, terrorist organisations and terrorism, among others. The possibility of controlled deliveries is provided for in Article 160-A of Law 144/99. This legislation provides law enforcement and the FIU have adequate powers to identify and trace property that is likely to be confiscated.

199. Protection for the rights of bona fide third parties is guaranteed in Article 52 of Law 11/2004, which establishes the regime for the prevention of the laundering of benefits of illicit origin. The protection of rights of third parties is also provided for in Decree-Law 15/93 Article 36-A, and in the general provisions of Article 110 (3) and Article 111 (2) and (3) of the Criminal Code. Such guarantee is in accordance with the provisions of the Palermo Convention.

200. Article 178 (2) of the Code of Criminal Procedure establishes that, where possible, seized objects should be attached to the proceedings and where this is not possible, in order to avoid its conveyance, transfer or disposition, they should be entrusted to a court official linked with the proceeding or to a trustee, with the drawing up of the respective deed. Article 249 (2) c) of the Code

of Criminal Procedure provides for interim measures of protection that may be necessary to keep or preserve seized objects, so as to prevent the offender from getting rid of the assets or property derived from the commission of an offence. Article 10 of Law 5/2002 provides the seizure of assets belonging to the agent of the offence, meant to secure the hypothetical payment of the value of those assets that would be confiscated to the State and that the agent would probably have disposed. According to the Civil Code, Article 294 and following, all the acts and contracts made against an imperative legal provision are considered void, which means that it is in this way possible to prevent or avoid attempts to get rid of assets or rights derived from criminal activities and that would possibly be confiscated in case of conviction.

201. Law 11/2004, Article 8 (2) prohibits the carrying out transactions suspected of being related to the commission of a laundering offence. If a financial entity that suspects that a certain transaction might be related to the commission of a laundering offence they are required to report the transaction to the AG immediately (at the present to the DCIAP through delegation of the AG), who may determine the stay of its execution. A criminal investigation judge must confirm this order within two working days from the moment of the report made.

202. In general, the Portuguese system appears to offer a comprehensive regime for the confiscation, freezing and seizing of the proceeds of crime. The proceeds can be confiscated where an illicit act has been committed but the law does not require a previous criminal conviction of an individual as set forth in Article 109 (2) of the Criminal Code. All property originating from a criminal activity or that has been acquired with its proceeds of crime can also be subject to confiscation in case of a conviction within the framework of a criminal proceeding (as long as it does not belong to bona fide third party). Nonetheless, Chapter IV of Law 5/2002 provides for the possibility of the defendant, in case of a conviction, proving the legal origin of the confiscated assets.

Additional Elements

203. According to the domestic criminal law, where a criminal association is involved, are also subject to seizure or confiscation all the objects that have been used or were meant to be used for the commission of an illicit act or that constitute the proceeds of that illicit act. The same applies to the objects that have been acquired as a result of that act or even assets of equivalent value. It is possible to confiscate assets without a conviction for the commission of a predicate offence, but only within the framework of a trial featuring a criminal nature.

Statistics (confiscation/freezing data)

Amount Confiscated from ML 2000 - 2005[21]

	2000	2001	2002	2003	2004	2005
Confiscated assets	EUR 141,190.20	EUR 629,867 USD 447.09 ESP 733,600 PTE 4,729,000	-	1 car	-	EUR 2,430,443 plus legal interest 1 car, bearer shares, apartment house owned by the defendant (not yet evaluated)

204. As the table above indicates in 2000 €141,190.20 was confiscated after criminal conviction, and more than € 3.000.000 in cash plus bearer shares, automobile and estate was confiscated between

[21]These figures only relate to proceeds confiscated for ML.

2001 and 2004. These figures indicate that Portugal have a system for the freezing, seizing and confiscation of criminal proceeds**.** The sums frozen or blocked FIU and the amounts confiscated at the end of a prosecution are different, the first corresponding to interim measures and the second to proceeds of criminal conviction. There may be several reasons for the difference between seized and confiscated assets, for instance the ongoing prosecutions and trials not yet concluded and also the way how ML statistics judicial and others are recorded.

Proposals to Suspend the Execution of a Transaction (in thousands of Euros)

2002	2003	2004	2005
€2,585.24 (3 cases)	€4,999.90 (9 cases)	€5,417.67 (5 cases)	€3,236.26 (4 cases)

The data in the above table concern proposals from the part of the FIU to delay the execution of transactions for the amounts indicated since the suspicion on them was confirmed.

205. The FIU holds statistics on the number of cases and on the amounts frozen by stay of execution, according to Article 8 (3) of Law 11/2004, which is the result of the analysis and the investigation following the submission of an STR.

2.3.2 Recommendations and Comments

206. The Portuguese legislation allows law enforcement to confiscate, freeze and seize proceeds of crimes. However, the small number of proceeds confiscated raises serious questions about the effectiveness of the system to confiscate the proceeds of crime. Naturally, a small number of ML inquiries and convictions will only allow a limited amount of assets to be frozen.

2.3.3 Compliance with Recommendations 3

	Rating	Summary of factors underlying rating
R.3	LC	• Only a small amount of money has been confiscated which may reflect on the effectiveness of the system.

2.4 Freezing of funds used for TF (SR.III)

2.4.1 Description and Analysis

Special Recommendation III Freezing actions under S/RES/1267 and S/RES/1373

The obligation under Special Recommendation III consists in two elements. The first requires the implementation of mechanisms that will allow a jurisdiction to freeze or seize terrorist related funds in accordance with relevant United Nations Security Council resolutions. The second element is the obligation to have measures that will allow a jurisdiction to seize or confiscate terrorist funds on the basis of a judicial order or through some other similar mechanism. In Portugal, the first obligation has been implemented through the framework of the European Union, and this mechanism will be described in more detail below. For the second obligation, that's to say, the ability to seize or confiscate terrorist funds using judicial mechanisms, Portugal relies on the Criminal Code and Law 5/2002, described in the previous chapter.

207. ***S/RES/1267:*** Portugal has implemented UN Security Council Resolution 1267 (1999) (S/RES/1267 (1999)) and its successor resolutions under EU Council Regulation (EC) No.881/2002 which imposes measures against the Al-Qaeda and the Taliban. According to the Treaty of Rome,

Article 189, European Regulations are binding in its entirety and are directly applicable in all EU Member States. Therefore EC Regulations have direct force of law in Portugal and require the freezing of funds and economic resources belonging to persons designated by the UN Sanctions Committee and listed in the Regulations, and prohibit making funds or economic resources available to such listed persons. This said it is not necessary that the national legislator passes legislative measures to handle the freezing of funds or other assets belonging to persons or entities referred in the UN lists, later on transposed into community law by the mentioned EC Regulations.

208. EC No. 881/2002 requires the freezing of funds and economic resources belonging to persons designated by the Sanctions Committee and listed in the Regulations, and prohibit making funds or economic resources available to such listed persons. These lists are updated regularly by the EU, at which point assets are required to be frozen. Enforcement of these lists in Portugal by means of criminal sanctions for non-compliance is provided by Article 2 of Law 11/2002.

209. The EU list of designated persons is the same as the UN list of persons, and is drawn up upon designations being made by the UN Sanctions Committee. Financial Institutions should affect the freezing of funds immediately after the relevant lists are forwarded to them by the competent authorities. In Portugal these bodies are the Ministry of Finance and the Ministry of Foreign Affairs, through the Directorate General for European Affairs and the International Relations and Directorate General of Multilateral Affairs respectively. Portugal has not reported under Council (EC) Regulation No. 881/2002 the names of any listed entities that have had assets frozen.

210. ***S/RES/1373 (2001):*** Is implemented in a similar way to S/RES/1267 (1999), and is enforced through Council Common position 2001/930/CFSP and EC Regulation Council Regulation (EC) No. 2580/2001, that requires the freezing of all funds and economic resources belonging to persons listed in the Regulations and the prohibiting of making available of funds and economic resources for the benefit of those persons or entities. Any member State as well as any third party State can propose names for the list. The Council, of the EU establishes amends and reviews the list. However, as instruments of the Common Foreign and Security Policy (CFSP) must relate to a foreign policy objective, the asset freeze does not apply to terrorists who are designated as internal to the EU, i.e. "domestic" or "internal" terrorists.

211. For those persons designated under Regulation 2580/2001 as well as for those persons identified in Portugal under the authority of S/RES/1373 (2001) by non-EU member states, Portugal would normally still be able to freeze assets of the person by opening an inquiry through the authority of the AG. This would normally require some indication of a connection of the person to Portugal. It should be noted that this procedure would not have to take place through usual rogatory procedures. Furthermore, the freeze would be valid for the duration of the inquiry and the judicial proceeding. Executing a decision to freeze assets issued by an authority of another State in the context of a criminal proceeding is also possible in Portugal, under Article 145 of Law 144/99. In addition, through judicial co-operation, Portugal can freeze and confiscate assets belonging to EU internals for which Common Position 2001/931/CFPC applies and also to citizens of non-EU countries.

212. The legal stay of execution of movements (that is to say, the freezing) is extended to funds or other economic resources, as provided for in UN Resolutions and in EC Regulations, and includes any action that, direct or indirectly, might permit to put the funds within reach of any individual or legal entity mentioned in those international legal instruments (Articles 1 and 2 of Law 11/2002). Along with the direct applicability of EC Regulations Law 11/2002 allows the stay of execution of funds movements of any persons or entities linked to terrorism that could be EU or non-EU residents and allows for the application of criminal penalties for non compliance with its provisions**.** This action will be later on validated by the Public Prosecutor, applying as interim measure of protection the seizure of those funds or financial assets, within the framework of a criminal proceeding to determine the facts and the application of the sanctions.

Communication to financial institutions and procedures:

213. EC Regulations describe the communication and notification systems to the competent authorities of the Member States, as far as frozen accounts and amounts are concerned. In the Portuguese system the movement of the funds will be suspended (frozen). After publication of the EC Regulations, the lists of persons or entities are disseminated to the financial sector through the Ministry of Finance (DGAERI) and the Bank of Portugal. The Ministry of Justice applies a similar procedure, sending the lists to the General Directorate for Registries and Notaries. This entity, within the framework of its competences, will then identify and locate any real estate and moveable property registered in the National Registries, such as the Commercial Registry, National Registry of Legal Persons or the Vehicles Registry.

214. General Directorate of Multilateral Affairs/Ministry of Foreign Affairs and DGAERI/Ministry of Finance which are in charge of issuing guidelines on this matter and the BdP informs the financial institutions, by means of a letter, on the procedures to adopt as far as the stay of execution of movements (or freezing) is concerned. This information is also made available on the websites of the supervising authorities[22].

Process for de-listing and unfreezing

215. Lists are attached to the EC Regulations and they are permanently updated by the Council of the EU. As these Regulations are directly applicable into the Portuguese legal system any de-listing or for unfreezing of funds or other assets acts as an automatic procedure for de-listing or for the unfreezing the funds or other assets. As soon as the lists are updated it is no longer necessary to declare domestically the cessation of the stay of execution applying to movements of funds or other assets that had been identified.

216. Common Position 2001/931/ CFSP, from 27/12, paragraph 5 states that the names of persons or entities in the lists should be regularly reviewed, at least every six months, so as to ensure that their presence in the lists is still justified. According to Law 11/2002 the Public Prosecution can also determine, for the same reasons, the archiving of any enquiry that has been opened on the EU or non-EU persons or entities that have meanwhile been de-listed. In addition, whenever an individual or legal entity have been incorrectly identified, after assessing the true identification of the person, when the account movements are suspended, the suspension would be immediately lifted. Unfreezing in the case of mistaken identity may also take place in accordance with the document "EU Best Practices for the effective implementation of restrictive measures targeting terrorist persons, groups or entities", adopted in December 2004.

Freezing actions other than S/RES/1267 and S/RES/1373: In application of UN Resolutions 1127 (1997), 1173 (1998) and 1295 (2000) establishing economic and financial sanctions applicable to some members of UNITA in Angola as well as EC Regulations 1705/98 and 2231/2001, were frozen by credit institutions 13 bank accounts, with the total amount of €789,921.

217. As a general judicial mechanism funds are also liable to be frozen on the initiation of an inquiry opened by a public prosecutor. According to the general principles of the Civil Law, if any illicit action gives rise to damages to the rights or legitimate interests of the persons to whom the suspension of movements have been applied, those persons will be entitled to a compensation for damages, in the case of negligent behaviour from the institution that decided the suspension of movements (freezing). In addition, de-listing or incorrect listing can also be pursued before Portuguese courts and, if they consider that have not jurisdiction to deal with the issue, before the EC Court of Justice.

[22] http://www.cmvm.pt/NR/exeres/EDB0294D-4AE7-4AA1-AAA4-E79BC1029B40.htm

218. EC Regulations that provide for that possibility, that is to say that the freezing of funds does not apply, or the funds or other financial assets or economic resources can be unfrozen, if they have been determined to be necessary for the purposes of the provisions set fourth in Resolution 1452 (2002), paragraph 1, sub-paragraph a). That is, for instance, what is provided for in Regulation (EC) 337/200 (Article 6), Regulation (EC) 467 (2001) (Article 2, paragraph 3) or Regulation (EC) 2580 (2001) (Article 6). Regulation (EC) 881/2002 at Article 6 also protects the good faith actions of freezing entities except when a freeze is due to negligence. The same protection is provided for in Article 6 of Law 11/2002 which redirects to the laundering preventive regime (Law 11/2004) ensuring the right of bona fide third parties.

219. According to the Constitution of the Portuguese Republic, Article 20, access to law and courts to defend their rights and legally protected interests, is guaranteed to all persons. Justice cannot be denied for lack of economic resources. Therefore, the decision to freeze funds or other assets can always be contested in court, whether it is an administrative act damaging the rights of a private person, pursuant to Article 268 (4) of the Constitution of the Portuguese Republic, or a decision of a private nature from the part of a credit or financial institution, in this case pursuant to the general law, which provides for a compensation for damages caused by illicit acts offending the person's rights. This constitutional principle is expressed in the Organisation Law of Judicial Courts which, in Article 7, using a similar language mentioning that access to law and courts to defend their rights and legally protected interests is guaranteed to all persons (Law 3/99). The person can bring compensation proceedings in civil and administrative courts for damages caused by illicit measures in applying EC Regulations and also in criminal courts and, if these courts consider that have not jurisdiction to deal with the issues, de-listing or incorrect listing can be challenged before the EC Court of Justice.

220. Articles 109 to 111 of the Criminal Code apply to the seizure and confiscation of terrorism-related funds or other funds that can be confiscated for the State. These include objects that have been used or were meant to be used for the commission of an illicit act or that constitute the proceeds of that illicit act. Confiscation can also be applied to things, rights or benefits or assets equivalent in value where the earlier mentioned cannot be seized in goods that, through the illicit act, have been directly acquired by the offender to himself or to a third person and represent property of any kind (Article 111). Article 111 (3) and (4) explain that the confiscation of benefits includes the things or rights obtained through the transaction or exchange with the things or rights directly derived from crime. Confiscation can also apply where things, rights or benefits cannot be seized in goods and confiscation may then be replaced by payment to the State of the respective equivalent in value (assets of equivalent value). Both situations apply regardless if the benefits are in the possession of the agent or not.

221. The Code of Criminal Procedure and special legislation only require rules of active legitimacy as far as the intervention of the competent judicial authority is concerned as far as the prevention and combat against terrorism are concerned, the law does not require prior notice. Similar to the provisions for ML, the Code of Criminal Procedure, Article 178 and following, as far as terrorism and terrorist organisations are concerned, provides for the possibility of criminal police bodies seizing objects used or meant to be used for the commission of an offence, as well as those that may constitute the proceeds, profit, price or reward (see also Article 249 (2) c)).

Sanctions for non-compliance and monitoring mechanisms:

222. Through Law 11/2002 Portugal implemented a penal regime for non-compliance with financial or economic sanctions imposed by UN Security Council Resolutions or by European Community Regulations. According to Article 6, as far as prevention and repression of the offences provided for in the law, the special provisions relating to ML apply, that is to say, the provisions of Law 11/2004.

223. According to Article 2, non-compliance with the requirements of the Law 11/2002 is punishable with 3 to 5 years' imprisonment, whereas negligence is punishable with a fine up to 600

days. As far as legal persons are concerned, a fine of not less than the amount of the transaction and not more than the double of that amount is provided for (Article 4 (3)). Where the offence does not involve a transaction, a fine shall be established in an amount between €5,000 and €2,500,000 if applied to a financial entity, and between €2,500 and €1,000 000, if applied to any individual or entity of a different nature (Article 4 (4)).

Seizure and confiscation in relation to terrorist funds

224. Law 5/2002 Chapter IV provides for a special regime of confiscation for the State of goods derived from the commission of the offences of terrorism or terrorism organisation, including TF. Thus, in case of conviction, it is considered as benefit from a criminal activity the difference between the value of the defendant's actual property and one that is consistent with his lawful income. It should be noticed, without prejudice of the court's taking into account of any evidence in the proceeding that the defendant can prove the legal origin of the assets referred to in Article 7 (2).

225. Similarly to what has been indicated for Recommendation 3 Article 178 (2) of the Code of Criminal procedure establishes that, where possible, seized objects should be attached to the proceedings and where this is not possible, in order to avoid its conveyance, transfer or disposition, they should be entrusted to a court official linked with the proceeding or to a trustee, with the drawing up of the respective deed. Article 249 (2) c) of the same Code provides for interim measures of protection that may be necessary to keep or preserve seized objects, so as to prevent the offender from getting rid of the assets or property derived from the commission of an offence.

226. Law 5/2002, Article 1 provides for the seizure of assets belonging to the agent of the offence, meant to secure the hypothetical payment of the value of those assets that would be confiscated for the State and that the agent would probably have disposed of. According to the Civil Code, Article 294 and following, all the acts and contracts made against an imperative legal provision are considered void which means that it is in this way possible to prevent or avoid attempts to get rid of assets or rights derived from criminal activities and that would possibly be confiscated in case of conviction.

Additional Elements

227. The measures set out in the FATF Best Practices Paper for Special Recommendation III have been generally implemented at the domestic level. The EC Regulations provide the basis for the Portuguese freezing regime allowing the possibility for the stay of execution for frozen funds, that financial assets or economic resources can be unfrozen, if they have been determined to be necessary for the purposes of the provisions in UN Resolution 1452(2002), paragraph 1, sub-paragraph a). The EU consolidated list provides Portuguese financial institutions and DNFBPs with access to a list of entities subject to freezing action. Lines of communication between the UN, the EC and with foreign governments appear adequate, as are the communication of the lists to financial institutions and DNFBPs.

Statistics:

228. In 2001 and 2002 13 cases were detected with identical names to those mentioned in EC Regulations, which after assessment did not match to the identity of the suspicious individuals included in the lists. In those situations, when the financial institutions suspended the movements of those banking accounts, that suspension was immediately lifted.

2.4.2 Recommendations and Comments

229. Portugal has implemented S/RES/1267 (1999) and has frozen accounts of persons listed by the UN Sanctions Committee. Law 5/2002 provides for sanctions to be applied to individuals and terrorist organisations. These are immediately applicable and enforceable, even before the EC

Regulations has been issued. Outside the listing of terrorists by the UN Security Council and the Council of the EU, through the national judicial system by initiating an enquiry by the Public Prosecution. The Portuguese authorities have the ability to designate as terrorists for asset freezing purposes persons who are not listed in EU Regulations or UN Security Council Resolutions for that purpose, or other international lists designated as terrorists by other jurisdictions.

230. The two European regulations, 881/2002 and 2580/2001 definitions of terrorist funds and other assets subject to freezing and confiscation do not cover the full extent of those given by the UN Security Council or FATF, especially the notion of control of the funds does not feature in 881/2002.

231. Portugal has clear and well established communication channels with financial institutions for dissemination of information, but does not have an effective system for communicating actions taking under freezing mechanisms to some DNFBPs. Likewise it does not adequately monitor all non-financial businesses and professions for compliance with measures taken under the Resolutions, notwithstanding that criminal penalties for non-compliance do exist in law.

232. With regard to freezing under S/RES/1373 (2001), Portugal satisfies the requirement in part through the EU framework (EC Regulation 2580). It is also able to freeze the assets of EU internals or other persons identified under S/RE/1373 (2001) by opening a judicial inquiry. While this last mechanism does permit freezing of assets in the immediate term of those persons identified under S/RES/1373 (2001) it falls short of the requirement foreseen by the FATF standard since the freezing action would be maintained for the duration of the inquiry and judicial proceeding in Portugal.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**PC**	• Portugal has a limited ability to freeze funds in accordance with S/RES/1373 (2001) of designated terrorists outside the EU listing system. • Communication mechanisms to all DNFBPs are limited. • Portugal does not adequately monitor DNFBPs for compliance with the relevant laws for freezing of terrorist funds.

2.5 The Financial Intelligence Unit and its functions (R.26, 30 and 32)

2.5.1 Description and Analysis

Recommendation 26:

233. The UIF (*Unidade de Informação Financeira*), the Portuguese FIU, was created by Decree-Law 304/2002. Prior to the establishment of the FIU the ML Investigation Squad (BIB) located within the Central Department for Drugs Trafficking Investigation (*Direcção Central de Investigaçào do Tráfico de Estupefacientes - DCITE*) of the Criminal Police functioned as the national authority for gathering and processing financial intelligence in relation to ML. The BIB was responsible for police investigation and criminal proceedings into suspected cases of ML (including, since 1994, the investigation of STR information). The BIB was recognised as an FIU and a member of the Egmont Group in 1999.

234. The BIB worked with the Central Department for Investigation and Prosecution (DCIAP) on the receipt and dissemination of STR information. The DCIAP is part of the AG office, which integrates the Public Prosecution (*Ministério Público*) structure and is a body of the so-called administration of justice and has been delegated the responsibility of receipt of STRs by the AG. Since 1993 (Decree Law 313/93) financial institutions and DNFBPs are obliged to report STRs to the

AG office. In practice, however, it is the DCIAP who receives the STRs and immediately forwards them to the FIU and is due to the autonomous stance of the AG (Article 219 of CRP) and the relationship between the AG and the Criminal Police, which is a body functionally dependent of the Public Prosecution.

235. The FIU has been established as a law enforcement-style body located within the Criminal Police. Its main functions include:

- The collection, storage, analysis and dissemination of information on suspected ML and tax offences including fiscal fraud cases
- Ensuring internal co-operation with the Criminal Police, other government authorities and the financial and DNFBP sectors
- Co-operation with other FIUs
- Establishing institutional and co-operation relationships with the judicial authority, as well as with all the supervising authorities, regulatory authorities and financial and DNFBPs

Receiving STRs by the DCIAP

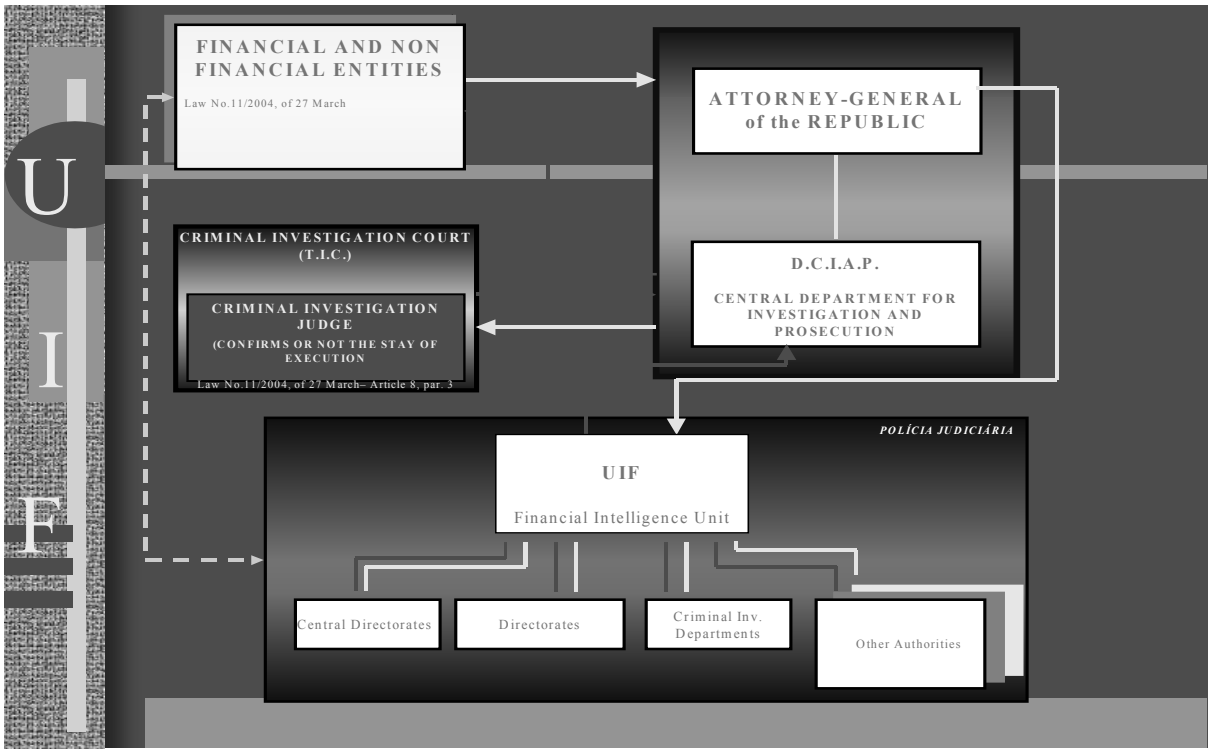
236. The DCIAP received STRs directly from financial and DNFBPs by an exclusive fax and make an initial assessment on the information. Under Article 47 of the statute of public prosecutors the DCIAP can investigate serious crimes including economic and financial crime, terrorism and drug trafficking. Within the DCIAP 8 senior public prosecutors[23] work co-ordinating such investigations nationally and assisting other judiciary authorities conducting investigations, 2 are allocated to conducting investigations into STRs. Whenever a criminal act impacts beyond an individual district, or is categorised as serious the competence for investigation lies with the DCIAP. STRs are sent to the DCIAP as they are considered to be allegations of serious or complex crime and DCIAP is a Department which cover all national territory and is the authority empowered to lead preventive investigations in cases where the suspicions are not sufficient to open a criminal enquiry.

237. On receipt of STRs, at the DCIAP, within the framework of an investigation under - number 4 of Article 47 of the Statute of Public Prosecution, public prosecutors conduct a review aiming to analyse, confirm or cancel the suspicion of ML indicated in the STR. This initial review can involve research against existing criminal intelligence databases and the raising of a pre-criminal preceding file. The 2 public prosecutors are assigned within the DCIAP to examine the STRs and can, in addition, initiate any freezing action on assets that are suspected of being the proceeds of crime. The public prosecutors can freeze assets for up to two days, without a judicial confirmation (see Recommendation 3).

238. After this initial review of the STR, the DCIAP will pass immediately the report on to the FIU. Reports are normally sent to the FIU as soon as they are received, most of the time on the same day by the DCIAP. The flows of STR information from financial institutions and DNFBPs operate as indicated in the diagram below:

[23] At the present 12 senior Public Prosecutors

Information flows to and from the FIU



239. The FIU provides reporting entities with a standard form for the submission of STRs to the DCIAP and the FIU annual report provides a model of a good quality STR and a list of potentially suspect operations as well as typologies of actual ML cases designed to encourage the submission of good quality information that can subsequently be analysed. The team were informed that a project is in development to encourage the automatic, electronic reporting of STRs and reports made above certain thresholds - Currency Transaction Reports (CTRs). This project will be initiated with the DNFBPs and it is expected to contribute to raise the amount of reported information.

Receiving STRs/CTRs by the FIU

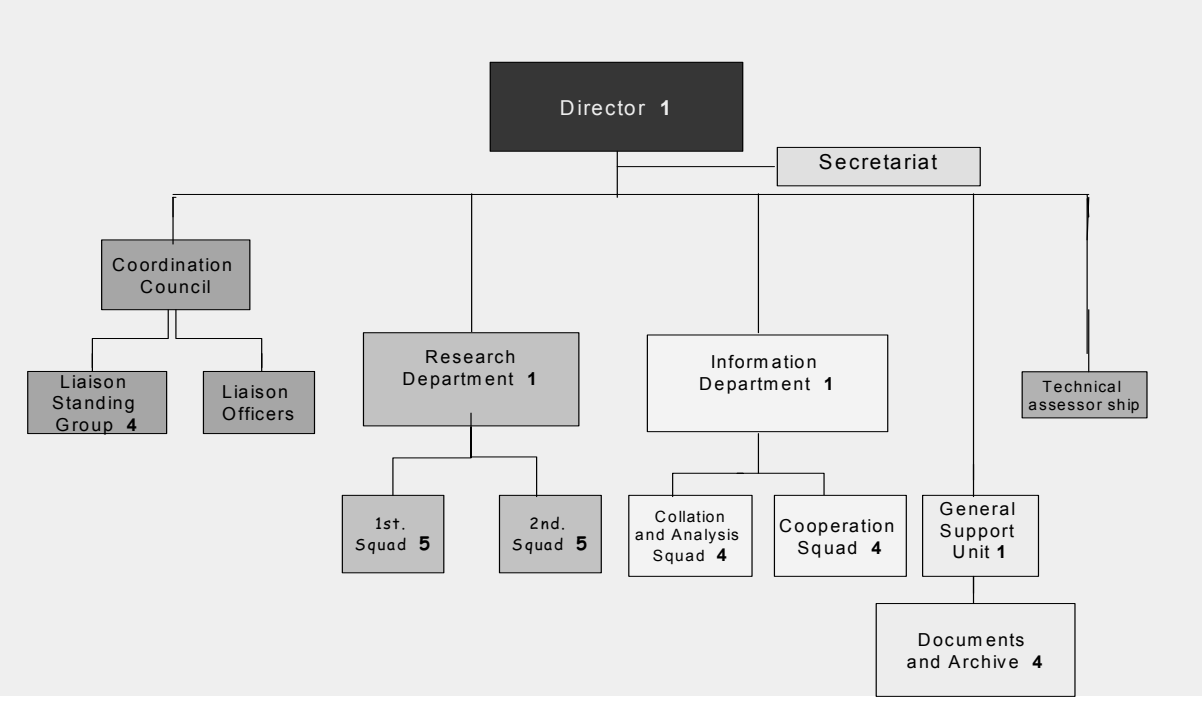
240. Within the FIU the information department receives the STRs faxed from the DCIAP. Batched CTRs sent periodically from the IGAE (since 1 January 2006 the ASAE) and from the General Inspectorate for Gambling and from DGAIEC are also received by the Information section. These reports are added to the database in the FIU.

241. Information on the STRs and CTRs received are analysed against information collected by the FIU and against the criminal databases available within the FIU. Each STR / investigation file undergoes the following research:

- The FIU collects all information available on the suspected case of ML
- The cell carries out an evaluation of the information contained in the declaration of suspicions
- From the available legal databases, the "collation and analysis" group carries out the collation of information which it contain
- This information is then analyzed starting from crossing between the various collected information and the result of the investigations carried out by the UIF

242. If the initial research validates the suspicion of ML, then the department creates an investigation file which it transmits to the Research Section. The Research Section will hold the file as any further research continues before communicate the results of the investigation to the DCIAP who then have the responsibility of checking whether an enquiry has been opened or command its opening when necessary. At the FIU level, the STR takes one or two days prior to be sent to the investigator of the Research Squad (at the FIU) depending on the amount of data in the Analysis Squad.

Structure of the FIU



The FIU is organised into 4 main sections (see table above)

- The command group: Including the Director, Secretariat and the financial experts
- The Information Section
- The Research Section
- The co-ordination council: In charge of the relations foreign and two groups of investigation.

Analysis and dissemination of STRs:

243. The FIU can interrogate a number of police intelligence sources to develop STR information. These include direct access to the files of police information, at national level, SIIC (Integrated System of Criminal Information) and databases that provide access to applications that provide information related to legal persons, civil identification, vehicles register and prisoners' information as well as Schengen and Interpol information sources. In addition the FIU has access to a number of open source databases such as Dunn & Bradstreet and MOPE to research STRs and consider interrogated them as part of a further investigation.

244. The FIU has indirect access to a number of data sources and is able to request background data; such as any vehicle registration. This information is available to the FIU. It was, however, noted by the team that, for the moment, all the data held by the general direction of the registers and the notaries of the Ministry for Justice have not yet been placed on a computer database.

245. The FIU is able to research and investigate utilising a number of techniques. As a law enforcement FIU, a number of convert or overt investigative techniques can be directly utilised by the FIU staff. These can include surveillance and other techniques of researching information. Any

covert surveillance employed requires the authorisation of the Examining Magistrate who controls the need and the proportionality of the attacks to the personal freedoms during any investigation.

246. The FIU utilises a Liaison Standing Group (see diagram above). Within this structure reciprocal access to the databases of the Customs (DGAIEC), of the Taxes (DGI) and of the Criminal Police can occur; this model of co-operation was provided for in Decree-Law 96/2003. The access, which is of the exclusive responsibility of the officials from the respective agencies holding the information and, is only possible if a criminal investigation is taking place, during the enquiry phase, and the aims of the investigation are into ML offences and serious tax-related offences. The FIU also relies on indirect access to the data bases of the Social Security through requests made to the co-ordination council.

247. On completion of any initial research (which may include some investigation by serving officers within the FIU) the FIU will take a decision on whether to disseminate the STR to an investigative agency for further inquiry. In 2005, 55% of STRs that were further researched by the Research Squad/FIU were disseminated for investigation (up from 30% in 2004). Although the FIU has the ability to commence an investigation it will entrust the investigation, according to the nature of the suspected infringement, to one of the three investigative agencies:

- **The Central Department for the Combating of Terrorism** (*Direcção Central de Combate ao Banditismo – DCCB*),
- **The Central Department for Drugs Trafficking Investigation** (*Direcção Central de Investigação do Tráfico de Estupefacientes - DCITE*),
- **The Central Department for the Investigation of Corruption and Economic and Financial Crime** (*Direcção Central de Investigação da Corrupção e Criminalidade Económica – DCICCEF*).

248. If a customs crime is suspected the DCIAP can forward a case file for investigation to **The General Directorate of Customs and Special Tax on Consumption** (*Direcção-Geral das Alfândegas e dos Impostos Especiais sobre o Consumo – DGAIEC)*. Generally, according to the geographical location of the suspected ML offence the DCIAP can also disseminate an STR to a territorial unit of the Criminal Police.

249. The FIU has had statutory autonomy since December 2002 (under Decree Law 304/2002) and it is independent in most of its functions. However, all entities obliged by law 11/2004 to make STRs send their information directly to the AG office and not to the FIU. The responsibility for the reception of STRs is of the AG who delegates in the DCIAP to undertake an initial assessment. The Criminal Police, where the FIU is integrated, assists the Public Prosecution which is directed by the AG, in the criminal proceedings that they are supposed to lead according to the law. The Public Prosecution directed by the AG and the Criminal Police form jointly a functional structure in criminal investigation. The DCIAP is a separate office from the FIU with separate management structure.

250. At any time in the investigation, the DCIAP or the FIU can request information from the reporting financial or non-financial entity directly. This, in practice appears to occur also informally. The FIU can also obtain, upon its request, information from the financial entities and DNFBPs, as provided for in the description of its competences (Organic Law of the Criminal Police, Article 33-A).

251. Although held by the principle of legality of the continuations guaranteed by the Portuguese Constitution (Article 219) the evaluation team thought, it relevant to identify the possibility available to, in theory, the AG can block an STR and not transmit it to the FIU for purposes of research and investigation. However, the team verified that, in practice, all the STRs where sent to the FIU for analysis and dissemination. It was noted that the Public Prosecution is ultimately the body with

ability to open criminal enquiries and responsible for the direction of the investigation. The Criminal Police may investigate only through delegation of the Public Prosecution.

252. The FIU exchanges information related to ML cases at the national and international level with other FIUs. However, the FIU is not qualified to develop or conduct investigations into the prevention of the financing of terrorism since this is not a competence of the FIU and pertains to the Criminal Police. This field is exclusively reserved for the DCCB.

Annual Report:

253. Each year, the FIU publishes an annual report that contains information on the achievements of the FIU, its mission, its resources and the process and procedures for receiving and disseminating STRs. The report also publishes statistical data on the activity of the FIU during the year:

- Number of received declarations
- Number of treated files, origins and destinations of the files.
- Proposals of stays of execution.
- Mechanisms involved in the suspicious transactions.
- Amounts of the transactions.
- Countries involved in the transaction.

254. For the financial institutions and other reporting entities, the FIU draws attention to those establishments required to have procedures in place to prevent and detect ML and to submit STRs. The report is forwarded to all financial entities supervised by the BdP, ISP and CMVM as well as a number of DNFBP supervisors, oversight bodies and trade associations and also some supervised authorities, such as Banks and insurance companies.

Structure of the FIU within the Criminal Police

255. The location of the FIU within the Criminal Police enables them to communicate directly with the other investigative services. The FIU is able to exchange information with the other components of the national direction of the Criminal Police, and can also task operational agencies to investigate a case of ML.

256. Under Article 33-A of Organic Law of the Criminal Police, the FIU reports to the DCIAP the result of the analysis of STRs and reports also to the other Central Departments of the Criminal Police according to the underlying offence being investigated. Knowledge of the dissemination of the files from FIU, to the investigation agencies must pass through the DCIAP which can require further information of the FIU. The decision of the DCIAP is always depending on the evidence about the facts under investigation and is governed by the legality principle under which the DCIAP acts. Furthermore the great majority of ML investigations originate from predicate offences, such as drug trafficking or tax related offences.

257. Although integrated into the Criminal Police, the financial information in the FIU has an autonomous statute. The framework of investigation envisaged by Article 4 of the organic law of the Portuguese Criminal Police enables them to have capacities of investigation and therefore, of an operational autonomy. Nevertheless, the evaluation team noted that the FIU remains, for the administrative perspective, hierarchically subordinate to the national direction of the Criminal Police and noted that its Director is evaluated by the National director of the Criminal Police.

258. All the information held by the FIU is entered onto a secure database whose access is authorized only to the members of the FIU. All information relating to the reports received can only be disseminated, in accordance with the law of criminal investigation, to the authorities with competence to investigate ML and TF.

259. Exchanges of information between the FIU and the other FIU occur within the "*Declaration of mission*" of Egmont Group and are carried out via Egmont Secure Web. The FIU has established MOUs with the FIUs from Albania, Andorra, Argentina, Australia, Belgium, Bolivia, Brazil, Canada, Colombia, France, Guernsey, Ireland, Israel, Monaco, Poland, Romania, Russia, South Korea, Spain, Thailand, Ukraine and Venezuela.

260. The FIU maintains relations with its foreign counterparts and within the framework of its investigations; the FIU receives and sends many requests to third countries. A team within the FIU is especially dedicated to international co-operation. In 2005, this team of financial information transmitted 173 requests and answered 104 requests. Additionally, the FIU takes part, within the framework of a European "PHARE" program, in training courses with the other European FIUs. The Criminal Investigation Department also provides a structure for the central service for international co-operation and the judicial police employed within the FIU.

Resources[24]

261. The FIU, as a sub section of a wider police organisation depends on the general direction of the Criminal Police. There are 28 officials; 21 Investigators, 7 Assistant Specialists and 1 Senior Specialist. The investigators in the FIU are recruited by the general management staff of the Criminal Investigation Department. They must have 5 years of professional experience in a unit of criminal investigation. If its field of action is financial, the FIU has a panel of skilled investigators diversified, capable of investigating on all the likely ML predicate crimes.

262. The personnel of the FIU undertake several types of training. From its position under the umbrella of the Criminal Investigation Department, the members of the FIU profit from the continuous training courses exempted by the ISPJCC – Institute of Criminal Police and Criminal Sciences. Moreover, the investigators of the unit were trained with the use of software of criminal analysis (Analyst Notebook) and take part in specific trainings in the field tax, commercial, financial and banking. In 2005, the FIU took part in a common training (with four European /FIU) within the framework of the EU "AGEIS" program.

Statistics

263. In their annual report, the FIU provides statistical data as the number of STRs received, their source, the type of offences concerned, the numbers of files transmitted to the investigative departments of the Criminal police or to other authorities.

STRs and CTRs Received by Sector – 2002 -2005

Reporting Entities	2002			2003			2004			2005		
	STR	CTR	TOT	STR	CTR	TOTAL	STR	CTR	TOTAL	STR	CTR	TOTAL
Credit institutions	162		162	182		182	315		315	317		317
Banco do Portugal								61	61		191	191
Insurance Co	1		1							3		3
CMVM											31	31
Bureaux de change	3		3									0
Registries					1	1						0
Notaries					9	9		155	155		4	4
Traders in high value goods					10	10		11	11		21	21
General								9.195	9.195		44,499	44,499

[24] As related to Recommendation 30; see Section 7.1 for the compliance rating for this Recommendation

Inspectorate for Gambling												
DGAIEC					50	50		78	78		358	358
ASAE (IGAE)											4,058	4,058
Betting & Lotteries											2	2
Others		123	123		150	150		46	46	10	1	11
TOTAL	**166**	**123**	**289**	**182**	**220**	**402**	**315**	**9.546**	**9.861**	**330**	**49.165**	**49,495**

264. The FIU annual report includes statistics on received STRs and CTRs that are also divided and subdivided according to the offences, the origin of the reports (financial, non-financial, supervising or regulatory entities), the number of reported transactions, the number of requests sent to and received by FIU's counterparts, the number of proposed stays of execution, the mechanisms used in the alleged suspicious operation and the respective amounts and the countries involved. The FIU additionally counts and registers all files sent for investigation in other departments, with the indication, where possible, of the predicate offence.

2.5.2 Recommendations and Comments

265. Although it was clear to the evaluation team that the receipt and transmission of STRs by the DCIAP allows for the investigating and raising a pre-criminal preceding file which can then be monitored and received and passed onwards from the DCIAP, this does produce an additional layer of bureaucracy. This does, however, allow for the DCIAP to examine the STR for provisional measures and present it before a judge immediately – if, for example, freezing action is required.

266. In addition, given that the vast majority of reports made to the FIU are received as CTRs then a premium should be placed on ensuring that all this information is received and stored in the FIU promptly in case it might link to an existing inquiry or STR. The establishment of electronic reporting links between CTRs and STRs should continue to be explored.

267. The FIU does not have the formal authority to conduct detailed research and investigation on cases of TF (although in practice all the cases reported of TF have been registered in the FIU (1 STR in 2003 and 4 cases in 2004). TF is a predicate offence for ML and therefore STRs (that are either directly suspected of being related to TF or after analysis are suspected of being related to TF) are registered by the FIU and disseminated to the competent department of the Criminal Police although not researched or investigated within the FIU. A more formal arrangement for the receipt, analysis and dissemination of STRs and other relevant information concerning suspected TF activities is required.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**LC**	• The FIU is not the recognised competent authority to receive and analyse STRs in relation to TF.

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30 and 32).

2.6.1 Description and Analysis

Recommendation 27:

268. Portugal separates those authorities in charge of investigations and the legal authorities in charge of the judgement of criminal offences. The authorities in charge of investigation are independent from any influence from the executive and operate independently. The authorities in charge of investigations are mainly the responsibility of three police forces:

- The Criminal Police;
- The Republican National Guard (GNR), police force to military statute;
- The Police force of Public Safety.

269. The Criminal Police operates under the authority of the Public Prosecution service, which is directed by the AG, the highest-ranking magistrate in the Portuguese legal system. The Criminal Police has the responsibility to initiate a procedure of investigation concerning all the penal offences that come to its knowledge (except in the case where continuation is subordinated to the deposit of a preliminary complaint by the victim or to the exercise of preliminary private continuations in front of the civil jurisdictions).

270. In addition, the Criminal Police can also conduct criminal investigations that have been delegated by any Public Prosecutor. For this purpose, the Public Prosecution has the central direction of the criminal investigations. This direction is on criminal files (criminal and correctional) and can direct the investigations carried out by specialised services of investigation. Within the Criminal Police three Central Departments carry out investigations on:

- For suspected terrorism offences (*Direcção Central de Combate ao Banditismo - DCCB*),
- For the traffic of narcotics (*Direcção Central de Investigação do Tráfico do Estupefacientes - DCITE*),
- For general economic and financial criminality (*Direcção Central de Investigação da Corrupção e Criminalidade Económica e Financeira - DCICCEF).*

271. These Departments of the Criminal Police have investigators with experience in different fields of investigation. ML investigations are generally entrusted to the DCICCEF except when the infringement is suspected to be TF, and then the investigation is entrusted to the DCCB and, in the case of the trafficking of narcotics, with the DCITE. Each one has investigators specialised for examining ML offences. The DCICCEF is a Department unit of investigation especially dedicated to the examination of complex economic and financial affairs. Moreover, the Criminal Police also has a service specialised in the accountancy and financial comprised of 15 people that can provide specialist assistance to investigations on request.

272. The Public Prosecution is charged with the direction of the investigation of the penal infringements and retains the primacy on the investigation. Within the framework of their investigations, the members of the Criminal Police can use a panel of various "special investigation techniques" subjected to the control and the authorization of the Examining Magistrate (the magistrate has 48 hours to return his ordinance). Pursuant to the Law 11/2004, the Public Prosecution can stay a suspected transaction. Pursuant to the Law 144/99, the Public Prosecution can suspend a customs procedure with an aim of facilitating, within the framework of a police co-operation with an EU non-member state, the investigations on people suspected of having committed an offence. Law 5/2002 allows the judiciary authorities, for serious offences like ML or TF, to

control bank accounts, to obtain in the 24 hours a report on banking operations or, to use the wiring for sound of places or the video surveillance.

273. At the time of the on-site visit the DCICCEF had 15 ML cases ongoing, 21 tax related, 11 involved fraud and forgery and were sent 19 cases from the FIU (40% of the current cases under investigation).

274. Law 101/2001 allows the undercover infiltration of criminal networks and within the framework of the international and European legal co-operation, governed by the Laws of 144/99 and Law 65/2003, it is possible to constitute joint investigation teams for files to international character and to deliver, with a Member State of the EU, a European Arrest Warrant (EAW).

275. The investigation of ML cases can sometime be complex and lengthy procedures that require dedicated and specialist investigators to prepare and prosecute cases. Thorough financial investigations are likely to lead the DCIAP to detect predicated offences; these predicate offences and the ML offences are both forwarded and recorded as the prosecution according to the principle of the legality. The DCIAP currently does the tracking investigation files that may have begun as a ML investigation, or may contain a ML charge on the file (see comments in relation to statistics under Recommendations to 1 and 2).

276. The evaluation team noted that on retrospective examination of case files investigative authorities were able to identify that in between 2003 and 2005, 257 cases were sent for investigation; that 208 enquiries took place (this number reflects the untypical and derived from indiscriminate reports by notaries following the enter into force of Law 11/2004; the real number is lower as mentioned in Table of page 38 Recommendation 2); 12 cases were heard in court and 12 people were convicted (see table under Recommendations 1 and 2). Although cases reported in one year may not necessarily lead to a court case of conviction until a future statistical period, it would appear that from the cases sent for investigation that the vast majority lead to inquiries. However, only a minority of cases are eventually heard in court. The cases that are heard have a very high conviction rate. From this sample of statistics the evaluation team questioned why a relatively high number of inquiries lead only to small number of cases heard in court.

Additional Elements

277. Law 5/2002 establishes a special regime for evidence gathering, in relation to a catalogue of serious offences, among which are ML and TF. Such a regime provides for the possibility of monitoring bank accounts, requiring the credit institution to report any operation within 24 hours. It is also possible, in the investigation and for the purpose of obtaining evidence, to conduct intrusive surveillance with no prior consent from the suspect. Law 101/2001 establishes a regime for undercover operations for the purposes of prevention and criminal investigation, as far as ML and TF are concerned, among other offences. There are specialised groups gathered under a Department of the Criminal Police (Central Department for Prevention and Technical Support), that hold the necessary competences to conduct undercover operations.

278. As previously mentioned, the Law on International Judicial Co-operation in Criminal Matters, Law 144/99, establishes the regime for controlled deliveries, interception of communications and joint investigation teams. Law 65/2003, of, enacted the legal regime of the European Arrest Warrant (EAW) applicable to ML and TF offences.

279. There are permanent groups for the investigation of ML and TF spread over the various Departments of the Criminal Police, due to the competences of these Departments. The Criminal Police counts on a Support Department (Department for Financial and Accountancy Expertise) that provides co-operation in terms of both accountancy and financial expertise and opinions. This Department is an autonomous one at the technical and scientific levels.

Recommendation 28:

280. The services of Criminal Police can obtain, by the means of a legal request, all the documents useful for an investigation to determine if there has been a case of ML. In the same way, Laws 11/2004 and 5/2002 carries the obligation to any person (natural or legal) to assist the service of Criminal Police in an enquiry. In the case of a refusal, this Criminal Police can carry out a search and a seizure of the documents required.

281. According to Law 5/2002 by order of the judicial authority, the Criminal Police can request financial and credit institutions information and support documents that are relevant for the investigation. These entities have to provide the documents within the time frames provided for in the Law 5/2002 (Article 3 (2)); 5 days for electronically stored information or 30 days for data electronically unavailable. If that request is not fulfilled, the judicial authority can order the seizure of the mentioned documents (Article 3 (3)).

282. Law 11/2004, Article 9, refers to the duty to cooperate of all the entities subject to this law, which includes the obligation to provide all the assistance required by the judicial authorities or by the authority with competence to verify compliance with the duties in the mentioned law, including the provision of all information and all the documents required by the investigating authority.

283. The Code of Criminal Procedure describes the regimes for searches (Articles 174 to 177) and seizures (Articles 178 to 186) and it establishes the details in relation to seizures from banking institutions (Article 181). This regime extends to seizures of securities, valuables and amounts that are kept in financial institutions.

284. The Criminal Police can take witness statements during the investigations that are assigned by the Public Prosecution. Any person duly summoned, in accordance with the criminal procedural law (Articles 111 to 117), has the duty to appear at the indicated time and place, otherwise they will be subject to the sanctions provided for in Article 116 of the Code of Criminal Procedure, in accordance with Article 10 of the Organic Law of the Criminal Police (Decree-Law 275-A/2000). The Criminal Police are entitled to question defendants, except for the first judicial questioning of a detained defendant, which is a competence of the Criminal Investigation Judge.

285. To fulfil its role the DCIAP has 8 senior Public Prosecutors (at the present 12) assisted by a technical unit (NAT) with experts in economic and financial matters. According to the applicable Organic Law, the Criminal Police has technical independence for the investigation offences for which it is responsible, acting under the direction of and subordinate to the judicial authority, without prejudice to its own hierarchic organisation. It is also administratively and financially independent.

286. The Portuguese Criminal Police is functionally subordinate to the Public Prosecution. According to the principle of separation of the responsibilities, the Criminal Police cannot be subject to influences or undue pressures from the legislative or executive power. On a structural level, the Criminal Police selects the specialists from investigation services that may be required. This guarantees effective and swift process of the investigation procedure. The staff of the Criminal Police are subject to all duties applicable to civil servants in general, such as impartiality, and also to professional secrecy and the secrecy of the investigation and instruction. These are protected by the application of criminal penalties.

287. The members of the Portuguese Criminal Investigation Department benefit from training courses provided by the ISPJCC (*Instituto Superior de Polícia Judiciária e Ciências Criminais*). The ISPJCC organises seminars relating to financial crime which supplement the initial training of the investigators. Within this framework, specific training on ML is included. They relate to the legal, national and international framework, the identification of general patterns of ML and, finally, on the use of the ML offence to go up with predicate offences. The ISPJCC stresses penal procedure measures such as the freezing and the seizure of the funds.

288. In 2006, the ISPJCC planned 30 hours of courses to ML; the courses are intended to train around 35 participants. Magistrates also take part in the mixed formations of the Criminal Investigation Department organized jointly by the ISPJCC and the centre of legal studies. However, the Ministry for Justice probably did not publish plates or booklets relating to ML at the time of the incorporation of ML in the Criminal Code in 2004.

Additional Elements

289. Judges and Public Prosecutors are subject to continuing training delivered by the Centre for Judicial Studies (the entity responsible for the training of magistrates). There are regular modules on economic and financial crime, which include ML and terrorism. All judges that would examine ML or TF cases would be specialists in cases of serious criminality. The evaluation team noted that, as the judiciary are independent of the government, it is up to the individual judge to determine if he or she requires training. The absence of magistrates specialised in ML could explain the low number of ML offences prosecuted, bearing in mind the statistics provided.

290. The DCIAP is able to provide statistical data relating to the procedures and judgments for ML - for seizures and confiscations pronounced within this framework.

2.6.2 Recommendations and Comments

291. The DCIAP should keep and track more detailed statistics on ML cases (even when the case file contains other charges). This would assist the Portuguese authorities in assessing the effectiveness of their ML and TF investigations. Whilst overall a reasonable amount of law enforcement resources are available to investigate ML very few cases are heard before the courts. A more detailed assessment of why this might be the case would assist the overall AML/CFT framework and may assist in allowing a larger number of prosecutions.

292. A focus on ML – possibly an increased emphasis in the national law enforcement strategy – together with re enforced awareness by potential used of the ML offence as a means of deterring financial crime, prosecutors and the regulatory authorities (see Recommendation 31) may also assist in ensuring the entire AML/CFT mechanism can deliver more results that assist law enforcement with the successful charging and prosecution of ML cases.

2.6.3 Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	LC	• There are relatively few ML prosecutions initiated. This raises effectiveness issues under the requirement of recommendation 27 to ensure that ML or TF cases are properly investigated [issue of effectiveness].
R.28	C	This Recommendation is fully met.

2.7 Cross Border Declaration or Disclosure (SR.IX and R.32)

2.7.1 Description and analysis

Special Recommendation IX

Authority to obtain further information and restrain currency or bearer negotiable instruments

Background information

293. The General Directorate for Customs and Special Taxes on Consumption (DGAIEC), under the Ministry of Finance, are responsible for monitoring for economic and excise purposes the national territory and EC borders of Portugal. The provisions of Decree-Law 360/99 Article 2 and Decree-Law 295/2003 Articles 19 and 20, provide the DGAIEC the authority to apply procedures and control entry and, exit points of goods within the national territory. The DGAIEC can carry out control, checks and inspections, so as to ensure the correct application of customs, taxes and foreign exchange regulations. The DGAIEC has responsibility:

- To control the goods and all the means of transport which carry them and, in particular, to detect and control trans border physical transport of species or negotiable instruments to the carriers;
- To carry out investigations to apply customs legislation and all the other provisions applicable to the movement of goods;
- To prevent and repress the tax and customs violations relating to the frauds and the illicit traffic in hazardous products, chemical precursors and all other products subjected to restrictions or a prohibition; of immediate assessment of an investigations carrying of the tax offences where the amount is lower than €500,000 or for the investigations (of where the amount is higher) which do not present a complex character, or are not carried out in an organised manner or involving international matters; and punishable by administrative sanctions.

The disclosure system

294. Decree-Law 295/2003 applies specifically to the detection of the physical cross-border transportation of currency, bearer negotiable instruments and unwrought gold as well as foreign exchange transactions. Articles 19 and 20 require the declaration of all trans border physical transfers of cash, of travellers cheques, bearer securities and currencies or gold ingots whose total amount is equal to or higher than €12,500.

295. Persons, residents or non resident, in Portugal who carry with them when leaving or entering the national territory bank notes or coins, travellers' cheques or bearer securities in any currency, as well as gold coins, ingots or unwrought gold, whose overall amount is €12,500 or above, should when requested, disclose this fact to the customs authorities. The disclosure collected by the customs includes:

- passenger identity of the passenger (name, addresses, nationality);
- destination and origin of the passenger;
- the source of the funds, securities or assets.

296. If the passenger withdraws himself from the obligation to disclose cash bearer, negotiable instruments or unwrought gold that they are carrying, they are subjected to a customs investigation which will allow the customs agents to obtain the identities of the contravener, the documents or title of goods or funds in order to be able to determine their origin and their destination and purpose of carrying the funds, securities or assets.

297. Customs authorities have the power to carry out inquiries, to fulfil their control duties, inspections of incoming and outgoing goods, and means of transport within the national territory, as well as the prevention and repression of customs infringements and tax evasion and fraud and illicit trafficking, pursuant to the Organic Law of the DGAIEC - Decree-Law 360/99 Article 2 b), as well as to the Code of Community's Customs, Article 4 (14). Underlying this monitoring may be criteria of risk analysis, individualised information or other measures determining each situation. Where the movement of means of payment or bearer instruments is linked to the commission of customs-related offence, of an amount of €500,000 or above, and with special complexity, or might relate to a ML or TF offence, the responsibility for the investigation is up to the Criminal Police, pursuant to the provisions of Decree-Law 275-A/2000 Article 5 (2) and Decree-Law 304/2002.

298. Where the movement of means of payment is linked to illicit acts of a customs nature, of an amount up to of €500,000 it is up to the Customs Administration to initiate enquiries. Within the framework of the adequate criminal or administrative procedure according to the Organic Law and to the Organisation and Functioning Regulation of the DGAIEC, passed by Decree-Order 705-A/2000, amended by Decree-Order 772/2002 and Decree-Order 191/2003, and Decree-Order 1067/2004 they apply appropriate criminal procedure legislation.

Powers of competent authorities upon discovery of a false declaration and information collected and retained in the case of a false declaration

299. Upon discovery of a false declaration to the Customs official of currency, bearer negotiable instruments or unwrought gold, carried by a resident or a non resident requested in accordance with Decree-Law 295/2003, Article 19 (3), the Customs authorities can legally require identification of both the carrier, as well as those in connection with the assets, in order to find out about the origin, destination and purpose of the funds, securities or assets with the view to applying a customs control procedure or criminal proceedings, as necessary.

300. Information obtained by Customs at the borders concerning the movement of funds, bearer negotiable instruments or unwrought gold, according to the procedures referred to in Articles 19 and 20 of Decree-Law 295/2003, are reported on a quarterly basis by the Directorate for Anti-Fraud Services/DGAIEC and to the FIU. If a transfer of funds declared or not, appears related to ML or TF an STR is made. Information which appears in it is recorded in the database of the Customs. This operation at the same time makes it possible to preserve the information in the disclosure and to send this electronically to the FIU.

Co-ordination amongst domestic competent authorities

301. At national level co-operation in this matter carried out in a formal way with the Criminal Police, pursuant to Decree-Law 93/2003 and to Protocol 22/2003. This occurs within the framework of the access and processing of tax-related data relevant for criminal investigation actions, as well as in pursuance of the Protocol established on 19 May 1997 concerning reinforcement of co-operation in the combat against economic-financial and tax related crime. Informal operational co-operation and information exchange is maintained between the National Republican Guard/Fiscal Group (*Brigada Fiscal*) and with the Borders and Aliens Authority (*Serviço de Estrangeiros e Fronteiras*).

International co-operation and assistance

302. International Customs co-operation between the Portuguese Customs Administration and foreign counterparts is divided into two main aspects: the EC's and those outside the EC. At the EC level, in multilateral terms, there are three essential legal instruments:

- The Council Regulation (EC) 515/97;

- The Convention that is based on Article K.3 of the EU Treaty, on the use of computer tools within the Customs scope and which was ratified by the Decree of the President of the Republic 129/99 with its current wording; and
- The Convention that is based on Article K.3 of the EU Treaty, on the mutual administrative assistance and co-operation amongst customs administrations ratified by the Decree of the President of the Republic 29/2004.

303. Additionally the Protocols of Co-operation and Mutual Administrative Assistance contained in the Association Agreements, as well as the Co-operation Agreements established by the Commission, on behalf of the EU, with several countries in Eastern Europe, Northern Africa and Middle East. Bilaterally, the "Declaration of Principles" of co-operation, recently signed between the DGAIEC and US Customs within the Container Security Initiative assists in the detection of smuggled goods in containers between the US and Portugal. Co-operation amongst customs services may involve exchanging of relevant data, includes personal data, with due respect for data protection as well as the execution of adequate actions on the request of foreign Customs and performed according to national law.

Sanctions for failing to make a declaration

304. Whoever fails to provide the requested information, commits an administrative offence punishable with a fine of €5,000 to €25,000 in the case of a natural person, and €2,000 to €10,000 in the case of a legal person, pursuant to Decree-Law 295/2003, Article 35. In addition, a person may also be committing a smuggling offence, provided for in Article 92 of the RGIT (Law 15/2001), punishable with up to three years' imprisonment or a fine up to 360 days, in case the goods that were the object of the offence amount to more than €25,000 if that person:

- Imports or exports, or by any means introduces or withdraws goods from the national territory without reporting them to the responsible Customs officer;
- Conceals or prevents any goods from being subject to the action of a Customs within the area of the Customs points or facilities directly controlled by the Customs Administration.

305. An attempted smuggling offence is always punishable, pursuant to Article 92 (2) of the RGIT. In case the goods that were object of the offence amount to a value equal or under than €25,000, the perpetrator may be punished by an administrative customs penalty with a fine of €150 to €150,000 (Articles 108 (1) and 92 of the RGIT). In this case DGAEIC would be the competent authority to conduct the proceedings and apply the sanction. The attempt is also punishable, according to Article 108 (2) of the mentioned law. Under the Criminal Code and Law 52/2003 ML and TF activities are punishable, as serious offences, as stated above in this Section.

306. If valuables are linked to ML or TF offences, they should be seized in view of the investigation of these offences, pursuant to the Code of Criminal Procedure, Article 178, which provides for the following: (1) - "*Objects shall be seized that have served or that were meant to serve for the commission of an offence or that constitute the proceeds, profit, price or reward of it, as well as all the objects that may have been left behind by the offender at the crime scene or any other object that may serve as evidence*."

307. If discovered, an unusual cross-border movement of gold, precious metals or precious stones, both incoming or outgoing or moving within the national territory, the procedure consists in notifying and exchanging information, as appropriate, with the Customs authorities of the countries with links to the transportation of the goods. In this way, it is possible to carry out physical and document checks, with specific purposes, the follow-up of the goods until their final destination or the carrying out of inspection or investigation, joint or not, within the respective competences. If these movements may be linked to ML or TF situations, it is compulsory to report it to the Public Prosecutor, pursuant to the Code of Criminal Procedure, Article 242.

Additional Elements

308. The Anti-Fraud Service of the DGAIEC is in the process of implementing a system to record of movements of currency or other means of payment incoming the national territory. The future entry into force of EC Regulation 1889/2005 on control of physical cross-border transportation of currency and bearer negotiable instruments will conduct in due time to the establishment of a mandatory declaration system, applicable to the transport of cash over €10,000 as well as to the necessary revision of the legal regime in force at the present.

309. The information from the record of movements of currency or other means of payment incoming the national territory is only available to officials posted at the Anti-Fraud Service of the DGAIEC, both at the central level and at the peripheral level (Customs).

Statistics:

Cash Reported and Seized at Portugal's Borders

Reporting of cash at the borders notified to FIU		
2003:	**2004**	**2005**
50	78	358

Seizure of currency by the Portuguese Customs		
2002	**2003**	**2004**
USD 324,623.32 Iraqi dinars 6,000,000.00		USD 512,790.00 360,000.00 forged euros

310. In addition from 1 January 2004 to 17 October 2005, a value of more than €1,090,826 of jewellery and precious stones were seized at Portugal's airports. In 2004 more than €500,000 was seized at Lisbon airport.

2.7.2 Recommendations and Comments

311. Portugal should collect more detailed statistics on the amount of cross border cash, bearer negotiable instruments or unwrought gold seized at ports of entry and exit.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**LC**	• There are insufficient statistics upon which to assess the efficiency of the measures in place [issue of effectiveness].

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

3.1 Risk of ML or TF

312. Pursuant to the provisions of Article 13 of Law 11/2004, AML measures are applied without restriction to designated entities in the financial sector. The measures apply to all such institutions with a registered office in Portugal, along with branches established in Portugal and to entities belonging to the postal service, in so far as they provide financial services. The way preventive measures are applied in each of these areas of the financial sector is described in Section II of Law 11/2004. With the exception of certain life insurance transactions (covered in Article 16 of Law 11/2004), Portugal does not provide the option of a risk-based approach as permitted within the framework of the 40 Recommendations and 9 Special Recommendations.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

313. Law 11/2004 requires that all entities within its scope to require identification for customers and their representatives (see Articles 2 and 3). The financial entities covered by the Law 11/2004 (under Article 13) are:

- Credit institutions (e.g. banks, savings banks, the *Caixa Central de Crédito Agrícola Mútuo* (central mutual agricultural credit bank) and *Caixas de Crédito Agrícola Mútuo* (mutual agricultural credit banks),
- Credit financial institutions,
- Investment companies,
- Financial leasing companies,
- Factoring companies,
- Credit purchase financing companies,
- Mutual guarantee companies and electronic money institutions - see Article 3 of the Decree Law 298/92).
- Investment firms (e.g. dealers, brokers, foreign exchange or money market mediating companies, and wealth management companies) and other financial companies (investment fund management companies, credit card issuing or management companies, regional development companies, exchange offices and credit securitisation management companies - see Articles 6 and 199-A of the Decree Law 298/92);
- Insurance companies carrying out activities in the area of "life insurance";
- Pension fund management companies;
- Credit securitisation companies;
- Venture capital companies;
- Venture capital funds management or marketing entities;
- Collective investment entities marketing their units with registered office in Portugal;
- Branches established in Portugal of the abovementioned entities having their head office abroad and offshore branches;
- Entities entrusted with the postal service, in so far as they provide financial services (at present only the Portuguese postal service, the CTT - *Correios de Portugal*).

314. Credit institutions, investment firms and other financial companies are also subject to BdP regulations, specifically BdP Instruction 26/2005 on ML. Insurance companies within the area of life insurance and pension fund management companies are subject to ISP Regulatory Standard 10/2005-R. Financial entities which carry out financial intermediation activities in securities are also subject

to the Securities Code (CdVM) and CMVM Regulation 12/2000. Theses instructions, regulations and notices are mandatory and are issued under authorisation of the law attributing regulatory powers. The evaluation team considered the instructions, regulations and notices were not primary or secondary law, but could be considered secondary legislation or *other enforceable means* according to the Methodology. Securitisation Companies are subject to Decree-Law 453/99 and Venture Capital Companies are subject to Decree-Law 319/2002 and to CMVM Regulation 1/2006.

Recommendation 5

Anonymous accounts and accounts in fictitious names

315. There is no explicit provision in Portuguese legislation that prohibits anonymous accounts and accounts held in fictitious names. Articles 14 and 15 (in connection with Article 13) of Law 11/2004 require the identification of the customer when opening a bank account. As a result of this requirement, it is impossible for financial institutions to open an anonymous account or an account in a fictitious name. BdP Notice 11/2005 contains the identification requirements that must be fulfilled when opening a bank deposit account.

316. Numbered accounts may exist within an individual financial institution in order to protect the identity of individual customers from being openly known to all bank staff. However, it is always be possible for the financial institution (formally and materially) to identify the account holder and fulfil their AML/CFT identification obligations. The customer's information is available to the AML/CFT compliance officer, other appropriate staff and competent authorities. Commercial banks and savings banks indicated to the evaluation team that these types of accounts were insignificant in number.

Account opening and CDD

317. Article 15 of Law 11/2004 requires identification of the customer when entering into a business relationship, when opening a deposit account or savings account, when providing safe custody service or investments services for securities, or, when issuing insurance policies or managing pension schemes. Identification is also required whenever the financial institution carries out occasional transactions in an amount exceeding €12,500, whether the transaction occurs in a single operation or is linked through a series of transactions (Article 3.3).

318. Article 3.5 of law 11/2004 requires identification in the case of operations, whatever the amount involved, that might to be related to ML offences on the basis of specific features of the transaction, such as its type, complexity, unusual character in the context of the customer's activity, the amounts involved, the frequency, the economic situation of those involved or the means of payment used. In addition, Article 17 of law 11/2004 requires the identification of the parties involved in operations connected with a country or territory considered as non-cooperative in virtue of non-compliance with the AML international standards, irrespective of the nature or amount of those operations.

319. Credit institutions, investment firms, other financial companies and life insurance providers are required to comply with identification when establishing the business relationship (Article 3.1 of BdP Instruction 26/2005 and Article 3.1 ISP Regulatory Standard 10/2005, respectively), in occasional transactions over €12,500 (Article 3.2 of BdP Instruction 26/2005 and Article 3.2 of ISP Regulatory Standard 10/05) and in cases of suspected ML (Article 3.3 of BdP Instruction 26/2005 and Article 3.3 of ISP Regulatory Standard 10/05). Within the securities sector, companies are also obliged to follow the rules as set out in CMVM Regulation 12/2000-R (Article 36-B (1)) that stipulates what is necessary for registration of customers. This must contain, *inter alia*, the identification of the customer. In the securities sector as well, BdP Instruction 26/2005 is applicable to all financial intermediaries when they intermediate securities. There is no CMVM regulation applicable to those

entities under the supervision of CMVM that intermediate securities (but are not also supervised by the BdP).

Required CDD measures

320. Article 3 of Law 11/2004 requires that a valid document proving the identity, bearing a photograph where the name, the place and the date of birth are mentioned for proof of identity. There is nothing specific in law 11/2004 about supporting evidence required for address. For legal persons identity can be established by the presentation of a copy of the identification card of the legal person. When entering into a business relationship, the identification elements and the supporting evidence summarised in the table below:

Identification Requirements and Supporting Evidence for Financial Institutions in Portugal

IDENTIFICATION ELEMENTS	SUPPORTING EVIDENCE
Natural Persons	
full name and signature	**Residents** • identity card or any substitute accepted in Portuguese law • passport • authorisation to reside in Portugal **Non-resident** • passport • identity card or equivalent issued by a competent public authority, valid, with photograph and signature of the holder
date of birth	
place of birth	
nationality	
name of parents	(when not specified on another document) • civil registration certificate • equivalent (for non-nationals)
full address	• any document considered sufficient by financial entities • any action considered necessary to check the address
profession and employer	• professional card • wage receipt • any other supporting evidence
official posts held	No supporting evidence is required at the moment of the opening of the account, the declaration of the natural person being sufficient at this stage.
details of identification card: type, number, issuing authority and date	---
Legal Persons	
Business name	• commercial registration certificate • other official documentary evidence
Purpose	
Address of the head office	
Legal person identification number	• Identification card issued by *Registo Nacional de Pessoas Colectivas* (the National Register for Legal Persons) • equivalent (only for non-residents)
Identity of the holders of equities and voting rights of the legal person, equal to or higher than 25%	written declaration from the legal person containing the name or the business name of the holders

Identity of the holders of the management bodies of the legal persons	

321. Regulations and instructions for the banking, insurance and securities sectors have been approved by each of the relevant supervisory authorities. The regulations provide more detailed requirements for each sector about the type of documents that supervised financial institutions must require for each individual case. Articles 9 to 12 of the BdP Notice 11/2005 on the opening of bank deposit accounts set the identification requirements and the required procedures for verifying the identification for banks, saving banks and mutual agricultural credit banks. In addition, paragraphs 3.1 and 3.2 of the BdP Instruction 26/2005 on ML make the provisions of BdP Notice 11/2005 applicable to all financial entities whatever the nature of the business relationship: long-standing or occasional, face-to-face or non face-to-face.

322. Paragraphs 3.1 and 3.2 of the ISP Regulatory Standard 10/2005 (applicable to all life insurance companies and pension fund management companies) establish identification requirements in the insurance sector. When occasional transactions are undertaken — in a single operation or several operations that appear to be linked — equal to or higher than €12,500, identification and supporting evidence as indicated in the table above are required.

323. Financial entities are obliged to request all the information mentioned in the table above whenever there is an occasional transaction, whatever the amount, where there is a risk that the transaction may be related to ML or there is any kind of connection with a country or jurisdiction that is considered non-co-operative by virtue of non-compliance with international AML standards (Articles 3 (5) and 17 of Law 11/2004, paragraph 3.3 of BdP Instruction 26/2005 and ISP Regulatory Standard 10/2005-R).

324. In addition, Article 9 (3) and (4) of BdP Notice 11/2005 and paragraphs 3.1.2.1 and 3.1.2.2 of ISP Regulatory Standard 10/2005-R set up identification requirements the following specific categories of customers:

- **Individual entrepreneurs**: All the identification elements stipulated for natural persons should be obtained, as well as the legal person identification number or the taxpayer identification number, the business name, the address of the head office and the purpose of the business;
- **Limited liability individual enterprises or other collective centres of interest without legal personality** (such as condominiums of buildings submitted to the horizontal property and autonomous properties): All the identification data required for legal persons, duly adapted, should be obtained.[25]

325. Starting a business relationship and undertaking occasional transactions with a natural person normally presupposes presenting to financial entities a valid identification document issued by a competent public authority and containing the photograph and signature of the holder (Article 3(1) of Law 11/2004; paragraphs 3.1 and 3.2 of BdP Instruction 26/2005; Article 10(1) (a) of BdP Notice 11/2005; and paragraphs 3.1.1.1 and 3.2 of ISP Regulatory Standard,). Only the following exceptions to this rule are permitted:

- Where the customer of the financial entity is a minor without identification card or a substitute or an equivalent or without passport or authorisation to reside in Portugal, the supporting evidence may be the "birth bulletin", (*cédula pessoal*), the birth certificate or, in the case of non-nationals, an equivalent official document which should be presented by the person who has the legal right to sign on behalf of the minor (Article 10 (3) of BdP Notice, and paragraph 3.1.1.1b of ISP the Regulatory Standard,);

[25] This also applies to foreign trusts registered in the Madeira Free trade Zone.

- In cases of non face-to-face contracts in general, evidence can be in the form of a written declaration issued by a credit institution established in an EU member state or in a member of the FATF (where the person to be identified is already the holder of a bank deposit account) to be sent directly by the issuer to the financial entity (Articles 10 (4) and 12(b) of BdP Notice) and paragraph 3.1.1.2 of the ISP Regulatory Standard,).

In respect of the opening of deposit accounts, the following is also required:

- Proof by the customer relating to any information necessary for an account to be opened must be in the form of an original document or duly certified copy (Article 4(2) of BdP Notice);
- It is the duty of credit institutions to take all necessary steps to confirm the elements used for identification stipulated in Article 9 of the Notice, whenever the documents presented for the opening of a deposit account raise doubts as to their content, integrity, authenticity, validity, accuracy or completeness (Article 4(3) of BdP Notice,).

326. In the securities sector, Article 36.B.2 and 3 of CMVM Regulation 12/2000 set down the list of documents which make up the customer's records, requiring the financial intermediary to ensure the conformity of the record with the supporting documentation.

Identification of legal persons:

327. Article 3 (1) and Article 15 of the Law 11/2004 impose a duty of identification for customers and their representatives. Paragraphs 3 and 4.2 of BdP Instruction 26/2005 and the ISP Regulatory Standard contain the documents required to verify the identity of the person who acts on behalf of the legal person. The requirement to check documentation that gives a natural person the right to be represented by a legal person is provided in Article 2 of BdP Notice 11/2005 which stipulates that confirmation of the truthfulness and adequacy of the instruments conferring the powers to represent and operate the accounts must take place.

328. *Trusts* can not be established under the Portuguese Law (see discussion under Recommendation 34) Foreign trusts, however, may enter into a business relationship (exclusively with financial institutions established in the Madeira Free Trade Zone, under Article 1 of Decree Law 149/94). Identification of trusts is not expressly mentioned in law or regulation but according to the interpretation of Portuguese authorities, they are considered as *"collective centres of interest without legal personality"* whose identification requirements are established in Article 9 (4) of BdP Notice 11/2005 and paragraph 3.1.2.2. of ISP Regulatory Standard 10-2005-R. AML Law and regulations explicitly require financial institutions to identify customers and their representatives. The trustee of a trust is considered to be the legal representative of the trust and as such is always identified in accordance with these provisions.

329. ISP Regulatory Standard 10/2005 requires the general identification and verification of the identity of the representative of the legal person, but does not make an explicit mention to the verification of the documents that provide them with the power to represent the natural person. However, the Civil Code requires as a general principle that powers of representation should be always verified. In addition both BdP and ISP regulations impose that the general identification and verification of the identity of the customer's representatives should be completed with all the necessary documents whenever justified. This requirement is also mentioned in article 36-B.2 of CMVM Regulation 12/2000.

330. In the framework of the start of a business relationship or an occasional transaction that requires identification and where the customer is a legal person, identification data must be obtained (Article 3 (1) of Law 11/2004; paragraphs 3.1 and 3.2 of the BdP Instruction, Articles 9 (2), 10 (2), 11 and 12 of BdP Notice 11/2005 and paragraphs 3.1.2 and 3.1.2.3 of the ISP Regulatory Standard,):

- The business name, purpose and address of the head office (to be checked against the commercial registration certificate (or other public documentary evidence);
- The legal person identification number (to be checked against the identification card issued by the national register of legal persons or, in the case of non-residents, through an equivalent document);
- The identity of those who hold equity and voting rights in the legal person equal to or more than 25% and identity of those in management bodies of legal persons (to be checked against a written declaration issued by the legal person itself, containing the name or designation of the holders).

331. This information must also be requested with regard to limited liability individual enterprises or other collective centres of interest without legal personality (BdP Notice 11/2005, Article 9 (4) and ISP Regulatory Standard, paragraph 3.1.2.2).

332. For face-to-face contracts with non-resident legal persons and non face-to-face contracts in general, it is acceptable to verify identification data by way of a written declaration issued by a credit institution established in an EU member state or jurisdiction that is a member of the FATF, where the person to be identified is already the holder of an account. This information must be sent directly by the issuer to the financial entity (BdP Notice 11/2005 Articles 10(4) and 12(b) and ISP Regulatory Standard, paragraph 3.1.2.4).

333. CMVM Regulation 12/2000 covers the representatives of legal persons (Article 36-B paragraph 1 h)) applicable to financial intermediaries in the securities sector. When the customer is a legal person, the records should also contain a copy of the document that gives authority to representatives to sign for the account (Article 36-B paragraph 2 d)). The financial intermediary is also required to keep a copy of the commercial registration certificate of the legal person, or equivalent, which includes the composition of the governing bodies with the identity and address of the administrators, or a copy of the registration in the national register for legal persons (RNPC) or equivalent, proof of the main characteristics of the legal person and confirmation as to their existence. According to Article 4, paragraph 2, of the BdP Notice 11/2005, applicable to financial intermediaries, there is an explicit requirement for the customer to present original documentation to the financial intermediary.

Identification of beneficial owners

334. The duty to require identification of the customer, under Article 3 of Law 11/2004 includes the duty placed on institutions to obtain information from their customers on the identity of the person for whom they are effectively acting whenever the institution knows or suspects that their client is not acting on his/her own behalf (Article 3(2)). BdP Instruction 26/2005 and the ISP Regulatory Standard 10/2005-R establish a set of general principles, which include the requirement that financial entities also obtain information of the ultimate beneficiary (see paragraph 2.2). Article 36-B of CMVM 12/2000 requires identification of the person authorised to operate the account (Article 36-B h), and in Article 36-B 5 b the identification — before commencing the provision of services — of the economic beneficiary of the account, if this is other than the customer. With regard to foreign trusts (recognised in the Free Trade Zone of Madeira and exclusively related to non-residents in Portugal), there are no requirements that explicitly require identification of the beneficiary *of a trust*; however, according to the Portuguese authorities, the provisions of Instruction 26/2005 (Article 2.2 & 5,1a) concerning *centres of collective interest without legal personality* – duly adapted (Notice 11/2005, Article 9[4]) apply.

335. Apart from the identification requirements mentioned, there is also the requirement to identify those persons with holdings in capital or voting rights equal to or higher than 25%, as well as the members of management bodies and financial entities. When the customer is a legal person, the financial institution must adopt measures deemed adequate to be able to understand (ongoing throughout the business relationship) the identity of significant shareholders and management if they

change. The ownership and control structure of the legal person and the knowledge of the identity of natural persons who are the ultimate owners or holders of final control of the legal person must be known (paragraph 5.1.a of BdP Instruction 26/2005 and the ISP Regulatory Standard 10/2005-R). Whatever the circumstances, when the risk analysis undertaken justifies the need for increased knowledge about the customer or his representatives, financial entities must obtain more complete information and carry out verifications deemed adequate and sufficient for that purpose (see paragraph 5.1.b) of the BdP Instruction 26/2005 and the ISP Regulatory Standard 10/2005-R. With regard to trusts, there are no explicit requirements on determining beneficiary (or settlor); however, the Portuguese authorities apply provisions regarding legal persons, adapted to the situation of trusts (see previous paragraph).

336. Article 36-B, paragraph 5.b) of CMVM Regulation 12/2000, requires that, before commencing the provision of services, the financial intermediary must request from the customer information on the identity of the economic beneficiary of operations in securities, if other than the customer.

Purpose and intended nature of the business relationship

337. The general principles, to which financial entities are subject under the provisions of paragraph 2.4 of BdP Instruction 26/2005 and ISP Regulatory Standard 10/2005-R, require them to obtain information on the purpose and nature of the business relationship, defining risk profiles for customers and operations. The provisions of the CMVM 12/2000 require financial intermediaries to obtain information on the customer's experience in investment, his/her financial situation (including income, the origin of the income and profession) and the objectives that underlie the service to be provided (Article 304, paragraph 3, of the CdVM).

Ongoing Due Diligence

338. The general principles, to which financial entities are subject under the provisions of Part II of BdP Instruction 26/2005 and Chapter II of ISP Regulatory Standard 10/2005-R, require financial entities to perform ongoing monitoring of the business relationship and examine carefully the operations undertaken during the course of this relationship. BdP Instruction 26/2005 and ISP Regulatory Standard 10-2005-R both require that institutions obtain the aims and nature of the business, define risk profiles and perform similar ongoing monitoring and examination. They must also verify the conformity of transactions with the knowledge they have of the customer and perform checks regularly of the timeliness and correctness of information on their customers, based on materiality and risk criteria. Institutions should also have procedures for the periodic updating of information on their customers on the basis of materiality of risk and consider ending the business relationship (under the terms of Law 11/2004) if they fail to obtain this information.

339. CMVM Regulations do not refer to ongoing due diligence. However BdP Instructions are applicable to financial intermediaries when they intermediate in securities, and Article 36-B, paragraph 3 of CMVM Regulation 12/2000) requires the financial intermediary to adopt adequate measures to ensure that records are kept up-to-date and duly documented.

Risk

340. Articles 2.4, 2.8 and 5.1.b) of BdP Instruction 26/2005 require institutions to obtain information on the object and nature of the business relationship and define risk profiles for both customers and transactions. Enhanced due diligence measures are required to guard against the risk of ML for correspondent relationships established outside the EU and with non- FATF countries. To reduce risk, institutions are required in particular to:

- Compile sufficient information on the institutions to which they provide services, in order to understand the nature of their activity and to assess their reputation and the quality of the respective policies and internal procedures intended to prevent ML;

- Register in writing the responsibilities of each institution;
- Refuse to initiate or maintain correspondent relationships with banks incorporated in a jurisdiction in which they have no physical presence and which are unaffiliated with a regulated financial group ('shell banks').

341. A risk analysis should be made on a case-by-case basis where a financial institution considers they should have an increased knowledge of their customer or of his/her representative necessary. The institution is required to supplement the information and verify this with any other information deemed adequate and sufficient for the purpose. Examples of situations in the BdP Instruction that would warrant increased knowledge:

- Financial entities that supply private banking services, in addition to the normal identification procedures are obliged to ensure that a minimum of two employees of the financial entity authorise the opening of the account (paragraph 5.2 of the Instruction);
- The opening of "customer accounts" by a financial intermediary (for example a brokerage or asset management company), resident or non-resident, depends on the existence of sub-accounts disaggregated by the ultimate beneficiaries of the operations or on the fact that the intermediaries concerned have an account opened in a bank located in a member state of the EU or in a country or territory listed in Appendix 1 (paragraph 5.4 of the Instruction).

342. In line with the EC regime (paragraphs 3, 4 and 9 of Article 3, Directive 91/308/CEE, modified by Directive 2001/97/CE), Law 11/2004 (Article 16) and the implementing regulations (paragraph 4 of the BdP Instruction and the ISP Regulatory Standard 10/2005-R), there are certain exceptions to the duty of identification, limited to when the customer is a financial entity subject to the ML regime in force in Portugal or any regime considered as equivalent, these are:

- Financial entities covered by Article 13, Law 11/2004;
- Financial entities equivalent to the previous category set up in other EU member states or in countries that are members of FATF (including branches based in these areas);

343. Financial entities are, whatever the circumstances, obliged to obtain the information necessary to verify if the customer fits into these categories (see paragraphs 4.1 of the BdP Instruction and the ISP Regulatory Standard 10/2005-R). Identification is not exempted whenever the operation is likely to be related to the crime of ML, or whenever there is a connection to any a country or territory considered non-cooperative, in the light of a decision published by the supervisory authority in the sector concerned (Article 17 of Law 11/2004 and paragraphs 3.3. and 4.1.of BdP Instruction 26/2005 and ISP Regulatory Standard 10/2005-R).

344. Other exemptions apply for operations where the risk of ML is considered negligible, such as in the following cases:

- Insurance contracts or pension funds whose annual premiums or contributions amount to less than €1,000 or, in case of single premium or contribution, to less than €2,500;
- Insurance contracts concerning the payment of rents emerging from a labour contract or from the insured's professional activity, if the insurance contract does not include a surrender clause and may not be used as collateral for a loan;
- Insurance contracts, transactions within the scope of "life insurance" and pension schemes, if the payment of the premium or contribution is made by means of debit to, or drawn by cheque from, an account opened in the name of the insured in a credit institution subject to the legal duties of ML prevention established in the AML Law.

345. The waiver on the duty to identify customers resident or established in another country applies in Portuguese law to customers that are financial entities covered by AML rules considered as equivalent to those of Portugal. It is considered that for EU members, whose regimes are harmonised through EC directives, or for members of FATF that are obliged to implement FATF

Recommendations and are subject to mutual evaluations assessing the observance of such Recommendations, the waiver would apply. As a requisite for applying this waiver Article 4.1 of BdP Instruction 26/2005 obliges financial institutions to compile the information required for verifying if the client is included in one of the above categories. The waiver is not applied whenever operations appear to be linked to ML, and in any kind of connection with a country or jurisdiction that is considered non-co-operative in virtue of non-compliance with international standards to prevent ML.

346. With regard to the exemption relating to financial institutions established in the EU, the FATF interprets Recommendation 5 in the sense that each country needs to make its own determination that another country is in compliance with and effectively implementing the FATF Recommendations before allowing its financial institutions to apply simplified CDD to financial institutions in the other country. This implies that the assessed country has gone through a deliberative process if it utilises a list of third countries that meet FATF standards. It appears that the Portuguese authorities have not taken any measures to satisfy themselves that the country of residence of potential or existing customers (in this case an EU country) has effectively implemented the FATF Recommendations.

347. The Portuguese authorities therefore consider that there is a very low risk that EU credit institutions would not be duly regulated and supervised. The EU AML regime is harmonised and member states are under the obligation to implement and apply the relevant Directives, Regulations and Council Decisions. Under the Directive currently in force (Directive 91/308/EEC, as modified by Directive 2001/97/CE, see Article 3), as well as with the forthcoming Directive (2005/60/EC) financial institutions should not apply CDD measures with regard to customers which are financial institutions covered by the Directive, unless there are suspicions of ML.

Timing of verification

348. Under the provisions of Law 11/2004 and the BdP Instruction 26/2005 and the ISP Regulatory Standard 10/2005-R, financial entities are subject to the duty of requiring identification and verifying it when they intend to start a business relationship or perform transactions with occasional customers above the designated threshold (€12,500) (Articles 3 and 15 of the Law 11/2004 and paragraphs 3.1 and 3.2 of the BdP Instruction 26/2005 and the ISP Regulatory Standard 10/2005-R). They are also obliged to refuse to carry out operations when the customer does not supply identification, or the identification of the person for whom they are effectively acting (Article 4 of the Law and paragraphs 2.3 of the BdP Instruction 26/2005 and the ISP Regulatory Standard 10/2005R). In addition, Article 36-B, paragraph 1 of CMVM Regulation 12/2000, expressly prohibits financial intermediaries, without exception, from starting any service without the customer or any others who may possibly have access to the account duly providing identification, and paragraph 5 b of the same Article stipulates that the financial intermediary must request the customer to identify the economic beneficiary of the operations, if the natural person is not acting on their own behalf.

349. Notice 11/2005 and Instruction 26/2005 require that the identification documents be presented at the moment of the opening of the account and when proposing to initiate the business relationship or occasional transaction.

Failure to satisfy complete CDD

350. Law 11/2004 states that financial entities should not enter into a business relationship or carry out operations when the customer does not supply his/her identification or the identification of the person on whose behalf he/she is effectively acting (Article 4). Paragraphs 2.3 of the BdP Instruction 26/2005 and ISP Regulatory Standard 10/2005-R oblige financial institutions: (1) to refuse to perform any operation with whoever does not supply the relevant information and supporting documents; (2) to consider making a suspicious transaction report (the decision taken in this respect must be based on a written judgment). Paragraph 2.7 of BdP Instruction 26/2005 and ISP Regulatory Standard 11/2005 lay out the obligation of ending the business relationship and informing the

competent authority when the institution is not able to obtain the information necessary to update the records from the customer. CMVM Regulation 12/2000 is silent on the procedures for ending the relationship and considering submission of an STR.

Existing customers

351. Article 15 of BdP Notice 11/2005 provides that institutions should update their customer files on the basis of materiality and risk, and the files relating to bank deposit accounts should be up-dated on a regular basis or at least once every five years (see Article 15 (2) of the BdP Notice 11/2005). BdP Instruction 26/2005 and ISP Regulatory Standard 10-2005-R have similar requirements in paragraph 2.6 and 16. In accordance with these rules, all credit institutions, investment firms, other financial companies and insurance companies must have procedures for the periodic verification that information pertaining to clients is up-to-date and accurate, based on weighted criteria of materiality and risk. Paragraph 3 of Article 32-B CMVM Regulation 12/2000 requires financial intermediaries to adopt adequate measures to ensure that records for the provision of financial intermediation services to clients are kept up-to-date and duly documented, guaranteeing the veracity of the records and their conformity with the supporting documents.

352. Paragraphs 2.7 of BdP Instruction 26/2005 and ISP Regulatory Standard 10/2005-R also require financial institutions to consider making a suspicious transaction report and ending the business relationship when an existing customer does not provide the institution with the information to update its records.

Recommendation 6:

353. Specific measures for the treatment of politically exposed persons (PEPs) in Portuguese legislation will only be complete with the transposition to domestic law of Directive 2005/60/EC, on the prevention of the use of the financial system for the purpose of ML and TF (published in the EC Official Journal, 25/11/2005). Meanwhile, regulations issued by the BdP, ISP and CMVM require financial entities, whenever they propose to enter into a business relationship with natural persons, to obtain information on the official posts held by the customer. Additionally, the list of potentially suspicious operations in the appendices of the relevant regulatory rules make special mention of the risk associated with specific operations performed by politically exposed persons.

354. There is a general requirement regarding financial institutions to obtain information about those who hold official posts (Article 9.1.h of BdP Notice 11/2005 on account opening; paragraph 3.1 of Instruction 26/2005; paragraph 3.1.1 h of ISP Regulatory Standard 10/2005; and Article 36-B, paragraph 5 a of CMVM Regulation 12/2000). The BdP Notice and ISP Regulatory Standard contain a list of the type of official posts concerned: representatives of sovereign bodies, as well as executive members of the central, regional and local governments and members of the management bodies of entities under the indirect administration of the State.

355. Though the BdP, ISP Instructions, and Standards and Regulations indicate that institutions should establish general risk profiles on their customers and perform additional diligence if a higher risk of ML is established, there is no explicit requirement for additional CDD measures, or to obtain senior management approval when establishing or conducting an ongoing business relationships with a PEP.

Additional Elements

356. Information on official posts held should be obtained from all customers, Portuguese or foreign, resident or non-resident as part of account opening procedures when establishing a business relationship and monitoring. A list of potentially suspicious operations included in the annexes to BdP Instruction 26/2005 and the ISP Regulatory Standard 10/2005 annex 2 refer specifically to persons having held high public office, or their close family members. The examples of potentially

suspicious activity in this regard do not differentiate between Portuguese nationals and foreigners, residents or non-residents.

Recommendation 7:

357. The provisions of paragraph 2.8 of the BdP Instruction 26/2005 require that financial entities perform enhanced due diligence and take precautionary measures against the risk of being involved in ML, whenever such relationships are with institutions from countries which are not EU member states or FATF members. They must in particular obtain sufficient information on the institutions for which they provide a service to understand the nature of their activity, assess their reputation and the quality of their AML policies and procedures. Additionally they must record in writing the responsibilities of each institution and refuse to start or maintain a relationship with a correspondent institution set up in jurisdictions where they have no physical presence and which are not part of regulated financial groups (shell banks).

358. There is no explicit requirement for institutions to obtain approval from senior management before establishing new correspondent relationships or satisfy the conditions required under Recommendation 7 for "payable-through accounts".

Recommendation 8:

359. Financial entities are obliged to draw up ML prevention plans that include, *inter alia*, procedures to guard against the increased risk of ML stemming from the use of technologies that favour anonymity (paragraph 15 of the BdP 26/2005 and the ISP Regulatory Standard 10/2005; Article 2(1) and (3) of CMVM Regulation 21/2000 and Article 57 of CMVM Regulation 12/2000). BdP Notice 11/2005 and the ISP Regulatory Standard 10/2005 require the same identification data for face-to-face and non face-to-face operations.

360. The supporting evidence for verification of this identification data requires that specific procedures must be carried out by financial entities whenever there is a non face-to-face business relationship or occasional transaction to be performed (paragraphs 3.1 and 3.2; Article 12 of Notice 11/2005; and paragraphs 3.1, 3.1.1.3, 3.1.2.5 and 3.2 of ISP Regulatory Standard 10/2005). Such procedures require that proof be obtained in at least one of the following ways:

- A certified copy of the documents the information requested must be sent to the credit institution, by registered mail;
- A written declaration confirming that the information supplied by the concerned party is true and up to date, issued by a credit institution where he/she has an account, established in a EU member state or in a country or territory belonging to FATF, must be sent directly by the issuer to the institution where the account is to be opened.

361. Alongside this, under the general principles governing their activity, institutions should define risk profiles for their customers and conduct ongoing monitoring of the business relationship. As a result of this analysis, regulations establish that whenever it is deemed necessary, and more specifically where there is a non face-to-face relationship, financial entities should require that their customers make their first payment (or the first credit into the account) through a transfer from an account in the name of the customer in a bank established in an EU member state, or in a country or territory belonging to FATF (paragraph 5.6 of BdP Instruction 26/2005; paragraph 5.3 of ISP Regulatory Standard 10/2005).

362. Prudential information issued by the BdP regarding the provision of financial services via the Internet (Circular Letter 10/2001 of 17 May) warn financial entities expressly about the increased risk of ML in non face-to-face situations and highlight the need to set up systems for the detection of suspicious situations (see point B.6 and Appendix 3, under the heading "Operational aspects"). Establishing a contractual relationship with investors via the internet obliges the intermediary to send

complete information about the site and a draft of the contract to the CMVM (Article 2, paragraph 1 f of CMVM Regulation 21/2000). Furthermore, before undertaking an operation involving financial intermediation via the internet the intermediary must receive a document proving the identity of the customer (Article 5, (2) of CMVM Regulation 21/2000). The CMVM issued a Circular on 2 September 2005 with guidelines regarding the establishing a non face-to-face relationship with customers.

363. The regulation and guidance regarding the need for internal policies within financial institutions to prevent the misuse of technological developments in ML or TF schemes is general. There are few explicit obligations to examine specific risks that may exist from technological developments in specific sectors (such as new payment technologies).

3.2.2 Recommendations and Comments

364. Portugal has implemented a range of measures contained in law and sectoral regulation that impose a series of measures for customer identification and examination of transactions, particularly those over €12,500. Financial institutions have a duty not to carry out transactions if adequate identification has not been obtained. These requirements provide a good basis to enable financial institutions to carry out on-going due diligence.

365. Some of the requirements for CDD are contained in instructions or notices issued by the regulators. The evaluation team considered that given the Methodology requires that basic obligations should be in law or regulation that where these requirements were contained in instructions or notices these would only be considered as a minor, technical, shortcomings, since the instructions and notices impose mandatory requirements, and are sanctionable and enforceable. It was, however, difficult to assess the effectiveness of the range of CDD obligations contained in the instructions and notices of BdP, ISP and CMVM as they were issued or amended in 2005, so these were only in force for a short period of time at the time of the on-site visit. Previous regulations were not so detailed and demanding as the ones of 2005 so it is difficult to know if financial entities are still limited to complying with the old regulations or have started to fully comply with the regulations of 2005.

366. The evaluators noted, positively, that the Portuguese legal system does establish additional measures regarding the duty of identification in potentially higher risk situations (for example in relation to operations, that are related to a country or territory considered non-co-operative, as a result of not complying with international AML standards). However, Article 3 of Law 11/2004 regarding legal persons only establishes the requirement to present a copy of the identification card of the legal person, not the original documentation. The provisions of Notice 11/2005, Instruction 26/2005 of BdP and Regulatory Standard 10/2005 of ISP are in general very detailed for each kind of persons (covering natural and legal persons, residents and non residents, minors and other types of subjects making distinctions between opening accounts, occasional transactions and other kind of transactions, requiring the presentation of original documents or certified copies). However they do not contain explicit provisions regarding the identification of legal arrangements, namely trusts recognised in Madeira. It would be useful to include trusts in BdP and ISP regulations indicating more clearly the conditions applicable specifically to *centres of collective interest without legal personality.* Article 36.B of CMVM Regulation 12/2000 is not so detailed regarding the description of the type of documents which should be obtained by financial institutions.

367. Article 2 of BdP Notice 11/2005 provides that when opening a deposit account, credit institutions confirm the truthfulness and adequacy of the instruments conferring the powers to represent and operate the accounts, but Articles 9 and 10 do not specify what kind of document should be enough to verify the powers of a natural person to represent another natural or legal person

in the same way, or with the same degree of detail, as for other documents[26]. It is recommended that a clear definition of the duty to verify, through reliable documents, the powers of a representative of a legal person, natural person or legal arrangements such trusts, not only when establishing a business relationship, but in other instances where CDD is required, for all financial entities is introduced in the law or specific regulations regarding preventive AML measures. There is no equivalent provision in regulations issued by ISP.

368. The requirements of Article 3.2 of Law 11/2004 refer only to a person acting on behalf of the customer, and not to the beneficial owner, and stipulate identification but not verification. Article 2.2 of BdP Instruction 26/2005 refers to the identity of the person acting on behalf of the customer, when institutions are sure or suspect that the customer is not acting on his own behalf. BdP Instruction 26/2005, Article 5.1 a) for legal persons complies with the requirement to take reasonable measures to determine the beneficial owner and the control structure. These provisions also apply to financial institutions which are financial intermediaries in securities. Article 2.2 of ISP Regulatory Standard 10/2005 complies with the requirements to verify the beneficial owner. It is recommended that the requirement to identify the beneficial owner also be stipulated by law and not only in BdP and ISP instructions and regulatory standards. This requirement according to the Methodology should be established by law or regulation this raises the question of whether the supervisors regulations could be considered secondary legislation or *other enforceable means* according to the Methodology.

369. Paragraph 5.2 of Instruction 26/2005 requires the completion of a set of identification procedures, which include for private banking the additional measure that opening of accounts shall be authorised by a minimum of two employees of the financial institution. It is recommended that other measures of enhanced due diligence be added in this case.

370. There is no specific and explicit CDD requirement for wire transfers that are conducted on an occasional basis. Therefore the CDD requirements are not applicable to wire transfers executed outside a business relationship, which are below €12,500 and which do not raise suspicion, while Recommendation 5 requires identification for all wire transfers in the circumstances required under Special Recommendation VII. Future amendments to the Portuguese legal system should require, as a minimum, identification of customers for all wire transfers over €1,000. In the securities sector, regulation should develop, specify and adapt the duties of CDD established by law, as Article 36.b of CMVM Regulation 12/2000 only provides for the establishing of the relationship.

371. The requirement to conduct ongoing due diligence is established in paragraphs 2.5 and 2.6 of Instruction 26/2005 and Regulatory Standard 10/2005. There does not appear to be a general requirement in law as required by the FATF Standard. In the securities sector, there is no provision in any regulation of CMVM that imposes the duty to scrutinise transactions undertaken throughout the course of the relationship to ensure that these transactions are consistent with the institution's knowledge of the customer, its business and risk profile and where necessary, the source of funds.

372. It is not entirely clear that there is a requirement to conduct enhanced due diligence for higher risk categories of customers, business relationships or transactions. The appendix or annex containing lists of potentially suspicious operations of BdP Instruction and ISP Regulatory Standards only relate to examination duty in Articles 7 and 8 of the Instruction. The annexes help reporting entities to define higher risk areas and categories of customers, but it is the reporting entity itself that (i) analyses its own business profile and risks and (ii) defines which concrete measures are to be applied to the various groups of transactions. The obligation of enhanced due diligence could be clearly and explicitly imposed.

[26] However, these requirements are specified in Article 260 of the Civil Code (but are only applicable to the opening of an account). Although Article 260 of the Civil Code, requires as a general principle, that powers of representation should be always verified.

373. Instructions are silent on the type of additional identification and "know your client" measures to be taken by financial institutions in presence of a higher risk operation or customer. For the sake of clarity and proper implementation, financial institutions should be provided with more precise requirements on the types of enhanced due diligence measures that are expected to be adopted in these circumstances. As indicated in the Methodology, additional scrutiny and enhanced due diligence measures should also be required for business relationships involving legal arrangements (such as trusts) and companies that have shares in bearer form. There is no provision in the CMVM regulations to conduct enhanced due diligence for higher risk categories.

374. Current exemptions mean that, rather than reduced or simplified CDD measures, there is a complete absence of such measures for certain categories of customer, when there is no suspicion of ML. With regard to low risk situations, this appears to be an overly broad exemption from CDD requirements for financial institutions established in the EU and FATF members. Neither the Portuguese government nor Portuguese financial institutions as a whole have taken measures to satisfy themselves that the country of residence of potential or existing customers has effectively implemented the FATF Recommendations. There is no mention of the risk of TF; the only specific higher risk scenarios are NCCT in Article 17 of the law.

375. All preventive measures adopted by Portugal should clearly mention the fight against TF as a full component of the legal system in place. All Customer Due Diligence requirements should be extended to reflect explicitly the risk related to TF in law or regulation.

376. General requirements exist for financial institutions to conduct CDD measures under Recommendation 5 to determine whether a potential customer is a PEP. Institutions are supposed to apply general measures in relation to PEPs, for example, by asking the customer about official posts held when opening an account or establishing a business relationship.

377. Obligations to gather information should apply regarding all respondent institutions, and institutions from EU members or FATF members should not be exempt. Article 2.8 of regulation BdP Instruction 26/2005 does not include the explicit mention "including whether it has been subject to a ML or TF investigations or regulatory action." The requirement to obtain approval from senior management is not clearly set out in legislation or regulation. There is no regulation with respect to payable-through accounts.

378. The requirement for financial institutions to have systems to ensure that technological developments do not increase the risk of ML is only referred to in general terms. There is room for improvement in more effective regulations, notices of letters that set out specific obligations for specific risks or kind of sector. There is no mention in regulations to the risks posed by TF.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	LC	• There is no specific, explicit, requirement for CDD for occasional wire transfers that are not suspicious, under SR VII below €12,500. • Identification requirements for beneficial owners are not completely contained in law, but also in supervisors instructions. • For some entities in securities sector that are not covered by BdP regulations (venture capital companies and securitisation companies) the CMVM regulations do not explicit comply with some requirements regarding identification of beneficial owners of legal persons, ongoing due diligence, failure to satisfy complete CDD. There are no provisions for securities sector that impose the duty to scrutiny transactions undertaken throughout the course of the relationship to ensure that this transactions are consistent with the institutions knowledge of the customer, their

		business and risk profile and where necessary, the source of funds. Regulations for the securities sector does not provide explicit mention of the refusal to open accounts or carry out transactions, or to making a suspicious transaction report. • In regard to low risk situations particularly the application of low risk situations to EU and FATF members (when there is no suspicion of ML) some of the current exemptions mean that, rather than reduced or simplified CDD measures, no CDD measures apply whatsoever for these cases. • There is no explicit mention of TF in relation to the duty of CDD in suspicious transactions. • Issue of effectiveness of the supervisors instructions due to the short period of time since their entry into force (June/July 2005).
R.6	**NC**	• There is no requirement for appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP. • There is no legal requirement for financial institutions to obtain senior management approval for establishing business relationships with a PEP nor to take reasonable measures to establish the source of wealth and the source of funds. • It is not so clear about effectiveness in practice in part due to some confusion about national versus international PEPs.
R.7	**PC**	• The obligation to gather information should be applicable to all respondent institution and not exempt institutions from EU members or FATF members. Article 2.8 of BdP Instruction 26/2005 does not include the explicit mention "including whether it has been subject to a ML or TF investigation or regulatory action." • The requirement to obtain approval from senior management is not clearly set up in legislation or regulation. • There is no regulation with respect to payable-through accounts.
R.8	**C**	• This Recommendation is fully met.

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

379. Financial institutions are not permitted to rely on intermediaries or other third parties to perform some of the elements of the CDD process. Intermediaries operate in the insurance and securities sectors; however, they are subject to all the relevant ISP and CMVM Regulatory Standards. There are no outsourcing arrangements provided for as foreseen under Recommendation 9.

3.3.2 Recommendations and Comments

Not applicable

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**NA**	-

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

380. Credit institutions, investment firms and other financial companies are obliged to observe the duty of secrecy regarding any information obtained in the course of their activity (Articles 78, 79 (2) e and 195 of Decree Law 298/92 on the legal framework of credit and financial institutions; Article 80 of the BdP regulation on the duty of secrecy; and Article 354 of the CMVM regulation relating to the duty of secrecy of the CMVM). This duty, however, ceases when, *inter alia*, there are legal stipulations that expressly waive secrecy obligations. Such stipulations include investigations into suspected incidents of ML and TF. There is no specific legal provision that specifies the duty of secrecy on insurance companies and pension fund management companies (this is contained in the professional code implicit in contractual obligations).

Co-operation between financial entities and judicial authorities:

381. Law 11/2004 places a duty of collaboration on all entities subject to AML obligations. This requires them to pass on to the judicial authorities all information necessary to clarify operations suspected of involvement in ML and all the documentation necessary to assess these operations (Article 9). Article 12 of the Law sets down that the information supplied and the documents revealed to the judicial authorities, in good faith, within the scope of prevention and investigation into ML by competent authorities.

382. The duty to disclose to competent authorities incidents of suspected of involvement in ML also obliges the BdP, the CMVM and the ISP, when they become aware of facts indicating ML (Articles 19 (2) and (3) of the Law 11/2004), to report to the judicial authorities. Moreover, Article Law 5/2002 makes it clear that there is also, *inter alia*, an express waiver to the right of banking secrecy in the context of combating organised crime and economic and financial criminality. When crimes such as ML and TF are being investigated, the judicial authorities can obtain any information or documentation from any credit institutions or financial companies, including the BdP, and these entities are obliged to supply this information, within 5 days, without the board members, any employee or anyone else who provides a service within the entity being able to invoke the right to secrecy (Law 5/2002 Articles 1 to 5). If financial entities do not comply with the duty to provide information to the judicial authorities, they are liable for administrative offence proceedings (see Recommendation 17).

Co-operation between financial entities and the supervisory authorities:

383. Credit institutions, investment firms and other financial companies are obliged to provide the BdP, as the authority supervising their activity, all information, documents and books that the BdP considers necessary to fulfil its duties as supervisor.

384. Under the provisions of Article 157, paragraph 1.b of Decree Law 94-B/98, the ISP, as supervisory authority, has the power and the means to obtain detailed information on the situation of companies and the whole of their activity. These provisions also stipulate the duty of these companies to fulfil their AML obligations. To this end, the ISP can specifically collect data, obtain documents relating to insurance activity or inspect the premises of companies. CdVM 361/2/a, the CMVM can obtain from entities under its jurisdiction all the information it requires — including ledgers, records, documents or other information — without having the right of professional secrecy invoked.

Co-operation between supervisory authorities:

385. The three financial sector supervisory authorities can exchange information necessary for supervision purposes, among them the prevention of ML and TF, and they can also exchange

information with the same aim with their counterparts within the EU (Article 8 (1) of Decree Law 298/92 for BdP; Article 159 of Decree Law 94-B/98 for ISP; and Article 353, paragraph 2 and Article 355, paragraphs 1 a, 2 and 3 of the CdVM for the CMVM).

386. Supervisory authorities are also legally entitled to enter into agreements with supervisory authorities from countries that are not EU member states to exchange information relating to their activity as supervisors, subject to the principle of reciprocity and confidentiality equivalent to the Portuguese legal framework (Decree Law 298/92 Articles 81/2 and 82; the ISP Statutes, Article 4, paragraph 1 d); Article 376 of the CdVM).

3.4.2 Recommendations and Comment

387. Portugal has ensured that financial institution secrecy laws do not inhibit the implementation of FATF Recommendations; financial institution secrecy can be pierced in appropriate circumstances. Portugal should ensure that when implementing Recommendations 7, 9 and Special Recommendation VII, that secrecy and confidentiality laws do not inhibit financial institutions from relevant exchanges of information.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**C**	This Recommendation is fully met.

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

Recommendation 10:

388. Under the provisions of Article 5 of Law 11/2004, documents proving the identity of customers must be kept for 10 years from the point of identification and for 5 years after termination of the business relationship. Supporting documents relating to transactions (originals, their copies, references or microforms) and the record of operations performed must be kept for 10 years from the moment when the transaction took place.

389. Paragraph 6 of the BdP Instruction 26/2005 states that credit institutions, investment firms and other financial companies can consider any of the following as the point of termination of their relationship with the customer:

- The date on which an occasional transaction is performed or the last in a series of occasional transactions
- The formal date when an account is closed, either through the initiative of the institution or the customer
- The date when credit recovery proceedings are started, following insolvency or bankruptcy of the borrower.

390. Clause 6 of the ISP Regulatory Standard 10/2005-R specifies that insurance companies and pension fund management companies can consider the point of termination of their business relationship with the customer as the date when their contract with the natural person or legal person expires. Under the provisions of Article 36-B, paragraph 4 of CMVM Regulation 12/2000, the records of customers of financial intermediaries must be kept on file for a period of 5 years from the date when the business relationship terminates.

391. The rules regarding the internal control systems of credit institutions, investment firms and other financial companies require complete, reliable and up to date accounting and financial information, in particular their registration, keeping and availability, as well as procedures for retracing operations in chronological order (see paragraphs 6 d) and 7 b) of BdP Instruction 72/96). The records of the customer for financial intermediary activities includes all the information necessary to retrace the operations, under the provisions of CMVM Regulation 12/2000, specifically Articles 36-B, 53, 59 and 74 to 79.

392. In cases where facts suspected of involving ML and TF are investigated by the competent judicial authorities, financial entities are obliged, when requested by the authorities, to supply all the information and documents of interest for the investigation within 5 days, if the information is computerised, or 30 days, if another form of filing is being used and if there is no one in police detention, or 15 days if there is someone in detention, as set down in Article 3 (1) and (2) of Law 5/2002.

393. The rules regarding the internal control systems of credit institutions, investment firms and other financial companies require complete, reliable and up to date accounting and financial information, in particular their registration, keeping and availability, as well as procedures for retracing operations in chronological order (see paragraphs 6 d) and 7 b) of BdP Instruction 72/96). The records of the customer as regards financial intermediation activities includes all the information necessary to retrace the operations, under the provisions of CMVM Regulation 12/2000, specifically Articles 36-B, 53, 59 and 74 to 79.

Special Recommendation VII:

394. At present, there are no specific rules in Portugal that apply the requirements called for under SR VII. In practice, the evaluation team was informed by financial institutions that in the banking sector the name, address and account number of the payer will normally be included on a wire transfer. Incoming wire transfers are verified and establish any missing data before processing a transaction. For non-bank financial institutions conducting wire transfers (such as the Postal service-CTT) as a minimum, the name and address of the sender is collected.

395. The implementation of SRVII throughout the EU will be guaranteed with the adoption of an EU Regulation on "information on the payer accompanying transfers of funds". The proposal of the EC presented to the Council and to the European Parliament after the approval of the revised Interpretative Note on SRVII by the February 2005 FATF Plenary is at the final stages of the decision-making procedures. Once adopted, the Regulation will be directly enforceable in all Members States. Obligations on the payment service providers will be applicable from 1 January 2007, in accordance with the timetable established in the mentioned revised Interpretative Note.

3.5.2 Recommendations and Comments

396. An EU Regulation will introduce a legally binding requirement that will oblige financial institutions to collect and transmit the necessary originator information. The Portuguese authorities should work to ensure the requirements of Special Recommendation VII are smoothly implemented[27].

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	C	• This Recommendation is fully met.

[27]The requirements of the Interpretative Note for Special Recommendation should be implemented by 1 January 2007

SR.VII	**NC**	• Portugal has not implemented the full range of requirements of SR VII. There is no legal obligation to include full originator information in the message or payment form that accompanies a cross-border or domestic wire transfer. • There are no obligations on intermediary reporting financial institutions in the payment chain to maintain all of the required originator information with the accompanying wire transfer. • There are no obligations on beneficiary reporting financial institutions to adopt risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. • There is no obligation to verify that the originator information is accurate and meaningful. • There are no obligations to require financial institutions to apply risk-based procedures when originator information is incomplete. • There are no sanctions for breaching many of the obligations under SR VII because many of the obligations themselves have not been implemented.

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 & 21)

3.6.1 Description and Analysis

Recommendation 11:

397. Under the provisions of Article 6, (1) of Law 11/2004 , financial entities are obliged to pay special attention to certain operations due to their nature, complexity, unusual character, the amounts involved, the frequency, the economic situation of those involved or the means of payment. Institutions are required to consider if these factors are likely to indicate a laundering offence. Article 3 (5) of the Law 11/2004 also imposes on financial entities a special duty to identify their customers, their representatives or other persons acting on their behalf, whenever dealing with operations having the characteristics described above, whatever the amounts involved.

398. The obligations provided for in the law are expanded upon in paragraphs 7 and 3.3 respectively of the BdP Instruction 26/2005 and ISP Regulatory Standard 10/2005-R. These require the analysis of any transactions due to their nature, complexity and unusualness having regard to customer's activity, amounts involved, frequency, economic situation of the involved persons or means of payment used are liable to related to the crime of ML. Both regulatory instruments also include an appendix containing a list of potentially suspicious activities that might involve a higher risk of ML.

399. A specific provision clarifying that the assessment of the suspicion raised by a given operation does not necessarily presuppose the existence of any kind of documentation which could confirm the suspicion. The appraisal depends on the specific circumstances of the operation, bearing in mind the pattern-criterion used by the "average man" in the analysis of an identical situation (see paragraph 8 BdP Instruction 26/2005).

400. Article 304 (3) of CMVM Regulation 12/2000 obliges the financial intermediaries to collect information on the financial situation of customers, their experience in investment, and the objectives that underlie the service to be agreed. After Law 11/2004 entered into force, all financial intermediaries were alerted, through Circular of 2 June 2004, that it was necessary to examine operations in such a way as to identify those that showed signs of ML. In November 2004, after an analysis of replies by financial intermediaries to the mentioned circular, a special Note was sent to those financial intermediaries that had gaps or shortfalls in their procedures regarding the prevention of ML. (See Recommendation 23).

401. The financial industry has adequate measures in place to comply with the monitoring requirements laid down in the regulations. Instructions for monitoring unusual transactions are part of compliance manuals and special guidance is given to detect transactions with no apparent or visible economic or lawful purpose. In major banks, monitoring is supported by electronic research systems, and in the insurance sector, special supervision is put into place, for example, for transactions in large amounts, unusual redemptions or the change of the beneficiary.

402. Despite being commercial companies and not financial institutions according to the Portuguese legal framework, venture capital companies, venture capital management companies and credit securitisation companies are subject to the AML Law (11/2004) (Article 13 (1)) and are supervised by the CMVM. Consequently they are subject to the duty of monitoring unusual transactions even if the risk that they could be abused to ML is reduced given the scope of the financial activities they conduct.

403. Paragraph 13 of BdP Instruction 26/2005 and ISP Regulatory Standard 10/2005-R also makes it obligatory to document a decision not to communicate a specific operation to the competent authority by the financial entity and keep this information for a minimum of 5 years. There is no requirement to keep findings concerning unusual transactions under CMVM regulations.

Recommendation 21:

404. Article 17 of Law 11/2004 imposes on financial entities a special duty to identify everyone involved in operations (whatever their nature and the amount) relating to countries or territories which are deemed to be non-cooperative. A jurisdiction could be considered as non-cooperative through a decision made public by the relevant Portuguese supervisory authority in the sector concerned, based on the fact that they do not conform to the international standards for prevention and combating of ML.

405. The BdP and ISP require financial entities under its supervision to identify customers and undertake due diligence measures for transactions of any nature or amount related to designated NCCTs. The BdP and ISP provide subject entities with the list of Non-Cooperative Countries and Territories (NCCTs) through circular letters. The basis for this is Article 17 of Law 11/2004. Circular-letters of the BdP are published in the respective Official Bulletin and in its web-site[28]; ISP Circulars are published through the Newsletter[29]. Following the widening of the scope of entities included in Law 11/2004, CMVM has also published similar information. The most recent up-dates of this list were passed on to the financial entities through BdP Circular Letter 133/2005/DSB and ISP Circular 22/05. The CMVM published recent up-dates of list of non-cooperatives countries through Circulars issue on November 2005 and on 6 December 2005. Moreover the list of FATF is also posted in the CMVM website[30].

406. Article 18 (2) of Law 11/2004 sets down that when there are operations with a particular risk of ML, such as those related to a country or jurisdiction subject to additional counter-measures decided by the Council of the EU. The supervisory authorities of the specific sector can impose on the financial entities the duty to notify the AG on all the operations exceeding €5,000. Additional countermeasures were decided by the Council of the EU (following FATF decisions), regarding Nauru, the Ukraine and Myanmar. These were made public on BdP Circulars 69/02, 5/03 and 103/03 and ISP Circulars 28/02 and 10/04. Under the terms of these circulars, financial entities are obliged not only to enhance their special duties of identification and surveillance, but also, within their internal control systems, to notify their compliance officer of all the operations involving

[28] www.bportugal.pt/default_e.htm

[29] http://www.isp.pt/NR/exeres/E4E78FA6-C21D-4631-8FDA-4AB78076DF7C.htm

[30] http://cmvm.pt/NR/exeres/FDF0800A-AC68-4859-AE78-5F84C98128CC.htm

residents or entities established in countries subject to countermeasures which could give rise to STRs.

3.6.2 Recommendations and Comments

407. There is no requirement to keep findings concerning unusual transactions under CMVM regulations; however, the majority of entities under CMVM oversight perform financial intermediation. Therefore the BdP regulations would apply.

408. Whilst there are explicit requirements to pay attention to complex, unusual large transactions and the financial industry has measures in place to comply with the monitoring requirements laid down in the regulations, the legal requirements cited by the BdP in requiring extra attention (in Articles 3.5 and 17 of Law 11/2004) only deal with identification of the parties involved and do not explicitly require this additional attention to NCCT countries. The BdP and ISP circulars do explicitly require this additional attention in relation to NCCT countries. Furthermore, there does not appear to be a mechanism for advising institutions about concerns on weakness in AML/CFT systems of other countries.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	**LC**	• There is no regulation to set forth findings in writing for those entities falling only under the regulations and supervision of the CMVM.
R.21	**LC**	• The requirement to monitor business relationships and transactions from or in non-cooperative countries, or for countries that do not or insufficiently apply FATF Recommendations, is not clearly articulated in the law, although the BdP is able to require this through circular letters. • There does not appear to be a mechanism for advising institutions about concerns on weakness in AML/CFT systems of other countries.

3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

3.7.1 Description and Analysis[31]

Recommendation 13:

409. Designated entities are legally obliged to report any indications of ML without exception. Article 7 of Law 11/2004 requires, if they detect or suspect or become aware of specific facts that indicate the commission of the offence of ML they must inform the AG immediately by submitting an STR. Article 18 of Law 11/2004 requires financial institutions to communicate any indication of ML or underlying criminal offences and this complements the general duty set out in Article 7. All financial entities should inform the AG as soon as they have knowledge or suspicions that any amounts recorded in their books are coming from typical illicit practices or they become aware of any facts that may indicate the commission of the offence of ML, as set down in Article 368-A of the Criminal Code.

410. The supervisory authorities of each sector are also bound to communicate any suspicion of ML to the AG, when, in the course of inspection of supervised entities or in any other way, they become

[31] The description of the system for reporting suspicious transactions in s.3.7 is integrally linked with the description of the FIU in s.2.5, and the two texts need to be complementary and not duplicative.

aware of facts that may indicate the commission of a ML offence under the provisions of Articles, 2, 3 and 19 of the Law 11/2004. Clauses 11 and 12 of BdP Instruction and the ISP Regulatory Standard require that any information or suspicious operation reported to the competent authorities should relate to up to date facts and should be carried out immediately so as to allow for effective investigation. The information should include, at a minimum, information on:

- The identification, as complete as possible, of those involved in the operation (for example customers whose are the account holders, originators or beneficiaries of a transfer, effective beneficiaries of the operation) and their activities;
- The characteristics of the operation (for example, total and partial amounts; the period covered; the justification given; the currency used; suspicion indicators; and the means and payment instruments used).

411. CMVM Circular of 2 June 2004 alerted all financial intermediaries under their supervision to communicate to the AG all operations suspected of ML, as set down under the provisions of Article 368-A of the Criminal Code. The duty to communicate set down in the Law 11/2004 also applies to all the funds stemming from terrorist activities, including TF, when they are linked to a terrorist organisation since terrorism and the support of terrorism in any way is a predicate offence for ML.

412. The duty to communicate operations exists as soon as there is a suspicion of ML. This does not depend on the amount and it includes attempted transactions (Articles 7, 8 and 18 of the Law 11/2004). The BdP informed credit institutions and financial companies (in Circular 17/99 of 16 July 1999), that they should notify the AG of operations where there were grounds for suspicions of ML even when they believed that the suspicious operations were connected with the infringement of tax laws. Since the implementation of Law 10/2002 tax fraud has been included as one of the predicate offences for ML; financial institutions are therefore not required to distinguish between fiscal and non-fiscal crimes.

413. As indicated in Section 2 under Recommendation 26, STRs are not sent directly to the FIU. Rather the law obliges reporting to the Attorney General (AG) which has delegated in DCIAP; the DCIAP (within the AG department) then makes an initial assessment of the STR before passing it on to the FIU (usually in the same day or at latest on the next day).

STRs received by sector 2002 - 2005

Reporting Entities	2002		2003		2004		2005	
	No. of STRs	No. of Institutions	No. of STRs	No. of Institutions	No. of STRs	No. of Institutions	No. of STRs	No. of Institutions
Credit institutions	162	8	182	14	315	18	317	18
Banco do Portugal						1		1
Insurance	1	1				1	3	3
CMVM						1		1
Bureaux de change	3	3						
Registries			1	1				
Notaries			9	3	155	6	4	4
Traders in high value goods			10	5	11	5	21	5
General Inspectorate for Gambling						1		1
DGAIEC			50	1		1		1
ASAE (IGAE)								
Betting & Lotteries								
Others								
TOTAL	**166**		**220**		**481**	**34**	**345**	

414. Reports submitted on a suspicion that the funds might be the proceeds of crime accounted for only 330 reports in 2005. Of the 330 STRs received 31 individual institutions submitted reports.

415. Whilst the obligations in relation to financial institutions requirements under Recommendation 13 were largely met it was the evaluation team's view that, given that financial institutions had been obliged for a number of years to report STRs, the current number of STRs submitted by the number of designated institutions was relatively low. There was no clear single reason why this is the case.

Special Recommendation IV:

416. Law 52/2003, Article 2 (2) makes TF an autonomous criminal offence. TF is also a predicate offence of ML as it is an offence that is punishable with 8 to 15 years' imprisonment. Law 11/2004 (Articles 7 and 18 and the amended Article 368-A) sets out a duty to report an STR to the AG's office when it is suspected that funds may be linked to the commission of a serious crime (a crime punishable by more than 6 months imprisonment). Financial Institutions are therefore obligated to submit an STR if they suspect that funds either stem from terrorist activities or activities by terrorist associations or organisations or finances in any way their activities. The reporting of suspicious operations related to other forms of ML, the amount and the tax nature of the operations are immaterial.

417. The third EC Directive 2005/60/EC will require an extension of the ML preventative regime to TF, including the issue of communicating potentially suspicious operations. The Portuguese authorities informed the team that they will consider how to improve the reporting of STRs suspected of being related to TF.

Recommendation 14:

418. Article 12 (1) of the Law clearly states this information is supplied in good faith in complying with Articles 7,8 and 9 of the Act (the obligation to report STRs) and does not constitute a breach of any duty of confidentiality, nor does it make the person(s) who disclosed liable for submitting the STR. Article 10 of Law 11/2004 prohibits financial entities from revealing either to the customer or to a third party that information has been communicated to the AG, or that a criminal investigation is under way.

419. Compliance with this duty is ensured by the existence of disciplinary and administrative sanctions and, in addition, non-compliance with the duty not to disclose the identity of the person making the communication is a criminal offence, subject to imprisonment or a fine. Article 12, (2) of the Law states: "*Whoever, even through negligence, reveals the identity of the person supplying the information or simplifies the task of finding out such identity is liable to a prison sentence of up to 3 years or a fine under the provisions of Article 7*".

Additional Elements

420. Article 7(2) of Law 11/2004 states that information supplied can only be used in criminal proceedings and the identity of the person supplying the information cannot be revealed. The procedures within the FIU are to ensure that any information with criminal relevance sent to the criminal investigation departments must in no case reveal the identity of whoever supplied the information.

Recommendation 25 (only feedback and guidance related to STRs):

421. The FIU provides feedback to the financial entities relating to each suspicious case that is reported. This information is supplied to financial institutions every three months with the following generic feedback provided:

- "*Placed on file*", when the suspicion has not been confirmed, but allowing for the information to be available at a later date;
- "*Under review*", meaning that the information is awaiting confirmation of the suspicion in the FIU;
- "*Sent on for further investigation*" when the information notified has been sent for investigation to another department (the specialised department of the Criminal Police (*Polícia Judiciária*) or another body with powers for investigation).

422. The FIU publishes statistical data on notifications, trends and patterns in its annual report. Examples of typologies cases which have been investigated and lists of potentially suspicious operations and lists of suspicious indicators are also included. BdP Circular 11/2005, the ISP Regulatory Standard 10/2005-R and BdP Instruction 26/2005 includes a list of potentially suspicious operations and situations which could involve a higher risk of ML. Additionally, on a routine basis, the BdP sends Circular-Letters to credit institutions, investment firms and other financial companies, with information on the most relevant FATF decisions for the financial sector.

Recommendation 19:

423. The Portuguese authorities informed the evaluation team that they have considered whether it would be useful to have an automatic reporting system for large cash or currency transactions. It was decided to avoid duties to communicate transactions, based on thresholds to comply with the duty of preventing ML. The decision was taken to construct an AML system with an emphasis on the responsibilities of financial entities in the detection of suspicious operations that are in direct and close contact with their customers and are in an optimal position to detect suspicions of ML.

Additional Elements

424. Information concerning cash seizures at borders is recorded on a database; access is limited to antifraud services dealing with the treatment and analysis of information as well as investigation within the customs authority.

3.7.2 Recommendations and Comments

425. Recommendation 13 requires STRs to be sent promptly to the FIU. In Portugal the requirement in law is to report to the AG office – actually to DCIAP – and not directly to the FIU. The requirement to submit a suspicion to the highest legal office in the country is symbolic of Portugal's commitment to AML – recognising an STR as a suspicion of a serious crime - may ultimately also deter financial institutions from submitting STRs purely based on suspicion. The low number of STRs was considered an area of concern for the effectiveness of Recommendation 13 in practice.

426. The requirements contained in Portuguese laws and regulations on financial institutions are generally comprehensive. However the number of STRs is low and it is not immediately clear why the recent changes in the law have not resulted in a higher number of STRs. Given the changes in both law and regulation it may be prudent for the Portuguese authorities to review the STR system to determine if there are any reasons why reports are relatively low.

427. The feedback on every individual case by the FIU is of very high value to the reporting entities enables them to better determine whether future transactions of a similar kind could be as suspicious. It would be useful if reporting entities were also provided with the final result of the investigations.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	**LC**	• The low number of STRs filed by the financial entities by a limited number of financial institutions raises the issue of effectiveness of the reporting requirement.
R.14	**C**	This Recommendation is fully met.
R.19	**C**	This Recommendation is fully met
R.25	**PC**	• There are no deficiencies for this section. This Recommendation is rated in more than one section; please also see section 4.3.3 for the reason for this rating.
SR.IV	**LC**	• As the reporting obligation relates to suspected TF offences, the evaluation team had concerns regarding the scope of the TF offence (as discussed in section 2.2). This could limit the reporting obligation.

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

3.8.1 Description and Analysis

Recommendation 15

428. Under the provisions of paragraph 4 of BdP Instruction 72/96, the creation and updating of the internal control system as well as the verification of its operation and efficiency must be closely monitored by the management body of the institution. Article 11 (1) of the Law 11/2004, paragraphs 10 and 11 of BdP Instruction 26/2005 and ISP Regulatory Standard 10/2005, paragraphs 6 of BdP Instruction 72/96 and Article 19, (3) c and (4), and Article 36 (2) d) of CMVM Regulation 12/2000) require that the compliance officer have access to all the information relating to the identification of customers and the collection and recording of documents relating to operations so as to ensure compliance with the duties specified in the Law 11/2004.

429. Under the provisions of paragraphs 15, c of BdP Instruction 26/2005 and ISP Regulatory Standard 10/2005-R, financial entities are required to put on regular training courses for employees on ML prevention. CMVM Article 305 ff, CMVM Regulation 12/2000 stipulates expressly in Article 36, paragraph 2 e) that internal control systems for financial institutions should include procedures for the identification of operations in securities suspected of ML. It also stipulates, in Article 19, (3) c) and (4) that:

- The compliance officer of the financial intermediary (responsible for supervision and control) should make sure that effective procedures are in place to ensure the identification of operations in securities suspected of ML.
- That the compliance officer must be given the authority needed to carry out tasks independently, specifically in terms of obtaining relevant information.

430. Clause 10, point 8, paragraph a) of BdP Instruction 72/96 requires an internal control report to be sent annually to the BdP, which must cover specific aspects of ML prevention, including the presence in the organisational structure of the compliance officer. A report of the same nature is also prepared by branches established in Portugal of credit institutions, investment firms and other financial companies with head offices abroad (BdP Instruction 24/2002 and Regulation 12/2000 of CMVM). Clause 5 of BdP Instruction 72/96 outlines the main rules of internal control systems

stipulating objectives, procedures and means of ensuring its implementation must be written down and made available to their users.

431. The annual internal control report should include, among other information considered relevant to assess the efficacy of the systems put in place, information on the training courses developed and the number of employees involved (see number 10, paragraph 8, g) of BdP Instruction 72/96). Clause 4 BdP instruction 72/96 requires the creation and up-dating of the internal control system as well as the verification of its operation and efficiency to be directly monitored by the management board of the institution.

432. Annual internal control reports are sent to the BdP along with the opinion of the board of auditors, which includes a detailed statement on the adequacy of the existing internal control system. Reports give, *inter alia*, a brief description of the internal audit process, including auditing of the computer system. In this context, the institutions should indicate:

- Their adherence to the recommendations of the Basle Banking Supervision Committee on the management of compliance risk (appended to the Instruction);
- Human resources allotted to the internal audit;
- Audits undertaken, respective follow up and schedule of works to be performed
- The average number of months between two successive inspections of counters and central services:
- The audit of the computer system, as set down in paragraph 10, points 15 to 19 of BdP Instruction 72/96

433. Under the provisions of paragraphs 10 of BdP Instruction 26/2005 and the ISP Regulatory Standard 10/2005-R, institutions should designate a compliance officer to be responsible for the co-ordination of internal control procedures on ML and to centralise information relating to potentially suspicious operations as well as for the reporting to the competent authorities where applicable. ISP Regulatory Standard 14/2005-R, stipulates that an annual report are submitted each year to the ISP concerning the organisational structure and risk management systems and internal control systems of the insurance undertaking. This report must include at least the following aspects:

- Organisation structure;
- Information systems and communication channels;
- Main risk management procedures;
- Main internal control procedures and respective monitoring mechanisms;
- Specific procedures aimed at combating ML.

434. The procedures and support elements used by insurance companies in order to appraise its risk management and internal control systems are evaluated by an official auditor (ROC). The official auditor issues an opinion on whether or not the risk management and internal control systems are suited to the regulation's objectives, specifying any possible shortcomings and or weaknesses detected as well as measures taken in order to improve the implemented systems.

435. Article 11 of Law 11/2004 obliges financial entities to provide their management and employees with adequate training to enable them to recognise operations that might be related to ML and in accordance with the Law in question. Under the provisions of paragraphs 15, c) of BdP Instruction 26/2005 and ISP Regulatory Standard 10/2005-R, financial entities are required to put on regular training courses for employees and collaborators in the field of ML prevention.

436. Paragraphs 15 b) of BdP Instruction 26/2005 and the ISP Regulatory Standard, the ML prevention programmes established by financial entities should include adequate procedures for hiring employees so as to ensure a high ethical standard. CMVM Regulation 12/2000, Article 9 stipulates that top management subject to registration should fulfil specific requirements regarding integrity and professionalism. The Portuguese Bank Training Institute (IFB) also provides training

for bank staff. Training is available as in classroom and online form since 2004. After Law 11/2004 came into effect the IFB set up a new programme for AML in 2005.

437. There is no requirement that the compliance officer be appointed at the management level. Clause 10 of ISP Regulatory Standard 10-2005-R permits the designation of a "member of their staff", and paragraph 10 of BdP Instruction 26/20005 mentions the appointment of "an official" who in both cases could be any employee as well. Moreover there is no regulation for the insurance and securities sector requiring direct reporting by the compliance officer to the management. Nevertheless, it was noted that, in the practice of major banks, direct reporting lines to the board are established, and the Banking Association affirmed that compliance officers in general have a direct reporting duty to the board.

438. In the sample of institutions questioned by the evaluation team, an internal audit function to test compliance systems had been implemented by the internal auditing department or, in the case that it was impracticable or inappropriate to establish such a unit, the management board applied additional monitoring procedures or subcontracted this function to an independent official auditor (ROC). In order to guarantee the suitability of the internal control system, the official auditor (ROC) was required to be independent from the one that carried out the legal certification of accounts and the audit for the purposes of prudential supervision (Article 16 paragraph 5 of ISP Regulation 14/2005).

439. In addition to the director and employee training are required by Article 11 law 11/2004. The IFB also provides a comprehensive training programme for bank employees differentiating between levels of staff, providing additional training facility the internal training provided by the institutes themselves. The number of participants is low but increasing: In 2004, 394 participants took part in classroom training. However, by 2005 there were 1,387 online participants and 107 attending classroom sessions. The Insurance Association (ASP) provides seminars together with the FIU. The ASP indicated that employees in the insurance sector did not have a comprehensive understanding of ML typologies until a short time ago. It is noted that ISP disseminated typologies developed by IAIS by regulation 11/2005 to improve the situation.

440. There is a special regulation on hiring employees in AML provisions (BdP Instruction 26/2005 and ISP Regulatory Standard 10/2005-A paragraph 15 b)). This requirement of having "adequate procedures in hiring employees in order to guarantee strict ethical criteria" (paragraph 15 b) could be considered to fulfil the screening requirement.

Recommendation 22:

441. Under Article 11, paragraphs 1 and 2 of Law 11/2004, financial entities are bound to create control mechanisms including in subsidiaries and branch offices abroad. They are obliged to have internal control and reporting mechanisms that enable compliance with the duties provided for in the Law and prevent the execution of operations related with ML.

442. Paragraph 14 of BdP Instruction 26/2005 and ISP Regulatory Standard 10/2005 requires financial entities to have internal control mechanisms to ensure that their duties regarding the prevention of ML are also observed in their foreign subsidiaries and branches, including international and offshore branches. They must inform their supervisory authorities expressly whenever the legislation in the host country prevents or hinders application of the principles and procedures relating to the duties of prevention set down in the law and in the relevant regulatory instruments. Under these provisions, financial groups are required to have procedures to ensure that the head of the group adequately monitors and controls the risks incurred by the whole group. Reputation, legal and compliance risks are among the risks explicitly covered.

443. Credit institutions, investment firms and other financial companies, use procedures to ensure the adequacy of their internal control systems in their foreign branches or subsidiaries, with the aim

of preventing the institution from being involved in ML operations, and these are detailed in the annual internal control report (see paragraph 10, point 8, c) of Instruction 72/96). Furthermore a reporting duty to BdP is used to ensure the adequacy of the internal control systems in branches or subsidiaries abroad. BdP Instruction 72/96 10 8 c) requires the report to be forwarded to the BdP by the end of June each year, together with the detailed opinion of the board of auditors of the institution about the adequacy of the internal control systems including the prevention of ML and the procedures used to ensure the adequacy of the internal control systems in the branches or subsidiaries abroad (whenever applicable).

444. Paragraph 14 BdP Instruction 26/2005 and ISP Regulatory Standard 10/2005-R lays out the obligation to report to the BdP and ISP whenever the legislation of the host country forbids the application of the principles and procedures deemed adequate to the fulfilment of their AML duties. However there is no explicit legal obligation that, where the minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries are required to apply the higher standard, to the extent that local (i.e. host country) laws and regulations permit (see paragraph 14 of BdP instruction 26/2005 and ISP Regulatory Standard 10/2005-R).

Additional Elements

445. Notice 3/2006 (which replaced Instruction 72/96) adds some more requirements, namely specific requirements concerning the internal control system of the financial groups and the report on the internal control system of the whole group (including of each entity subject to supervision on a consolidated or sub-consolidated basis).

446. Circular Letter 41/2005 defines a set of recommendations and principles that credit institutions and similar entities must take into account in their international activity, namely as regards their organisation and definition of their internal control system. In chapter "III. Recommendations and principles in the scope of international activity developed through off-shore undertakings", it is defined that internal audit must elaborate inspections plans and produce reports which covers, among others aspects, the observance of the principles of prevention of ML.

447. Under the provisions of Articles 116, 130, 131 and 133 of the RGICSF, the BdP supervises credit institutions with registered office in Portugal individually and on a consolidated basis including issues related to ML. The ISP under the provisions of Articles 157, 157-A and C of Decree Law 94-B/98, supervises insurance companies on an individual basis but also covers additional supervision of insurance companies within the area of life insurance, when they are part of an insurance group. Under this legislation financial institutions should be regulated in accordance with the Basel Core Principles, the IOSCO objectives and principles of securities regulation and the IAIS supervisory principles.

3.8.2 Recommendations and Comments

448. Overall the Portuguese regulations obligations on financial institutions to have internal controls are comprehensive and do not have any significant shortcomings. However, the position of the compliance officer within a financial institution could be strengthened so that they are required at a senior management level. At a minimum it should be required by law or regulation that he should have a direct reporting duty to the management board.

449. Regulations require installing the same AML procedures in branches and subsidiaries abroad as in the home country. It is an important point in the situation that the minimum AML/CFT requirements of the home and host countries differ, to create a definite obligation for branches and subsidiaries in host countries to apply the higher standard, to the extent that local (i.e. host country) laws and regulations permit. The dissemination and communication of typologies reports in the financial community would assist the training of staff in how to prevent and detect ML. This could provide additional sectoral guidance in areas such as insurance.

450. Whilst the laws and regulations are quite explicit, the team felt that the relatively low numbers of STRs reported to the AG was a cause for concern. The evaluation team were informed that prior to the implementation of law 11/2004 the internal audit department was responsible for the compliance role. The team suggest that a change of emphasis could be required by financial institutions in the application of their internal procedures – moving from the internally focused auditing approach to a more outwardly orientated approach in the detection and onward reporting of STRs.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	**LC**	• There is no explicit regulation that the compliance officer should be at the management level. • Training facilities for employees have been established but effectiveness could be improved especially in the insurance sector.
R.22	**LC**	• An explicit regulation that requires institutions to pay particular attention to their branches and subsidiaries in countries which do not or insufficiently apply the FATF recommendations is missing. • There is no definite legal obligation that, where the minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries are required to apply the higher standard, to the extent that local laws and regulations permit.

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

451. All credit institutions with head office in Portugal are subject to authorisation by the BdP. To be so authorised, they must, *inter alia*, have an effective administration in Portugal, and have an initial capital not lower than the legal minimum capital, set down in Executive Order 95/94 represented by nominative or registered bearer shares and fully subscribed and paid up on the setting-up date. They are subject to prudential and supervisory rules as set down in the Decree Law 298/92 (Articles 14, 15, 16 and 116). The Decree Law 298/92 also requires the institution's management body to be made up of a minimum of three members with full powers to run the business. Day-to-day running must be in the hands of at least two members of the management board (Article 15). Branches of credit institutions with head office in non-EU member countries are subject to similar requirements and must prove they have sufficient technical means and financial resources for the type and volume of financial operations that they intend to perform. The branch must have enough capital to set against the operations that it intends to carry out in Portugal, to be deposited with a credit institution prior to registration and which can not be any less than the minimum amount required for the same type of institution having their head office in Portugal (Article 59 of the Decree Law 298/92). Authorisation can be refused if, among other factors, the BdP considers inadequate the supervisory system to which the credit institution is subject in the country of origin (see Article 58 of the Decree Law 298/92).

452. There is no statutory provision prohibiting shell banks in Portuguese law. However according to Portuguese law, and in particular the banking authorisation provisions, it is not possible to operate a shell bank in the territory of Portugal. The Decree Law 298/92 sets out specific criteria to be met by all applicants, including foreign banks seeking to establish branches or locally incorporated subsidiaries. Under Article 16 Decree Law 298/92 all institutions must be authorised by BdP to carry on a banking business in Portugal. The authorisation to set up a credit institution which is either a subsidiary of a credit institution authorised abroad, or a subsidiary of the parent undertaking of such

a credit institution, is subject to prior consultation with the supervisory authority of the Member State in question (Article. 18 paragraph 1 Decree Law 298/92).

453. Branches of a credit institution with a head office in a non-EU member country are subject to similar requirements (Article 57 ff.). Also credit institutions established in the free trade zone of Madeira and on the island of Santa Maria are subject to BdP authorisation or prior notification in the above terms if their head office is in an EU member state. Apart from this, they are subject to all the rules of the Decree Law 298/92, stemming from the explicit statement that these entities are subordinate to general rules governing the taking up and pursuit of the business of credit institutions as set down in Article 1 of Decree Law 10/94.

454. Only credit institutions authorised in other EU member states are allowed to provide services in Portugal without being established there. As a prerequisite for starting operation in Portugal, the supervisory authority of the home country notifies the BdP of the activities which the institution intends to carry out in Portugal, and certifies that such activities are covered by the authorisation granted in the home country (Article 61 paragraph 1 Decree Law 298/92).

455. Paragraph 2.8 of BdP Instruction 26/2005 sets out an explicit prohibition to starting or maintaining a correspondent relationship with shell banks and requires that institutions adopt enhanced due diligence measures so as to guard against the risk of involvement in ML operations, whenever they establish correspondent relationships involving institutions established in non-EU member states or in countries which are not listed in Annex 1 to the instruction. In accordance with the above requirements, financial institutions are required to:

- Compile sufficient information on the institutions to which they provide services, in order to understand the nature of their activity and to assess their reputation and the quality of the respective policies and internal procedures intended to prevent ML
- Record in writing the responsibilities of each institution;
- Refuse to initiate or maintain correspondent relationships with banks incorporated in a jurisdiction in which they have no physical presence and which are unaffiliated with a regulated financial group ('shell banks').

456. Financial institutions are not required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. Paragraph 2.8 BdP Instruction 26/2005 does not cover this point, as it only sets out a general obligation to adopt enhanced due diligence measures whenever establishing a correspondent relationship even if the institution required to assess the reputation and the quality of the policies and internal procedures to prevent ML of the respondent bank.

3.9.2 Recommendations and Comments

457. Portugal's banking authorisation process effectively precludes the establishment and operation of "shell banks" within the jurisdiction. Paragraph 2.8 of BdP Instruction 26/2005 sets out an explicit prohibition for starting or maintaining a correspondent relationship with a shell bank. To complete regulations on the issue of shell banks Portugal should establish an explicit regulation that obliges financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**LC**	• There is no explicit regulation that obliges financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs

Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)

3.10.1 Description and Analysis

Authorities/SROs roles and duties & Structure and Resources (R23, 30, 32)

Recommendation 23 (Criterion 23.1)

458. As mentioned in Chapter 1, the Portuguese financial system is supervised by three main regulators: The Bank of Portugal (BdP), the Portuguese Insurance Institute (ISP) and the Portuguese Securities Market Commission (CMVM). Articles 19 (1) and 48 of Law 11/2004 require supervisory authorities within their respective sectors to impose compliance duties on financial entities to prevent ML and empower them to investigate administrative breaches of the law and apply administrative sanctions. The Minister of Finance also has responsibility for applying fines and ancillary sanctions resulting from non-compliance with the duties laid down in Law 11/2004 (see Article 48, 2 a)). For figures on the number of supervised institutions in Portugal please see the table after paragraph 28

Bank of Portugal (BdP)

459. Within the scope of its regulatory powers, specifically Articles 17 and 59 of the Organic Law of the Bank of Portugal, the BdP can issue regulations, general and mandatory, known as instructions and notices. Instructions are targeted at the financial industry and are signed by the Governor and published in the Bank's Official Bulletin and on its website.[32] Notices inform both the supervised entities and the general public and for this reason are published in the Official Gazette[33] as well as in the website.

460. BdP Instruction 72/96 on internal control requires the establishment of internal control systems to minimise financial, operational, legal and reputation risks including the risk of fraud, irregularities and errors (by ensuring their timely prevention and detection). These internal controls are also designed to prevent the involvement by the institution in ML and TF related operations (Article 6 h). Article 17 of the BdP Organic Law, as well as Articles 116, 197 and 199-B/1 of the Decree Law 298/92, confer responsibility to the BdP to monitor the activity of credit institutions, investment firms and other financial companies subject to its sectoral supervision, including the prevention of ML. The BdP has supervisory powers to:

- Monitor the activity of credit institutions and financial companies;
- Oversee compliance with the rules that govern their activities;
- Issue recommendations to clear up irregularities detected;
- Impose sanctions for infringements of its rules;
- Issue directives to regulate the operations of the entities it supervises.

461. These powers and responsibilities are set down in Articles 116 and 197/1 of Decree Law 298/92 and Article 17 of the BdP Organic Law. Under these provisions BdP has issued regulations on the opening of bank deposit accounts, on the prevention of ML and on the internal control system (the more recent are Notice 11/2005, Instruction 26/2005 and Instruction 72/96, now replaced by Notice 3/2006). In addition to the power to impose sanctions for non-compliance with the

[32] http://www.bportugal.pt/default_e.htm

[33] http://www.dre.pt

regulations issued by the Bank regarding ML there are also provisions in Article 48 (1) of Law 11/2004, which set down the responsibility of the BdP to investigate administrative offences and to organise and institute proceedings. It is then incumbent on the Minister of Finance to impose the fines and ancillary sanctions set down in Law 11/2004 upon a receipt of recommended action from the BdP. The BdP, within its role of supervising and verifying compliance with the law and regulations applicable to the activity of entities under its jurisdiction has the power to:

- Obtain from financial entities the information and documentation necessary for monitoring their activity and undertaking on-site inspections (Articles 120 and 197/1 of Decree Law 298/92);
- Institute administrative proceedings to verify, assess and where applicable impose sanctions for any non-compliance by institutions, specifically as regards the following: performing their activity while not observing rules regarding record keeping; non-observance of prudential relationships and thresholds set down in law or in regulatory instruments; omission of required information or notification; violation of legal and regulatory principles governing credit institutions and financial companies; the supply of false information, or incomplete information which may lead to erroneous conclusions by the supervisory authority; refusal to allow inspection of the bank or obstruction during inspection [Articles 19/1 and 48/1 of the Law 11/2004; Articles 14/1 and 4 of Law 5/2002 and Articles 116/1/c), 197/1, 210 and 211 of the Decree Law 298/92].

462. The Inspections Manual used by the BdP in its supervisory activities has been revised and chapter 12, section 6 concerning ML prevention has been developed and updated according to Instruction 26/2005 and Notice 11/2005.

Portuguese Insurance Institute (ISP):

463. ISP is responsible for regulation, oversight and supervision of insurance, reinsurance, insurance brokerage and pension fund management (Article 4, (1).a Decree Law 289/2001). Article 4 (2) stipulates "the responsibility of the ISP for supervision covers all activities of companies within its remit, including related and complementary activities. The task is performed in line with national and EC legislation in force and with a view to the smooth running and control of the market, ensuring that specific insurance creditors are protected".

464. The ISP has the power to approve regulations and rules which are mandatory to supervised entities (Articles 4/3 and 11, paragraph b of its statutes) and it also has at its disposal a vast array of powers to carry out its tasks, under the provisions of Article 157, 1 and 2 of Decree Law 94-B/98. Among these are the powers to:

- Verify technical, financial, legal and fiscal correctness in insurance and reinsurance companies' activities;
- Make thorough checks on other information relating to the situation of insurance companies and their operations as a whole, for instance through the collection of data, inspection of documentation relating to the insurance business or inspections carried out on the insurer's premises;
- Adopt any measures involving the insurance companies or their directors or controlling interests, sufficient and necessary to ensure that their operations are within legal and regulatory parameters applicable to them, specifically in regards to the programmes of their activities, and also to avoid or eliminate any irregularity that could jeopardise the interests of policyholders and beneficiaries;
- Ensure effective application of the measures referred to in the preceding paragraph, if necessary with recourse to the judicial authorities.

465. The ISP also has the power to apply sanctions to entities under its supervision which do not comply with a range of duties (Articles 212 and 213 of Decree Law 94-B/98), specifically if they:

- Fail to comply with the duty of sending the ISP documentation requested within the stipulated time scale;
- Fail to comply with the duties of information, notification or clarification to the Minister of Finance or the ISP;
- Supply incomplete or inaccurate information to the ISP;
- Fail to inform the ISP of the composition of their governing bodies and changes or modifications to shareholder structure;
- Hinder or obstruct any supervision carried out by the ISP.

466. In the insurance and pension fund sector, the ISP is the authority responsible for oversight of AML obligations (Article 19/1 of Law 11/2004) under the provisions of Article 4 (3) of its statutes, the ISP issued Regulatory Standard 16/2002-R, published in the Official Gazette.

Portuguese Securities Market Commission (CMVM):

467. The CMVM verifies that financial intermediaries in the securities sector comply with the obligations set out in Law 11/2004 and related regulations. Under the provisions of Article 353, (2) of the CdVM (the securities code), the CMVM has the power to regulate the securities markets, public bids and the activities of the entities that it supervises. The CdVM gives expression to the regulatory powers of the CMVM, which cover the operations and entities subject to its supervision.

468. The CMVM issues regulations under the provisions of Article 369 and other provisions of the CdVM. Within its terms of reference, the CMVM issued Regulation 12/2000, under provisions of Articles 318, 319 and 320. Revised in 2005, the regulation lays out rules related to intermediation operations by financial institutions and contains specific AML provisions, in particular, customer record keeping and guidelines for ML prevention within securities operations.

469. The CMVM has other powers outside the scope of its regulatory activity. It oversees the securities market, including public bids, settlement systems, centralised securities and financial intermediary systems within the business of intermediation in securities, under the provisions of Article 353 (1) and Article 359 (1) of the CdVM. In addition, within the scope of Article 19 (3) of Law 11/2004, the CMVM has the duty to notify the AG of incidents which appear to be linked to ML, involving securities management companies and companies managing settlement and centralised securities systems.

470. Stock Exchange market members have AML obligations in their capacity as financial entities. The duty to detect and suspicious transactions also applies to Stock Exchanges as market operators (Article 28 of the law governing markets management entities-LEG) whatever their purpose (insider trading, market manipulation or ML). Suspicious transactions and the measures taken should be reported to the CMVM (Article 13 (4), LEG), which will investigate the transaction to find information as to the purpose of such activity.

471. Within their supervisory tasks and under the provisions of Article 360, paragraph 1 a) of the CdVM, the CMVM has the powers to:

- Monitor the activity of entities subject to its supervision and the running of markets and systems (ongoing supervision - Article CdVM 362);
- Oversee compliance with the law and regulations; in this context, the CMVM carries out the inspections it deems necessary and undertakes enquiries to check on any kind of violations committed in the market or anything that might affect normal procedures (Article 364 CdVM);
- Approve acts and provide authorisations as set down in law;
- Provide for registrations set down in law;
- Institute legal proceedings and punish violations within its remit;
- Give orders and put together specific recommendations.

472. Under the terms of Article 361, paragraph 2 a) of the CdVM, the CMVM in its capacity as supervising authority has the right to obtain information or any elements whatsoever, to examine ledgers, records and documents, without the entities supervised having the right to invoke the right of secrecy and to obtain statements from any person, with an injunction if necessary. Where ML is concerned, the CMVM has tailor-made check lists especially drawn-up for supervisory purposes. A failure to comply with a CMVM order legally established and within its remit can result in legal proceedings (serious, and open to becoming very serious - CdVM 399) or criminal proceedings (if natural persons receive the order) (CdVM 381). Supervisory authorities are themselves legally bound to inform the AG whenever in the course of inspections or in any other way they have knowledge of or grounds for suspecting the commission of a laundering offence(see Article 19 (2) and (3) of Law 11/2004).

Overall supervisory regime in Portugal:

473. The evaluation team found that Portuguese financial institutions were thoroughly regulated. Often financial institutions that offer a number of different financial products are subject to regulation for AML/CFT purposes by more than one supervisory agency. Credit institutions, investment firms and investment fund management companies may carry financial intermediation activity in securities and they must register with CMVM before beginning this activity. As financial intermediaries, these financial institutions are also subject to the supervision of CMVM. Under the provisions of the "Banking Law" (Decree Law 298/92, in particular Articles 93 and 197) and of the Securities Code (Article 358 and 359), BdP and CMVM exercise their functions taking into account the supervisory responsibilities of each other.

474. The evaluation team were informed that most often supervision by each authority had a different nature and objectives, and therefore situations of overlapping competences did not tend to arise. However, in such situations the different supervisors responsibilities are resolved by exchange of information and co-ordination between supervisors. Co-ordination and information exchange is possible within the framework of the National Council of Financial Supervisors and on a case-by-case basis through MOUs between the regulators. General legislation which governs the investigation of administrative legal proceedings applicable by all the supervisory authorities, the General Regime of Counter-Ordinances (RGC), establishes a general rule to be applied in situations of overlapping competences (Article 37)[34] for government authorities. For example: Banks may sell insurance policies and when doing so they are subject to BdP Regulations that cover all the activities carried out by banks. They are acting on behalf of an insurance company which is the entity that, under ISP Regulation 10/2005, is responsible for ensuring that all the information required to comply with the relevant Regulation is provided to it by the bank (as any other insurance intermediary).

475. The National Council of Supervisors has the role of co-ordinating the work of supervisory authorities and providing for consistency where certain issues affect all areas of supervision including ML. In addition, the team noted that the MOUs of supervisory authorities include provisions for *inter alia* the co-ordination of supervisory action. MOUs exist between the BdP and the ISP and the BdP and the CMVM.

476. The evaluation team also noted that the Portuguese post office[35] provides a number of financial services; in particular, bill payment facilities, savings products, insurance and fund transfer and

[34] Article 37: Concurrent jurisdictions 1 - of the previous disposals to result the cumulative ability of some authorities, the conflict will be decided in favour of the authority that, for order of priorities: a) The argued one for the practical one of the against-ordinance will have first ear; b) first will have required its hearing for the police authorities; c) first will have received from the police authorities the files of legal documents of that the hearing of the argued one consists; 2 - The competent authorities will be able, however, for reasons of economy, procedural celeridade or effectiveness, to wake up in attributing to the ability the diverse authority of that it would result of the application of nº 1.

[35] http://www.ctt.pt/CTTsite/ctt_homepage.jsp?homepage=1&idioma_id=2

money order services (the post office provides a franchise facility for the money remitter Western Union). However, the financial activities provided by the Post Office are not supervised by any of the three main regulators except for the activity of marketing investment funds which is subject to CMVM supervision in the same way as all entities authorised to market such funds. Of all the transactions processed by the Post Office over 80% are direct payments for pensions. In the context of the Portuguese financial system:

- Domestically the Post Office accounts for: 1.8% of the retail banking system and 0.3% of the whole domestic system (roughly 95% of the domestic transfers carried out by the Post Office are pension payments)
- Internationally: Around 0.005% of the cross-border transfers sent and received are conducted through the Post Office.

Recommendation 30 (Structure and resources of the supervisory authorities):

477. The BdP, ISP and CMVM are independent, adequately structured, funded, staffed and are provided with adequate technical and other resources to conduct their regulatory duties. The Portuguese system with three supervisory authorities ensures that all relevant financial entities are regulated. The potential for entities to be supervised by more than one supervisor places an importance on effective co-ordination of inspections and information sharing on AML/CFT supervisory actions taken and in prioritising supervisory action in ML risk areas. Overlapping responsibilities for supervising has the potential, if uncoordinated to lead to ineffective supervision for AML/CFT purposes.

478. The team were informed that co-ordination efforts in relation to AML/CFT were managed by the National Council of Supervisors since it was created in 2000. The MOUs between the different supervisors provide the opportunity to exchange of information and co-ordinate efforts at an operation level. In addition yearly brainstorming sessions on AML/CFT regulatory issues held in order to ensure co-ordinated efforts (see Recommendation 31). All supervisors apply measures to maintain high professional standards with regard to their employees and provide training, both at national and international level.

Authorities' Powers and Sanctions – R. 29 & 17

Recommendation 29

479. Portuguese supervisory authorities have ensured a consistent dissemination of AML/CFT information to the financial sector on the hierarchy of laws, regulations and notices or letters that define their obligations. As indicated under Recommendation 10, there are adequate regulations in place that oblige institutions to maintain records and provide them to supervisors on request. Sanctions for breaches of law and regulations can be imposed on the institutions and their directors or senior management.

480. The hierarchy of obligations can be monitored and powers of action are available if financial institutions fail to meet their AML/CFT obligations. All three supervisors are responsible for detecting and instituting the initial administrative proceedings for any breeches of the AML law or regulations. The Ministry of Finance imposes the sanction in case of violations of the Law (Law 11/2004). The individual supervisors will prepare the case for any sanctions and pass this information in the form of a proposal to the Ministry of Finance who will decide upon and impose the sanction. This procedure ensures consistency of the sanction by the three supervisory authorities.

Responsibilities for implementing sanctions for AML breaches in Portugal

	Responsible for enforcement	Responsible for sanctions
Law 11/2004	SUPERVISORY AUTHORITIES - Article 48/1 -	MINISTER OF FINANCE - Article 48/2/a -
Law 5/2002	SUPERVISORY AUTHORITIES - Article 14/4 -	MINISTER OF FINANCE - Article 14/5 -
BdP Notice 11/2005 and BdP Instructions 72/96 and 26/2005	BDP - Decree Law 298/92 Article 213/1 -	BDP - Decree Law 298/92 Article 213/1 -
ISP Regulatory Standard10/2005	ISP Decree Law 94-B/98	ISP Decree Law 94-B/98
CMVM Regulation 12/2000	CMVM CMVM Articles 408 ff	CMVM CMVM Articles 408 ff

481. Under Article 19(1) of the Law 11/2004 and Articles 116 *ff* and 197 of the Decree Law 298/92, the BdP is empowered oversees supervised entities' compliance with AML/CFT rules, in the same way as it oversees other areas of compliance. It is the supervisor's responsibility to verify, follow up and impose (or propose) sanctions where credit institutions, investment firms and other financial entities have failed to observe laws and regulations that, directly or indirectly, form part of the AML system.

482. In the insurance and pension fund sector, the ISP is the authority with responsibility for oversight of compliance with AML obligations (Article 19 (1) of Law 11/2004). The ISP statutes were approved in Decree Law 28/2001 providing the ISP with the authority to regulate, oversee and supervise insurance and pension funds (Article 4, paragraph 1 a). The ISP has the authority to approve regulations and other norms and to see to compliance by supervised entities (Articles 4 (3) and 11/paragraph b of its statutes) and, under the provisions of Article 157, paragraphs 1 and 2 of Decree Law 94-B/98, it has a vast array of powers of enforcement, specifically to:

a) Verify technical, financial, legal and fiscal conformity in the insurance and reinsurance companies under its supervision;
b) Obtain detailed information on the situation of insurance companies and the whole of their activities through, for example, the collection of data, scrutiny of documents related to their insurance activities and on-site inspections;
c) Adopt, in relation to insurance companies, their governing bodies or controlling persons, all necessary and adequate measures not only to ensure that their activities conform to the law and specific regulations applicable to them, such as their programme of operations, but also to prevent or eliminate any irregularity which might jeopardise the interests of policyholders or beneficiaries;
d) Ensure the application of effective measures on the points mentioned in the previous clause, if necessary by recourse to the judicial authorities;
e) Obtain all the information it needs on contracts held by brokers;
f) Issue instructions and recommendations to ensure that any irregularities are cleared up;
g) Carry out all other functions and tasks within its auspices, set out in Decree Law 94-B/98 and supplementary legislation and regulations.

483. The CMVM has supervisory powers over the securities markets, public bids, settlement systems, centralised securities systems and the activity of financial intermediaries, under the provisions of Article 353 (1) and Article 359 (1) of the Securities Code. During the course of its supervisory activity and pursuant to the provisions of Article 360, paragraph 1 a) of the CdVM, the CMVM has the powers to:

a) Monitor the activity of entities subject to its supervision and the functioning of markets and systems (ongoing supervision - 362 CdVM);
b) Oversee compliance with the law and regulations: in this context, the CMVM performs the inspections that it deems necessary and carries out investigations to detect any kind of violations in the market itself or anything likely to hinder its normal operations (364 CdVM);
c) Approve acts and grant authorisations set down in the law;
d) Keep records as set down in the law;
e) Institute proceedings and punish violations of laws and regulations within its jurisdiction;
f) Give orders and put together specific recommendations.

484. Under the provisions of Article 361, paragraph 2 a) of the CdVM, can require information or any elements whatsoever, examine ledgers, records or documents, without any of the entities which it supervises having the right to invoke professional secrecy, and it can issue them with an injunction if necessary. The CMVM applies the division of competences resulting from its Statutes and from the legal instruments governing its functions. Infringement of a CMVM order legally founded and within its remit constitutes an administrative offence (serious, and open to becoming very serious – 399 CdVM) or result in criminal proceedings [if natural persons receive the order] (381 CdVM).

485. Within the framework of the supervisory powers conferred on the BdP, under the provisions of Articles 120/1/c and e and 197/1 of Decree Law 298/92, institutions are obliged to supply the BdP with all the information that it deems necessary for verification of their compliance with the laws and regulations governing their activity and the efficacy of their internal controls. Financial entities are required to allow access to their premises for inspections to be carried out. During the course of these inspections, the BdP has the opportunity to conduct direct, unlimited and unconditional examination of all the information, support and records (accounting data or otherwise) that it considers relevant for its supervision and it can take copies and transcriptions of all the documents (Articles 120 (2) and 3 and 197(1) of Decree Law 298/92). Under the provisions of Articles 126 to 128 and 197/1 of Decree Law 298/92, when the BdP has well-founded suspicions that an unauthorised entity is performing or has performed any activity reserved for credit institutions or financial companies, it can require it to:

- Present the information necessary to make the situation clear;
- Undertake inspections in the place or places where there seems to be evidence of activity or where there is a suspicion that there may be items relevant for shedding light on the unlawful activity and seize, during the course of an inspection, any documents or valuables that show any kind of connection with the Violations or are considered necessary for the initiation of administrative offence proceedings;
- Request dissolution and liquidation of the unauthorised entity.

486. The BdP can request the assistance of the police for any inspection and for the collection of documents or information that may be necessary for supervision of authorised or unauthorised entities (Articles 127 and 197/1 of Decree Law 298/92). However, competent authorities can without a judicial warrant seize any item which may be related to the violation giving rise to the administrative proceeding.

487. Not supplying information or notification to the BdP constitutes an administrative offence as set down in Article 210, paragraph h of Decree Law 298/92 and is punishable by a fine between €748.20 and €74,8196.85 if the violation is made by a legal person; or between €249.40 and €24,9398.95 if the violation is made by a natural person. Refusing to cooperate or obstructing any inspection by the BdP constitutes a serious offence as set down in Article 211, paragraph p of Decree Law 298/92, punishable by a fine of between €2,493.99 and €2,493,989.49 if the violation is committed by a legal person; or between €997.60 and €997,595.79 if the violation is committed by a natural person.

488. Furthermore the BdP has the power to conduct inspections to detect unlicensed operators (see Articles 126 – 128 and 197 paragraph 1 of Decree Law 298/92), and the BdP and CMVM can at any time request assistance from the police in the performance of their supervisory functions, in particular when carrying out on-site inspections (see Article 127, 197 paragraph 1 of Decree Law 298/92 and Article 361 paragraph 2 d CdVM). A comparable regulation is available to the ISP (Articles 6/1 and 36/b of ISP's Charter, Articles 217/5 and 219/1 of Decree Law no. 94-B/98 of 17 April).

489. There is no single authority responsible for imposing all types of AML/CFT sanctions. As indicated above, the BdP, ISP and CMVM are responsible for instituting the administrative proceedings, while the Ministry of Finance imposes the sanction in case of violations of the AML Law 11/2004. This procedure ensures consistency when sanctioning with regard the three supervisory authorities. The supervisors explained to the evaluation team that the sanctioning procedure was fixed and stable in as much as the individual supervisor prepares its decision on any violation of AML/CFT and forwards a proposal of its findings to the Ministry of Finance. The Ministry of Finance then merely decides whether or not the sanction is imposed.

INSPECTIONS CARRIED OUT BY BdP (2003-2005)

	2003	2004	2005
Banks	17	15	14
Other credit institutions	8	9	6
Financial companies	17	6	7
SGPS	3	1	1
Total	**45**	**31**	**28**

INSPECTIONS CARRIED OUT BY BdP RELATING TO, OR INCLUDING, ML (2003-2005)

	2003	2004	2005
Banks	3	0	3
Other credit institutions	1	2	4
Financial companies	4	3	4
SGPS	0	0	0
Total	**8**	**5**	**11**

Note: These figures do not include the on-site inspections carried by BdP to non-authorized entities (5, during 2004-2005).

490. During AML on-site inspections, BdP supervisors review the internal control system and its effective implementation, assess if the existing procedures enable the institution to comply effectively with its legal obligations in the AML prevention, validate practices actually taking place in the institution (by means of interviews, through observation and by testing), and compared the internal controls procedures with the information reported annually to BdP."

Inspections carried out by ISP and related to, or including, ML and TF, 2004-2005

	2004	2005
Insurance undertakings	3	3
Pension fund management firms	1	2

491. In the inspections, aimed at evaluating the detection systems and mechanisms of ML situations, in the context of applicable regulations and legal provisions, the following areas were addressed:

- Existence of internal rulings on procedures related to the implementation and monitoring of the requirements specified in the Regulatory Standard issued by the ISP;
- Existence of an official responsible for co-ordination of internal control procedures in the field of ML;
- Verification of the control system that has been implemented in relation to certain situations covered by established rules, in particular:
    - Form of receipt of pension fund contributions and "life" assurance premiums;
    - Analysis of several policies and individual contracts with high levels of insurance premiums or contributions, respectively;
    - Analysis of certain redemption procedures of insurance policies and reimbursements in pension funds and PPR insurance.

492. Since Law 11/2004 came into force until September 2005, the CMVM has carried out the following on-site supervision inspections using check lists especially designed for AML/CFT:

AML/CFT Inspections Conducted by the CMVM since Law 11/2004 came into force until September 2005

Type of intermediary	Number of entities inspected
Banks, brokers and dealers	12
Real Estate Investment fund management companies	2
Securities Investment fund management companies	1
Wealth management companies	2

493. The evaluation team noted that few sanctions had been imposed by the supervisors for the violation of AML/CFT rules; the ISP and CMVM have not to date imposed any sanctions due to infringements of ML obligations since law 11/2004 came into effect at all.

494. The overall number of inspections conducted is adequate even if BdP conducted on-site inspections only at 2.1 % of the entities under supervision in 2003 and at 1.4 % of such entities in 2004. These figures have risen for 2005; however, it should be noted that in Portugal that 5 major banks that are inspected regularly represent 75 % of the banking business. Investment firms with free provision of services are subject to supervision of the home member state's authorities.

Recommendation 17 (Sanctions)

Criminal Sanctions

495. Article 13 of Law 5/2002 provides a general provision in relation to "untruthful information". Law 5/2002 is a general law and covers members of governing bodies of credit institutions and financial companies along with their employees when, in the course of an enquiry, or during legal proceedings or hearings relating to ML and TF:

- They supply false or falsified documents;
- They refuse to provide information;
- They refuse to hand over or obstruct apprehension of documents.

496. The non-observance of this provision can be punished by imprisonment of between 6 months and 3 years or a daily-rate fine not less than 60 days.

Administrative Sanctions

497. If administrative proceedings are instituted for violations of Law 5/2002 and Law 11/2004, the procedural rules applied are in Part II of Decree Law 433/82 and can be jointly exercised by all the supervisory authorities. Article 48-A states that the authorities responsible for instituting the administrative proceedings and can, without a judicial warrant, seize any item which may be related to the infraction leading to the administrative proceeding and/or which may turn out to be evidence of it.

498. For proceedings instituted for violations of the rules set out in Notice 11/2005 and Instructions 72/96 and 26/2005, the applicable procedural rules are found in Articles 213 to 232 of Decree Law 298/92, from which the BdP has authority to:

- Request from the police or any other services whatever collaboration or help it deems necessary for the execution of its duties (Decree Law 298/92 Article 213/3);
- Seize, without recourse to a judicial warrant, any documents or valuables on the premises of credit institutions, financial companies and any other legal persons when the said documents and valuables are needed for investigating or instituting proceedings (Article 215/1 of Decree Law 298/92);
- Order the preventive suspension of natural persons who are board members of a legal person or responsible as a director, head or manager, whenever this proves to be necessary for an effective inquiry, for safeguarding the financial system or protecting the interests of depositors, investors and other creditors (Article 216 of Decree Law 298/92);
- Participate (in an active way) in any hearing in the case of appeal against sanctions imposed by BdP, as well as to appeal against the decisions made by the courts, where this is admissible (Article 231/1 and 3 of Decree Law 298/92).

499. Disregard of a specific ruling by the BdP renders the entity liable to an administrative sanction, as set out in Article 211, paragraph o) of the Decree Law 298/92 and is subject to a fine of between €2,493.99 and €2,493,989.49 if the violation is committed by a legal person; between €997.60 and €997,595.79 if the violation is made by a natural person.

500. If the BdP recommendations are not followed and the irregularities not cleared up, there could be grounds for the BdP to revoke authorisation, under the provisions of Articles 22/1/h and 178/1/g) of Decree Law 298/92.

501. The ISP also has the power to apply sanctions on the entities it supervises whenever they do not comply with an array of duties, specifically those set down in Regulatory Standards 10/2005-R (Articles 212 and 213 of Decree Law 94-B/98) if they:

- Fail to fulfil the obligation of sending documentation within existing timescales when requested by the ISP;
- Fail to observe the requirements for information, notification and clarification in regard to the Minister of Finance and the ISP;
- Supply incomplete or inaccurate information to the ISP;
- Fail to inform the ISP of the composition of their governing bodies and any changes or amendments to shareholder structure;

- Hinder or obstruct the ISP in the prosecution of its supervisory duties.

502. Within the insurance business, administrative measures include the revoking of authorisation if the company violates laws and regulations that govern its activity in such a way as to jeopardise the interests of policy holders or the smooth running of the insurance market.

503. The CMVM is charged by law with supervising compliance with the AML/CFT duties of financial institutions under its supervision (Article 19, nr.1 of Law 11/2004), which means that it can apply its broad responsibilities and powers given by the securities code in the field of ML (Article 361 of the Securities code). The CMVM can impose sanctions either on legal or natural persons. The breach of these duties is sanctioned with heavy fines which can run from €1,000 to €1,000,000. (Articles 43 to 46 of Law 11/2004). Moreover, additional sanctions can be imposed on natural persons. They can, for example, be prohibited from becoming members of the board or directors of any financial institution. The sanctions imposed can also be made public (Article 47) and are imposed by the Minister of Finance (with the CMVM prepares the case to be submitted (Article 48 of the AML Law)).

504. For administrative proceedings, the following table summarises the sanctions that can be applied in the case of violations of Law 11/2004 and Law 5/2002. The limits set out in Law 11/2004 and detailed in the table below, are very high when compared with the normal level of administrative sanctions and fines (RGCORD).

LAW Nº 5/2002 - Article 14/1			
ADMINISTRATIVE OFFENCE	**Responsible**	**MAIN SANCTION**	**ADDITIONAL SANCTIONS**
Breach of duties relating to: • Co-operation • secrecy	• legal persons • board members	Fine from €750.00 to €750,000.00	

LAW Nº 11/2004 Articles 36º a) e c), 43º, 44º e 47º			
Administrative offence	**Responsible**	**Main sanction**	**Additional sanctions**
Breach of duties relating to: • identification • examination • record-keeping	• legal persons	Fine from €1,000.00 to €750,000.00	• disqualification to take office as a board member or functions relating to senior managerial positions • in financial entities • final decision made public
	• board members • holders of senior managerial positions • representatives	Fine from €500.00 to €250,000.00	
Breach of duties relating to: • refusal (to cooperate) • communication • collaboration • abstention • secrecy • control and training	• legal persons	Fine from €5,000.00 to €2,500,000.00	
	• members of governing bodies • holders of senior managerial positions • representatives • employees	Fine from €2,500.00 to €1,000,000.00	

	Legal persons	**Natural persons**
	Financial entities	**Employees of financial entities**
Fines in Law nº 11/2004	Fine from €1,000.00 to 750,000.00 (43) Fine from €5,000.00 to €2,500,000.00 (44)	Fine from €500.00 to €250,000.00 (43) Fine from €2,500.00 to €1,000,000.00 (44)
Fines in RGCORD	€3.74 to €374.1 (17/1)	Up to €44,891.82 (17/2)

505. Furthermore, the additional sanctions contained in Article 47 of Law 11/2004 are relatively innovative, according to Portuguese authorities, when compared with those in Article 21 of the RGCORD. The "proportional" nature of the sanction is reached by criteria legally established for the determination of the applicable penalties. (18 RGCORD, applicable *ex vi* 34 Law 11/2004). Violations of BdP regulatory instruments connected to ML and TF, the stipulations are as follows:

NOTICE 11/2005 INSTRUCTION 72/96 INSTRUCTION 26/2005 ARTICLES 202, 203, 204, 210/I) AND 212 OF DECREE LAW 298/92			
Administrative offence	**Responsible**	**Main sanction**	**Additional sanctions**
Breach of the rules governing credit institutions and financial companies	• legal persons	Fine from €750.00 to €750,000.00	• apprehension and confiscation of the item causing the infringement • definitive decision made public • being barred from taking posts of social responsibility or functions relating to administration, board membership or management of credit institutions or financial entities for between 6 months and 3 years • suspension from the right to vote for holders of capital in credit institutions, financial companies and pension fund management companies for a period of between 1 and 10 years
	• board members • shareholders • holders of senior managerial positions • representatives	Fine from €250.00 to €250,000.00	

506. The penalties listed are determined by BdP in proportion to the seriousness of the offence and the degree of culpability of the agent (Article 18 of Decree Law 433/82; Article 206 of Decree Law 298/92). The BdP can revoke authorisation from credit institutions, investment firms and other financial companies if they violate the laws and regulations governing their activity in such a way as to jeopardise the interests of depositors or interfere with the smooth running of the financial, exchange or money markets (see Article 22, paragraph 1 h of the Decree Law 298/92).

507. If the entities under supervision of the ISP violate any of the duties imposed by Regulatory Standard 10-2005, then under Article 212, paragraph g of Decree-Law 94-B/98, such violations of the rules are punishable with a fine of €748,20 to €74,819,68 that will be applied by the ISP Management Board. In the case of violations of the provisions of Law 11/2004 by entities supervised by ISP, the respective process of administrative proceeding (*contra-ordenação*) is initiated by the ISP, under Article 48. As mentioned, for violations of Law 11/2004 by entities supervised by BdP, it is the Ministry of Finance that imposes and applies the sanctions based on the findings of the ISP. The ISP is entitled to impose sanctions only on violations of an AML obligation set out in Regulation 10/2005. In 2005, administrative proceedings were carried out in 23 instances.

508. Violations of AML/CFT rules are also violations of CMVM rules in terms of administrative sanctions. In such cases, there are times when the sanction stipulated in the CMVM is larger than in Law 11/2004.

509. Violations of the law and the regulations that govern the prudential running of the financial institutions, exchange or money markets are sufficient grounds for revoking the authorisation of such entities (see respectively Article 22 (1) (h), 178 (1) (g) and 199-B (1) of Decree Law 298/92). Revocation constitutes grounds for withdrawing the licence of the financial intermediary at the CdVM (303 (1) (a) and 300 (1) (a) of Decree Law 298/92) and the CMVM is notified immediately (229-A (3) of the Decree Law 298/91).

510. Sanctions provided by law are proportionate. These range from very low to very high amounts and make a precise distinction between the obligation violated and who is fined (see tables above on

law 5/2002 and law 11/2004). Supervisors have the power to apply sanctions widely: to the directors, senior management, representatives and employees of a financial institution as well as to the institution itself. The evaluation team noted that maximum fines are very high and that there was a differentiation made between the violation and who is fined.

511. According to the Articles 36 (c), 43 and 44 of Law 11/2004, directors and senior management are liable for failure to observe the AML/CFT duties imposed on them by Law 11/2004 and sanctions can be applied to them even if they did not commit the violation themselves.

512. No sanctions have been imposed by the supervisors since law 11/2004 (the main AML law) came into effect. Additionally, the effectiveness of the current sanctions regime is yet to be tested. Nevertheless, Portuguese authorities pointed out that the previous sanctions regime was virtually as extensive as the current one. The evaluation team did note, however, that a previous sanctions regime operated under Decree Law 313/93.

Market Entry (R. 23)

Recommendation 23 (Criteria 23.3, 23.5, 23.7)

513. The BdP has the authority to oppose, either plans to hold a qualifying holding, or the exercise of managerial and auditing functions in a credit institution, by persons who do not comply with fit and proper requirements. This would include, for example, any individual that has been convicted of ML (Article 30, paragraph 3 c of Decree Law 298/92). The assessment of the suitability of members of the management and auditing board in credit institutions is based on the provisions of Articles 30 and 31 of Decree Law 298/92, which are also applicable to investment firms and other financial companies, ex vi Articles 199-C and 182.

514. Article 30 of Decree Law 298/92 sets the rule: "*Only persons whose suitability and availability ensure sound and prudent management may be members of the management and auditing boards of a credit institution, the same applying also to members of the general council and to non-executive members of the board, with a view to providing security, in particular, to the funds entrusted to the institution.*" Article 30 (2) of Decree Law 298/92 establishes a general criterion for appraising suitability, specifying that: *"account shall be taken of the manner in which the person usually does business or carries on his professional activity, particularly of any aspects which show an inability to make wise and judicious decisions, or a tendency not to meet obligations punctually or to behave in a manner incompatible with the maintenance of market confidence."* Article 30 (3) of Decree Law 298/92 provides a list of examples of some of the circumstances which may indicate a lack of *suitability*[36].

515. The managers of branches or representative offices of credit institutions in Portugal that are not authorised in other EU member states are required to meet all suitability and experience requirements established by law for the members of the management boards of credit institutions having their head

[36] These include being: adjudged bankrupt or insolvent by a national or foreign court, or considered responsible for the bankruptcy or insolvency of a company controlled by the said person or in which he had been a member of the board, a director or manager; a member of the board, director or manager of a company whose insolvency or bankruptcy, either in Portugal or abroad, was prevented, suspended or avoided by reorganization measures or by other preventive or suspensive measures, or the holder of a controlling interest in such a company, in cases where he was deemed by the competent authorities to have been responsible for that situation; convicted, in Portugal or abroad, for fraudulent bankruptcy, bankruptcy due to negligence, fraudulent preference, forgery, larceny, theft, fraud, creditors' defrauding, extortion, breach of trust, dishonesty, usury, corruption, issue of uncovered check, embezzlement of money or property of the public or co-operative sector, harmful mismanagement in an economic unit of the public or co-operative sector, false declarations, unauthorized taking of deposits or other repayable funds, ML, improper use of inside information, manipulation of the stock market or crimes envisaged in the Company Law. (Article 30 of the BL); convicted, in Portugal or abroad, for infringement of legal rules or regulations governing the activity of credit institutions, financial companies or financial institutions, insurance activity and the stock market, whenever warranted by the seriousness or repetitive nature of the offences.

office in Portugal. (Article 45 of Decree Law 298/92). Under the provisions of paragraph 1 of BdP Instruction 103/96, the registration requires suitability assessments of, in particular, the following:

- Members and *alternates* of management and auditing boards in institutions subject to BdP supervision;
- Individuals to whom executive powers have been delegated;
- Managers of branches abroad;
- Managers of non- EU member states with branches in Portugal.

516. A questionnaire must be completed in full, accompanied by a photocopy of the front and back of the individual's identity card (or equivalent). A copy of this questionnaire is appended to the Instruction. The questionnaire is divided in two parts. The first contains background information covering general identification and personal data and information on the proposed professional nature of the financial business. The second part of the questionnaire consists of a series of questions that seek to detect any situation demonstrating lack of *suitability*. The questionnaire is considered a formal statement must be certified that truthful information has been provided.

517. Articles 102 to 108 of the Decree Law 298/92 set out rules relating to the acquisition of and increase to qualifying holdings in credit institutions and the possibility that the BdP may oppose the move. These rules are applicable also to investment firms and investment fund management companies, *ex vi* Article 199-G. Among these rules, Article 103(1) permits the BdP to oppose the acquisition or increase of a qualifying holding on the following grounds:

- If it is not satisfied that the person in question is in the proper conditions to ensure sound and prudent management of the credit institution;
- If it is not satisfied that the characteristics of the plan are in the proper conditions to ensure sound and prudent management of the credit institution.

518. Checks to ensure the existence of conditions of sound and prudent management of the credit institution are the main criteria for assessment of the *suitability* of the individuals (see Article 103 (1) of the Decree Law 298/92). Article 103 (2) of the Decree Law 298/92 sets out a selective list of circumstances which could indicate that fit and proper management cannot be ensured. This includes when the BdP has reason to doubt the legality of the origin of the funds used to acquire the holding, or there is doubt about the true identity of the holder of those funds.

519. The *suitability* of shareholders with qualifying holdings is established through BdP Notice 3/94, a set of information requirements that must be fulfilled in the communication of an intended acquisition of qualifying holdings. In addition, Notice 3/94 also requires that this communication should include two formal declarations signed by the holder of the qualifying holding:

- A declaration authorising any third party (even those subject to the duty of secrecy and not obliged to give information to BdP) to provide BdP with any information considered necessary to be included with the dossier or taken as proof of the information supplied;
- A declaration stating awareness of the consequences of giving false information to BdP, specifically as such conduct is considered to be a very serious offence, punishable under the provisions of Article 211 of Decree Law 298/92, notwithstanding other penal sanctions that are applicable.

520. In accordance with Article 104 ex vi 196 of Decree Law 298/92, the acquisition of a qualifying holding, or in its increase are subject to prior communication under the terms of Article 102, the BdP must be notified within 15 days of their occurrence. As a result, any opposition by BdP can only happen *a posteriori*, under the provisions of Article 106 of the Decree Law 298/92.

521. Irrespective of the application of administrative sanctions which may be applicable, the BdP can bar the exercise of voting rights relating to a qualifying holding if the acquisition or increase has

not been communicated to BdP (Article 105 (1) of Decree Law 298/92). The same measures can be used by BdP as and when it has raised a definitive or provisional objection but the acquisition or increase has gone ahead anyway (Article 105 (3) of Decree Law 298/92).

522. Granting authorisation for insurance business depends on fulfilment of a series of conditions set down in Decree-Law 94-B/98; these include recognised integrity of shareholders wishing to have a qualified controlling interest in an insurance company. Article 51, paragraph 2 of Decree-Law 94-B/98 considers the following to be indicative of lack of integrity in members of governing bodies and supervisory boards of companies:

a) They have been sentenced for theft, abuse of trust, robbery, embezzlement, extortion, disloyalty, abuse of guarantee card or credit card, making out cheques without cover, usury, malicious insolvency, unpremeditated bankruptcy, favouritism towards creditors, illegitimate appropriation of goods from the public or cooperative domain, injurious management in an economic operation in the public or cooperative sector, forgery, false declarations, bribery, corruption, ML, abuse of information, insider dealing on the securities market or any of the crimes set out in the company code;
b) They have been declared, through a decision in Portugal or abroad, to be insolvent or bankrupt or judged to be responsible for the insolvency or bankruptcy of a company where they have had a controlling interest or where they have been an administrator, director or manager;
c) They have been sentenced, in Portugal or abroad, for violation of legal and regulatory principles governing the insurance business, credit institutions, financial companies or financial institutions, and the securities markets, when the violation is serious enough — or committed on a recurring basis — to justify it.

523. Members of the management board, members of the auditing board and shareholders with qualifying holdings (BdP and ISP) are subject to fit and proper tests, which are applied at the time of licensing and subsequently. The whole senior management are not subject to fit and proper tests. In the field of entities supervised only by CMVM, there is a suitability assessment of the members of the board, auditing boards and shareholders with qualifying holdings for the securitisation firms (Article 41 and 42 of Decree Law 453/99 of 5 November). Regarding the venture capital companies there is a fit and proper assessment of the of the executive and auditing boards as results from the Article 8, paragraph 2 h), of the Decree-Law 319/2002 and paragraph 3 of the Article 10 of the CMVM Regulation 1/2006. The venture capital companies are also obliged to identify and register the persons responsible for investment decisions as results from Article 11, paragraph 2 a) IV of the CMVM Regulation 12/2000.

<u>Ongoing supervision and monitoring (R. 23-Criteria 23.4, 23.6, 23.7, and R.32)</u>

Recommendation 23 (Criteria 23.4, 23.6, 23.7)

524. The BdP has set up internal examination guidelines for assessing systems used by financial institutions for identifying STRs. The guidelines include:

- Checking the existence of information systems or of other procedures capable of detecting potentially suspicious transactions;
- Obtaining information on the total number of reported transactions, as well as the nature and aggregate amount of the transactions in question;
- Obtaining information on the total number of the transactions analysed and in relation to which it was decided the non-reporting to the competent authorities, as well as the nature and aggregate amount of the transactions in question;

- Examining information about the purpose and nature of the business of a selected number of clients and checking the existence of procedures regarding ongoing monitoring of the business relationship.

525. Usually, during ISP on-site inspections, the AML officer is requested to indicate the elements used in identifying suspicious transactions or events that may trigger special diligence duties or the submission of a suspicion transaction report or information to the competent authorities. Furthermore, "unusual" situations are also analysed directly in the system in order to verify how the insurance company is monitoring its procedures (e.g., the analysis of the reasons beyond those "unusual" situations and their consistency and reasonableness) and how the internal analysis has been implemented. During on-site inspections undertaken, there were no detections of any failures to report suspicious transactions.

526. CMVM supervisory actions verify whether financial intermediaries, including asset management entities and their respective marketing entities, have the necessary procedures for ML prevention and if they are being implemented. Information on procedures and the number of eventual suspicious transaction reports (on securities) that have been submitted are also collected. The adopted supervision procedures are better detailed in the relevant check-lists.

527. Within the scope of off-site tasks, the BdP assesses annually, the ML prevention procedures adopted by every institution, which are described on the internal control system report, forwarded to BdP in accordance with Instruction 72/96. This report includes an official statement of the institution's board of auditors and a detailed statement on the adequacy of the existing internal control system. Off-site surveillance is complemented through on-site inspections, which are targeted on the basis of the supervisors assessment of the internal control report (on a risk-basis) or on a periodical basis. It is also possible to conduct ad-hoc inspections. The BdP's concern about AML is visible on the rising number of examinations where the ML aspects were covered: in 2005, the review of AML procedures was included in 39% of on-site inspections, comparing with 16% and 18% in the preceding years. In 2005, 11 insurance companies were inspected (4 life insurance companies were examined for AML purposes, but not for TF).

528. Legal persons who provide a money or value transfer service are regulated by the BdP as any other entity providing a money remittance / funds transfer service (although the team did observe that postal service, as a state entity had no obligation for registration or licensing).

Statistics

529. No violations of AML laws or regulations in the insurance sector were detected in inspections. Therefore no sanctions have been imposed, and consequently there were no statistics available dealing with sanctions in the insurance market.

<u>Guidelines (R.25)</u>

Recommendation 25 (Criterion 25.1: Guidance for financial institutions other than on STRs)

530. Instructions 26/2005 and 72/1996 provide mandatory guidance including a list of potentially suspicious operations, and other examples designed to provide guidance for institutions. In addition, the BdP sent circulars in 2003 with the FATF guidelines for financial institutions in detecting activities related to TF (Circulars 39, 40 and 41/02 and 69/03). The updated lists of NCCT are also circulated as they are published.

531. ISP Regulatory Standard 10/2005-R contains an annex of potentially suspect operations that may indicate instances of ML. Circulars providing the updated lists of NCCT, as well as the application of counter-measures have been sent to the insurance sector in Circular 25/00. Whenever the list is updated by FATF Plenary decisions, new Circulars are issued (Circulars 23/01; 27/01;

28/02; 42/02; 11/03; 18/03; 32/03; 10/04; 20/04; 29/04 and 5/05. ISP Circular 11/2005 published a series of typical situations and practical examples to serve as a point of reference for implementing good practices in the prevention of ML by insurance companies and pension fund management companies.

532. Under the provisions of Article 370 of the CdVM, the CMVM has the powers to issue general recommendations to one or more categories of the entities subject to its supervision. It can also set down and circulate statements on issues posed in writing by any of its supervised entities or their associations. These are not regulations, but they may help to clarify situations and provide guidelines for practical situations. In the securities sector, under CMVM Regulation 12/2000, financial intermediaries are obliged to implement procedures aimed at identifying transactions on securities which arouse suspicions of ML (Article. 36, paragraph 2 d). The effective implementation of these procedures is a duty of the compliance officer (Article. 19, paragraph 3 c of CMVM Regulation 12/2000). Moreover the Circular issued on 2 September 2005, provides financial intermediaries with some recommendations aimed at a better monitoring of operations, providing also a list of potentially suspicious operations.

3.10.2 Recommendations and Comments

533. Portugal has a comprehensive supervision system in place to monitor the financial sectors compliance with the FATF Recommendations. All supervisory authorities are able to carry out their functions in a proper way and all relevant financial businesses are covered with the exception of the Post Office. Given the type of financial services provided by the post office and the share of the financial business in relative terms the ML risk was assessed as low.

534. All supervisors have the full range of supervisory powers. They can in particular issue instructions and notices, carry out on-site inspections and impose sanctions where infringements of notices and instructions occur. It is positive that the sanctions set out in law 11/2004 (Article. 43 ff.) are specifically aimed at ML. Sanctions can be imposed by the Ministry of Finance or the supervisory authorities depending on the type of violation. This could lead to a problem in that the Ministry of Finance is responsible for sanctioning but is not involved directly in the daily supervisory work, although the detection and investigation of potential violations of AML rules area prepared and findings recommended by the supervisory authorities. On the other hand this procedure ensures consistency with regard to the financial sector.

535. Overall the weaknesses described before are only of minor relevance and do not affect the Portuguese AML system overall. Nevertheless, it is difficult to understand the low number of sanctions imposed to financial entities what raises the matter of effectiveness.

3.10.3 Compliance with Recommendations 23, 30, 29, 17 & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	**LC**	• No sanctions have been imposed by the supervisors since Law 11/2004 (the main AML Law) came into effect, although some proceedings are pending.
R.23	**LC**	• Even though the three supervisors exercise comprehensive supervision on the basis of information provided by the financial entities themselves and audit reports the number of AML/CFT supervisory/regulatory visits is relatively low.
R.25	**PC**	• There are no deficiencies for this section. This Recommendation is rated in more than one section; please also see section 4.3.3 for the reason for this rating.
R.29	**LC**	• Few sanctions have been imposed by the supervisory to date. The ISP and CMVM have not imposed any sanctions since the introduction of law 11/2004. Therefore it is not possible to assess the effectiveness of the sanctions regime. [issue of

		effectiveness]

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis

536. The performing of money transfer operations – with the exception of the postal office – is only permitted to entities that are authorised, registered and supervised by BdP, i.e., credit institutions (banks, savings banks, mutual agricultural credit banks) and a specific kind of financial company (exchange offices). Exchange offices (governed, *inter alia*, by Decree Law 3/94) can only carry out operations involving money transfers to and from foreign countries if they have a specific BdP authorisation for this purpose. Under the terms of paragraph 1 of BdP Notice 3/2001, only exchange offices that respect the following conditions may be permitted to provide money transfer services:

- If the capital stock is represented by nominative shares or registered bearer shares, in they take the form of *sociedade anónima* (joint-stock company);
- If the capital stock is not less than €500,000;
- If they have the necessary third party liability cover for what might result from the business, through an insurance policy with an insurance entity so qualified, and for nor less than €250,000;
- If they have adequate human, technical and material resources.

537. In order to provide a remittance service the registration must cover the following items:

- Company or business name;
- Purpose;
- Date of setting-up;
- Location of head office;
- Capital stock;
- Paid-up capital;
- Identity of shareholders with qualifying holdings;
- Identity of the members of the management and auditing boards as well as of those who chair the general meeting of shareholders;
- Delegation of management powers;
- Date of commencement of activities; location and date of the setting-up of branches, subsidiaries, and agencies; identity of the managers of branches established abroad; inter-shareholder agreements; and any alterations which may occur in the above particulars (Articles 66 and 194 of Decree Law 298/92).

538. Presently, nine exchange offices are authorised to perform money transfer operations in Portugal.

539. All the financial institutions providing a remittance service are subject to the supervisory powers conferred to BdP (Articles 93 and 197 of Decree Law 298/92). Moreover, the exercise of money transfers operations without the authorisation of BdP; and the non-compliance of the rules of special registration of financial entities are considered a serious offence and are punishable by a fine (Articles 211 (a) and 210 (a) of Decree Law 298/92). In addition, BdP can require the winding-up and liquidation of any company or other collective body which, without being authorised, carries on activities only authorised to credit institutions and financial companies (Articles 126 (2) and 197 (1) of Decree Law 298/92).

540. 540 All financial entities carrying out money remittance services – that are authorised to perform money transfer operations, including the post office – are subject to the regime for ML prevention under Article 13 (1) of Law 11/2004 in the same circumstances as the others financial entities. All domestic and cross border transfers of funds for 2003 to 2005 are displayed in the table

below:

TRANFERS OF FUNDS

	2003		2004		2005	
	Number	Value €million	Number	Value €million	Number	Value €million
1. Banking System						
A) Domestic transfers (at national level)						
x SPGT (Real Time Gross Settlement System)	650.364	1.213.695,00	750.917	1.404.001,60	757.000	1.420.399,90
x Retail System (SICOI)						
- subsystem TEI (Interbank Electronic Tranfers)	41.426.637	52.648,57	43.114.171	57.178,47	48.076.702	64.464,72
- subsystem ATM	121.982.855	7.073,96	131.032.976	7.532,20	134.287.847	8.361,01
- others (E)	45.455.000	102.676,04	28.226.000	189.201,52	29.553.151	192.359,37
TOTAL A)	**209.514.856**	**1.376.093,57**	**203.124.064**	**1.657.913,79**	**212.674.700**	**1.685.585,00**
B) Cross-border transfers sent						
x TARGET	334.557	1.974.986,50	305.511	2.119.869,90	276.250	1.958.111,90
x others systems (1) (E)	2.252.500	138.507,50	2.790.400	163.777,87	2.873.617	152.492,34
TOTAL B)	**2.587.057**	**2.113.494,00**	**3.095.911**	**2.283.647,77**	**3.149.867**	**2.110.604,24**
C) Cross-border transfers received						
x TARGET	301.476	1.979.648,70	317.543	2.112.603,40	313.635	1.953.885,80
x others systems (1) (E)	1.373.363	2.906,23	1.475.829	2.966,93	2.073.792	3.887,58
TOTAL C) (2)	**1.674.839**	**1.982.554,93**	**1.793.372**	**2.115.570,33**	**2.387.427**	**1.957.773,38**
2. Exchange Offices (3)						
Cross-border transfers sent	**215.431**	**75,24**	**345.358**	**113,57**	**691.356**	**235,99**
Cross-border transfers received	**35.723**	**14,65**	**59.764**	**23,53**	**81.368**	**31,26**
3. Post office						
A) Domestic transfers (at national level)	**21.344.536**	**4.726,24**	**20.818.048**	**4.716,31**	**18.436.330**	**4.743,34**
of which Pension Payments	18.025.425	4.433,49	17.578.302	4.432,08	15.374.603	4.477,75
B) Cross-border transfers sent	**338.570**	**111,26**	**308.081**	**95,17**	**295.478**	**89,31**
C) Cross-border transfers received	**318.235**	**115,77**	**328.315**	**121,68**	**291.675**	**106,17**

(1) Includes PEACH since April 2005.
(2) Cross-border transfers received directly in the beneficiary bank are not included
(3) Only allowed to perform cross-border transfers.
(E) The number and value for 2005 are estimates.

Note: The financial institutions mentioned above are subject to the supervisory powers conferred to BdP (Articles 93 and 197 of Decree Law 298/92).

541. Exchange Offices have been conducting an increasing amount of business over the past three years. Row 2 of the table above indicates that both the number of transactions and the amount of money being remitted through licenced exchange offices both in and out of Portugal is increasing – although the average remittance is quite low (around €30).

542. Articles 66 and 194 of Decree Law 298/92 establish the item for registration of location of head offices and branches, subsidiaries and agencies of credit institutions and financial companies. Paragraph (o) of Article 66 imposes on all entities supervised by BdP the obligation to maintain permanently updated all the items contained in their registration (including the complete list of their agencies and its location), by reporting any subsequent changes to BdP within the time of 30 days (Article 71,1 of Decree-Law 298/92).

543. Within the specific scope of money transfer services during the period 2003-2006 BdP carried out 12 inspections, covering not only supervised institutions (7 exchange offices), but also unauthorised entities (5 companies). No STRs have been reported by exchange offices over the last 3 years. Since 2004 the BdP has detected, through on-site inspections, 6 situations of unauthorised money transmission performed by the referred 5 unauthorised entities and by one exchange office that did not have a specific authorisation granted by BdP for the performance of such type of operations

Additional Elements

544. The main principles and guidelines set out in the Best Practices Paper for SRVI are applied in Portuguese legislation, the exercise of this activity is only permitted to financial entities that are authorised, registered and supervised by BdP.

3.11.2 Recommendations and Comments

545. Given the ML risk associated with money remittance service, Portugal's increasingly cosmopolitan society and its location as a drug trafficking transit country continued attention should be paid to the ML risk associated with money value transfer services.

546. Although MVT are subject to general AML regime which includes Recommendation 13, the issue that no STRs have been reported from exchange offices over the last 3 years raises serious doubts about effectiveness of its compliance with many of the recommendations.

547. The limitations identified under recommendations 4-11, 13-15 and 21-23 and especially Special Recommendation VII also affect compliance with Special Recommendation VI.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**LC**	• There is an absence of STRs coming from exchange offices [Effectiveness issue in relation to application of Recommendations 11 and 13] • As with other financial institutions overall implementation of related FATF Recommendations, in particular Special Recommendation VII, negatively impacts on the effectiveness of AML/CFT measures for money transmission services.

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 Customer due diligence and record-keeping (R.12)

(applying R.5, 6, and 8 to 11)

4.1.1 Description and Analysis

548. Most of the FATF Designated Non-Financial Businesses and Professions (DNFBPs) currently operate in Portugal: Casinos, real estate agents/auctioneers, dealers in precious metals and stones, lawyers[37], *solicitadores* and accountants. All relevant DNFBPs fall under the scope of Article 20 of Law 11/2004, which stipulates the following DNFBPs as subject to the duties stated in subsection II of Law 11/2004:

a) Casino operators;
b) Persons engaged in estate agencies as well as buying and reselling real estate;
c) Operators awarding betting or lottery prizes;
d) High value dealers;

[37] The provision of trust and company administration as related foreign trusts within the Madeira Free Trade Zone is undertaken in general by lawyers and *solicitadores*.

e) Statutory auditors (*revisores oficiais de contas*), chartered accountants (*técnicos oficiais de contas*) and external auditors, as well as companies providing money transport services and tax advisors;
f) Firms, notaries, registrars, lawyers, *solicitadores* and other independent legal professionals who participate or assist on behalf of a client or otherwise, in the following transactions:

    i) Purchase and sale of real estate or businesses, as well as of shares;
    ii) Management of funds, securities or other assets belonging to the clients;
    iii) Opening and management of bank, savings and securities accounts;
    iv) Creation, operation or management of a company, a trust fund, or similar structures;
    v) Acting on behalf of the client in any financial or real estate transaction;
    vi) Acquisition and sale of rights over professional sportspersons.

549. Also, covered are companies, notaries public, register officers, lawyers, solicitors and other independent professionals where such persons act or assist on behalf of a customer, or in any other circumstances, in operations relating to: buying and selling of real estate, business establishments and corporate rights or interests; management of funds, marketable securities or other assets belonging to customers; opening and management of bank accounts, savings-accounts or securities; creation, exploitation or management of enterprises, trust funds or any similar structures; financial or real-estate operations on behalf of a customer; disposal and acquisition of rights over professional performers of sport activities. These entities are generally subject to the legal obligations as set out under Article 2 of Law 11/2004:

a) Obtaining and verifying the identification of customers and their representatives;
b) Refusal to carry out transactions;
c) Maintaining of documents;
d) Examination;
e) Reporting of suspicious operations;
f) Refraining from carrying out any suspicious operation;
g) Co-operation with competent authorities;
h) Secrecy;
i) Creation of control and training mechanisms.

Applying Recommendation 5, 6 and 8

550. All the general AML duties that are required of financial institutions apply to DNFBPs. These duties or obligations are subject to an appropriate adjustment to the specific circumstances of DNFBPs in accordance with the provisions of subsection II of the law (Articles 22 to 31 of Law 11/2004).

551. **Casinos**: are required to identify customers and record the amounts of their operations whenever they purchase or cash in chips or tokens which jointly or separately exceed €1,000. Identification of customers in whose name cheques are issued is obligatory, and these cheques are always nominative and barred (Article 22).

552. **Real estate agents and similar entities**: must ensure the identification of contracting parties and the purpose of the transaction if the amount is equal to or above €15,000 in accordance with Article 23 of Law 11/2004. The identification duty applies to all other similar entities and includes entities engaged in buying, selling, buying for resale or exchange of real estate regardless of whether they are dealers or real estate operators who promote the allotment or construction of buildings for further sale. They are equally obliged by Order no 5031/2005 of 9 March, to submit a report every six months using a special form prepared by ASAE (the relevant monitoring authority in this case). The report includes the following elements: the identities of contracting parties, the total amount of

the transaction, references to the respective title deeds, means of payment used and identification of the real estate involved (Article 23 (2)).

553. **Dealers in precious metals and stones**: are required to identify customers and respective transactions when the amount paid in cash is above €5,000 (Article 25 of law 11/2004). **Auctioneers**, as well as dealers in antiques, works of art, aircraft, boats or cars, are subject to the same duty whenever payment in cash is equal to or above €5,000 pursuant to Article 25.

554. **Lawyers, notaries, other independent legal professionals and accountants**: Statutory auditors (ROCs), chartered accountants (TOCs) as well as tax advisors engaged in accounting activity of enterprises, companies and customers (and also lawyers and notaries, other independent legal professionals or companies) who act for or represent a customer in the following operations, when the amount involved is equal or above €15,000, must identify customers under the following circumstances:

a) Buying and selling of real estate, business establishments and corporate rights;
b) Management of funds, marketable securities or other assets belonging to customers;
c) Opening and management of bank accounts, savings accounts or securities; creation, operation or management of companies, trust funds or similar structures;
d) Conduct of financial or real estate operations for a customer;
e) Holding or purchasing of rights over a professional performing sport activities, are required to make the identification of customers when the amounts involved are equal to or above €15,000 (Articles 26 to 29).

555. According to Articles 27, 21 and 3(1) and (2) of Law 11/2004, identification of the customer extends to the identification of their representatives.

556. Customer identification rules for DNFBPs under Law 11/2004 is the same as for financial institutions and is validated by producing appropriate supporting documentation, with a photo of the customer, including his/her name, place and date of birth, in case of a natural person (Article 3). Legal persons are required to be identified by production of the legal person identity card (Article 3). If a customer is known to act, or is suspected of acting, on behalf or in the interest of a third person, the customer must provide information on the identity of the person on whose name or on whose behalf he/she is acting; the operation may not take place in the absence of such information (Articles 3 and 4). All DNFBPs subject to Law 11/2004 are required under Articles 21 and 2 of the law to comply with the general duties of maintaining records and monitoring with special attention operations with higher risk as set out under Articles 5 and 6.

557. The shortcomings in the implementation of Recommendation 5 noted in section 3 of the report apply equally to reporting financial institutions and DNFBPs. The requirements applicable to clients that are legal arrangements (such as trusts) are also not directly implemented on those professions that are particularly likely to deal with trusts in a professional capacity (lawyers and notaries). Foreign trusts are recognised in the Free Trade Zone of Madeira and are few in number. They are considered by banks, financial institutions and DNFBPs as "*collective centres of interest without legal personality*". As such, there treatment for CDD purposes is the same as for legal persons, that is, the rules for legal persons apply, however adapted to the circumstances of the trust (see paragraph 288). The settlor and the beneficiary of trusts should be identified when opening a bank account or performing any other banking or financial operation, according Article 3 (1); and 15 of Law 11/2004; Article 9(4) of Notice 11/2005, Article 3.1 and 3.2 of Instruction 26/2005 and Paragraph 3.1.2.2 of BdP and ISP Regulatory Standards . The operations performed by casinos, dealers in precious metals and stones, notaries, registrars, and real estate agents are immediate transactions that do not generally require extensive on-going CDD.

Applying Recommendation 6 and Recommendation 8

558. Portugal has not implemented any specific AML/CFT measures concerning PEPs that are applicable to DNFBPs. Portugal has provisions in Law concerning non-face to face business relationships (Article 3.4 and Article 6 of Law 11/2004, relating to the duty of identification and the duty to examine with special attention operations that by their nature type, complexity, or unusual character might involve a greater risk of ML). Besides the reference in Article 6 of Law 11/2004, there are no general requirements that DNFBPs have policies in place to deal with the misuse of technological developments.

559. It was the view of the Portuguese authorities that the vast majority of DNFBPs (in particular casinos, notaries, registrars, accountants, dealers in precious metals and stones and real estate agents and similar entities) are engaged exclusively or to a large extent, in face to face transactions. The risk of the misuse of technological developments in relation to the activities of DNFBPs, in the opinion of the Portuguese authorities, seems to be rather low. The obligations for DNFBPs in this area are accordingly "light touch".

Applying Recommendation 9

560. For statutory accountants, chartered accountants, notaries, registrars, lawyers and *solicitadores*, because of their special statutes only the duly authorised entities may exercise these functions and powers. Real estate agents may use real estate promoters, with whom they maintain a contract, to find and present clients to the agency, which has the ability to formalise the intermediation contract. However, none of these arrangements fall within scope of Recommendation 9. Recommendation 9 is therefore not applicable.

Applying Recommendation 10:

561. Article 5 of law 11/2004 provides the same obligations for record keeping for DNFBPs as for financial institutions. Documents proving the identity of customers must be kept for 10 years from the point of identification and for 5 years after termination of the business relationship. Supporting documents relating to transactions (originals, their copies, references or microforms) and the record of operations performed must be kept for 10 years from the moment when the transaction took place.

562. All the original documents and supporting evidence of the transactions must be kept by DNFBPs according to Article 5 of Law 11/2004. Additionally, DNFBPs must co-operate and provide all the assistance requested by the judicial authority responsible for conducting investigations and by the authority that oversees their respective field of business activity, according to Article 9 of Law 11/2004. The ASAE has a general requirement under Article 20 of Decree Law 46/2004 that can be utilised to require DNFBPs to produce customer and transaction information. There is nothing, however, in Decree Law 46/2004 on the timeliness required for the production of this material.

Applying Recommendation 11:

563. Article 6 of Law 11/2004 places requirements on DNFBPs to examine with special attention the transactions that by their nature, complexity, unusual character in the light of the client's activity, the amounts involved, the economic and financial situation of the involved persons or the means of payment used amongst others might fall into the legal types of the laundering offence as defined by the law. In addition, whenever the transactions amount to €12,500 or more, the entities subject to it shall obtain information on the source and destination of the funds, the justification for the transactions in question, as well as on the identity of the beneficiaries, if not the same person.

564. There is no requirement for DNFBPs to set forth their findings in writing and to keep such findings available for competent authorities and auditors for 5 years. There should be regulations, applicable according to the level of risk of the activities involved that develop these duties describing how to comply

with them. The number of STRs coming from DNFBPs is low. In discussing this issue with the evaluation team, Portuguese authorities insisted that the low number of STRs should be seen in the context of the high number of CTRs submitted by DNFBPs (in 2005, some 48,640), from which the Portuguese FIU has been able to develop important data. Given the differing logic of the STR requirement (Recommendation 13) and obligations under Recommendation 11 versus the CTR mechanism (the former is based on the formulation by the obligated party of a suspicion or a subjective opinion on the unusual character of a particular transaction, while the latter is based on systematic or automatic reporting of transactions according to a given threshold), the evaluation team rejected the arguments of the Portuguese authorities. The evaluation team therefore had concerns about the effectiveness of this duty in practice given the very low number of STRs ultimately submitted to the AG. It is currently difficult to verify effectiveness of Recommendation 11.

565. There are a number of oversight bodies to physically inspect the activities of DNFBPs to verify if applicable obligations are being observed (see Recommendation 24): The General Inspectorate for Gambling, the Authority for Food and Economy Security (ASAE) the professional Order of Statutory Auditors (ROCs), the Chamber of Chartered Accountants (TOCs), the Bar Association, the Chamber of Solicitadores, the General Directorate for Registries and Notaries, who have the means to verify the compliance of DNFBPs in each sector with Law 11/2004 and regulations. There is limited evidence that AML/CFT specific, or inspections that involve an AML/CFT element are being conducted.

566. Generally these obligations have been in place, since 1995, with the enactment of Decree-Law 325/95, of 2/12, which applied the general AML obligations to casinos, betting and lottery operators, real state agents and similar activities, and dealers in high-value items. Those general preventive obligations were extended by Law 10/2002 of 11/2002 to notaries, registry officials, accountants, tax advisors and companies providing money transport services. Since the enactment of Law 11/2004, lawyers and *solicitadores* have also been subject to the same duties as the above referred DNFBPs (for entities supervised by the IGAE (now ASAE); these obligations have been in place since March 2005 under Order 5031/2005. The recent application of law 11/2004 to lawyers and solicitadores also makes it difficult to fully assess its effectiveness.

4.1.2 Recommendations and Comments

567. Portugal should ensure Recommendations 5, 6, 8, 10 and 11 are applied to DNFBPs in a comprehensive manner. The duty of verifying customer's identity using reliable, independent source documents, data or information are only described in Article 3 and 5 of Law 11/2004. In relation to legal persons, Articles 3 (1) and (5) of Law 11/2004, are both applicable to the identification procedure requiring that a copy of the legal identification card should be maintained by the entity. Trusts, recognised in the Madeira Free Trade Zone, must be identified through the identification of the physical persons representing that centre of collective interests, and the physical person that benefits from the trust, according to Article 3 (1) and (2) of Law 11/2004. Beyond the reference in Article 6 of Law 11/2004, there are no instructions specifically relating to DNFBPs that including a determination of the extent of CDD measures on a risk sensitive basis depending on the type of customer, business relationship or transaction.

568. Article 3 (2) of Law 11/2004 requires that DNFBPs, when they know or have grounds to suspect that the customer is acting on the behalf of a third entity, identify the person in the same manner as the customer, as referred in Article 3 (1) of the same Law. In the case of legal persons there is no rule to understand the ownership and determine the natural persons that own or control the customer. Article 4 of Law 11/2004 is applicable to DNFBPs and prohibits DNFBPs from carrying out transactions with customers that do not provide their identity or the identity of those on whose behalf they are acting. Performing CDD on existing customers is not expressly considered in Law or

regulation applicable to DNFBPs. These should be addressed by Portuguese regulations or enforceable guidance[38].

569. Portugal should address the issue of PEPs. Oversight bodies and SROs should ensure that DNFBPs are aware of their obligation to keep records in order that the reconstruction of individual transactions can be made. DNFBPs should also be required to set forth their findings in writing and to keep such findings available for competent authorities in a timely manner.

570. More generally, the effectiveness of the implementation of Portugal current law can be improved by developing a proper monitoring of the implementation of FATF standards by the DNFBPs in Portugal. It is also important to continue to work with the different sectors (via their professional associations for instance) to improve awareness and overcome reluctance to apply AML/CFT requirements.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	PC	• The deficiencies in the implementation of Recommendation 5, 6 and 11 that apply to financial institutions also apply to DNFBPs. • There are few implementation measures that clarify the specific obligations of DNFBPs (similar to regulations and circulars for financial institutions) • Portugal has not implemented explicit AML/CFT measures concerning PEPs applicable to DNFBPs. • There is no requirement that DNFBPs have policies in place to deal with the misuse of technological developments (Recommendation 8). • More generally, the implementation of the FATF requirements (both ML and TF) by DNFBPs raises concerns given the low number of STRs submitted.

4.2 Suspicious transaction reporting (R.16)

(applying R.13 to 15 & 21)

4.2.1 Description and Analysis

571. Article 6 of Law 11/2004 requires DNFBPs to comply with the general duty to thoroughly examine those operations which, by reason of their own nature, complexity, unusual character with regard to the customer's known business, the amounts involved, economic-financial status of intervening persons, and means of payment used, are likely to represent a risk of ML. If such operations involve an amount equal to, or above €12,500 DNFBPs are also required to request information on the origin and destination of funds, the justification of the operations concerned and the identity of the beneficiaries (Article 6).

572. DNFBPs operating in Portugal subject to AML/CFT obligations are subject as well to the reporting duty under Article 2 (e) and Article 7 of Law 11/2004. Should the examination of an operation for or by any other reason a suspicion or the knowledge of facts suggesting a ML offence, DNFBPs are required to report immediately to the AG. Additionally public notaries and registered officials are obliged to report any offence known to them in performing their duties and in relation thereto, even if the agent of such offence is unknown, as set out under Article 242 of the Code of Penal Procedure. Public officials at the Ministry of Finance, namely those at the General Directorate

[38] The Portuguese authorities noted that the overwhelming majority of transactions undertaken by DNFBPs are immediate and not continuous, therefore CDD requirements are reduced.

for Taxes and the General Inspectorate of Finance are required to report any suspicion of ML known to them in the exercise of their duties (Article 31 of Law 11/2004).

Applying Recommendation 13

573. Generally DNFBPs such as TOCs, ROCs and lawyers and *solicitadores* have been informed by their respective self-regulatory professional organisations through their normal communication channels on their duties under Law 11/2004 and what is required to comply with them.

574. Casino operators make reports pursuant to Article 22 of Law 11/2004. In practice the General Inspectorate for Gambling (IGJ) reports each month to DCIAP (within the AG's department) all information concerning the identification of customers and amounts in casinos gambling rooms on transactions above €1,000, as collected under the terms of Article 22 of Law 11/2004. The relatively low threshold for both identification and reporting means that (the majority) of customers to the casino are identified. In practice casinos report to the DCIAP office of the AG.

575. The evaluation team found that although overall the casino operators sampled were well aware of their obligations under the law and that tight prudential controls were operated in casinos, the awareness of what might constitute ML in a casino could be still improved. Increased awareness of what transactions or customer behaviour might constitute ML would certainly assist in the submission of good quality STR reports (as opposed to mandatory CTR reports).

576. Real estate agents are required to report every six months to the Authority for Food and Economy Security (ASAE [39]) and in a standard form that contains information on each transaction carried out: identification of contracting parties in the transaction, global amount of the legal transaction, reference of respective titles, means of payment used, and identification of the real estate (under Article 23 of law 11/2004).

577. Article 30 (2), (3) and (4) require that lawyers and *solicitadores* report immediately any suspicious operation of ML to the Chairman of the Bar Association or to the Chairman of the Solicitadores Chamber, respectively (Article 30 (1)). These SROs are required to report immediately to the AG any information concerning suspicious operations after having certified that such information has not been obtained (1) in the course of ascertaining the legal position of the client; (2) within the scope of a legal advice; (3) in the exercise of their task of defending or representing that client in, or concerning judicial proceedings; or (4) in the preparation, instituting or avoiding of such proceedings.

578. In addition notaries, register officials, TOCs and ROCs are legally required to report to the public prosecutor any fact that may suggest the commission of an offence known to them as a result of the exercise of their functions (including, obviously ML and TF) (Article 24 (1) j of the Notaries Statutes, Article 58 of ECTOC and Article158 of EOROC, respectively).

579. Both public notaries and independent professionals acting as notaries are required to report any offence known to them in the exercise of their duties, even if the agents are unknown, as set out under Article 242 of the Criminal Procedure Code and Article 23 (1) j of the Notaries Statutes). Furthermore, in the course of a monitoring and oversight action by authorities indicated in Article 32 of Law 11/2004 to ensure AML responsibilities, if facts come to their attention that likely indicate suspicions of a ML offence, the facts must be collected and immediately reported to the AG. Between 2002 and the first half of 2005, ROCs reported 148 reports of offences to the public prosecution authorities through their professional order, as follows: 35 in 2002; 17 in 2003; 46 in 2004; and 50 in the first half of 2005. However, it should be pointed out that according to statistics provided by Portuguese authorities, none of these reports resulted in the submission of an STR.

[39] http://www.asae.pt/

580. According to Article 30 (2) and (3) of Law 11/2004, lawyers and *solicitadores* report suspicious operations and not straight to the AG but to the Chairman of the Bar Association and the Chairman of the Chamber of Solicitadores, respectively. No STRs have been made by this mechanism since the requirement has been in effect.

581. The team noted that from 2003 to 2005 very few STRs were submitted by any DNFBPs or their respective supervisory authorities. The requirement to submit STRs is a relatively new, and the duties imposed on lawyers and *solicitadores* have only been in effect since the implementation of Law 11/2004 in March 2004. Since this date only 10 STRs have been made by DNFBPs.

582. The ASAE has already prepared and sent explanatory Information Circular Letters on how to comply with the legal requirements set out by AML legislation. Circular Letters are being sent to real estate agency companies and real estate buying and reselling companies; entities dealing with precious stones and metals, antiques, works of art, boats and cars, as well as to chartered accountants (TOCs), external auditors and companies providing money transport services. The most recent Circular Letter was sent on March 2005 (No 5031/2005, published in the Official Gazette in 9 March 2005)[40].

583. The Chamber of TOCs has hosted a number of training sessions, covering about 40,000 TOCs per year. The Professional Order of ROCs has published on its website the text of Law 11/2004 and intends to include, as from 2006, in its regular formation activities designed for its members the prevention of ML as a subject-matter.

584. At the time of the on-site visit, no co-operation procedures had been established between the Bar Association and the Chamber of *Solicitadores* and the DCIAP or FIU for the reporting of STRs, but it should be noted that lawyers and *solicitadores* have only been subject to the AML Law since 2004.

Applying Recommendation 14

585. Articles 7 and 30 (1) of Law 11/2004 forbids disclosing the identity of the person providing the STR. Exclusion of liability and duty of secrecy prohibiting the customer or any third person to be informed about a report of a suspicious operation or a criminal investigation pending on them (general duties resulting from Article 2 of Law 11/2004 and Articles 10 and 12) are applicable to DNFBPs.

Applying Recommendation 15

586. The requirements for DNFBPs to have internal procedures and controls outside the STR reporting obligation and to provide to their directors and employees appropriate training to recognise the transactions that may be related to a commission of a ML offence are expressly stated in article 11 of Law 11/2004. Training is provided in casinos and the evaluation team noted the planning of improvements concerning AML awareness within this sector. TOCs have received AML awareness training for chartered accountants and the ROCs educational programme for 2006 now also includes AML. To date no typologies, training or guidelines have been provided to the DNFBP sector. However the Ministry of Economy and Innovation has instructed the ASAE to set up preventive measures in the future. Training is planned by ASAE and is intended to be carried out by external experts on ML. No AML/CFT training efforts have yet to be focused on lawyers and solicitadores.

Applying Recommendation 21

587. There is no obligation for DNFBPs to give special attention to business relationships and transactions with persons (including legal persons) from or in countries which do not or insufficiently

[40] ASAE intend to prepare the issuance of a new information circular letter to be sent in October / November 2006

apply the FATF Recommendations. Where transactions from higher risk countries have no apparent economic or visible lawful purpose, it is not required for DNFBPs to examine the purposes and background of such transactions as far as possible or make their written findings available to assist competent authorities. Where a country continues not to apply or insufficiently applies the FATF Recommendations, there are no provisions that would require DNFBPs to apply appropriate counter-measures.

Applying Recommendation 17

588. Administrative sanctions and ancillary sanctions provided for under Articles 45 to 47 of Law 11/2004 apply to DNFBPs who can be either natural or legal persons. Sanctions are enforced by the government department responsible for the monitoring of the business sector concerned. In case of Casinos, as well as those entities engaged in real estate agency and buying and reselling of real estate, or dealing with goods of high unit value, the sanctions are applied by the Minister for Economy (Article 48 (2) b). The Minister of Finance in accordance with the provisions of Article 48 (2) a of Law 27/2004, modifying Law 11/2004, applies sanctions to statutory auditors (ROCs) or chartered accountants (TOCs) although any regulatory proceeding are brought respectively by their Professional Order and Chamber. Notaries, whether public officials or not, and registry officials although subject to sanctions provided for under the above-mentioned Law, whose sanctions shall be applied by the Minister of Justice (Article 48 (2) c of Law 11/2004), are also subject to disciplinary liability).

589. Wilful non-compliance with the duty to identify customers, to monitor operations and to keep documentation shall be punished with a penalty from €1,000 to €250,000 in case of natural persons carrying out the business activities and from €500 to €100,000 in case of members of bodies of legal persons or acting as director, manager or representative. On the other hand wilful non-compliance with the duty of not to carry out any transaction with a duly non-identified person; non-reporting of any suspicious operation to the AG; breach of the duty to abstain from carrying out a transaction as provided for under Article 8; non-co-operation with the competent authorities as set out in Article 9; breach of the secrecy obligation contained in Article 10; or violation of duties provided for under Article 11, may be punishable with fines ranging from €5,000 to €500,000, in the case of natural or legal persons carrying out designated professions or businesses, and from €2,500 to €200,000 in the case of individuals who are members of the management bodies of legal persons, or exercising there any director, chief or management function, or acting in their capacity as a representative thereof.

590. If lawyers and *solicitadores* fail to comply with their AML obligations, they may be sanctioned, under the provisions of Articles 50 and 51 of Law 11/2004. Sanctions can include: admonition; censure; fine; suspension of activity up to 10 years; and expulsion. The application of a fine must comply with the provisions of Articles 45 and 46 of Law 11/2004, whenever the obligations set out under the above provisions are not met as laid down in Article 50 (3). *Solicitadores* can incur a range of disciplinary sanctions: a fine ranging from €500 to €25,000; suspension from 2 years up to 10 years; and expulsion, in accordance with Article 51 (2) of Law 11/2004. Sanctions are applied by the Portuguese Bar Association or the *Solicitadores* Chamber. For lawyers, disciplinary sanctions are provided by the Bar Association Statute, according to Article 50 (1) of Law 11/2004[41].

591. Sanctions provided by law are proportionate; Article 47 of Law 11/2004 allows the imposition of supplementary penalties. However no sanctions have been imposed for a failure to observe AML obligations. The IGAE (now the ASAE) had implemented 123 general legal suits for general administrative offences nature from 2002 to 2005, 13 of these related to non compliance with AML legislation, specifically a failure to make an STR.

[41] All these sanctions are described in Article 125 of the Bar Association Statutes (Law 15/2005)

592. At the time of the on-site visit the ASAE was not sufficiently resourced to undertake its supervision duties in relation to AML/CFT, as it did not yet have its full number of authorised inspectors. Due to the transfer of responsibilities of IGAE to the new ASAE, there was a temporary slow down of the number of inspections. The evaluation team were informed that ASAE is setting up a new Planning and Operational Control Services to improve research and information analysis to perform directed inspections in the future.[42]

593. Administrative sanctions and ancillary sanctions provided for under Articles 45 to 47 of Law 11/2004 apply to DNFBPs, whether natural or legal persons. Wilful non-compliance with the duty to identify customers, to monitor operations and to keep documentation for a 10-year period, is a breach for all DNFBPs under Article 6 of Law 11/2004. Breaches can be punished by a fine ranging from €1,000 to €250,000 (for natural or legal persons carrying out designated professions or businesses). Fines from €500 to €100,000 can be applied in the case of individuals who are members of the management bodies of legal persons, or exercising there any director, chief or management function, or acting in their capacity as a representative thereof.

594. In addition to the above-mentioned main sanctions provided for under Articles 45 and 46, some ancillary sanctions set out under Article 47 of Law 11/2004 may apply to the offender – restraint to perform any corporate or management function, and publicity of sanction at the offender's expense. Sanctions are applicable by the government department responsible for the business sector concerned.

Additional Elements

595. Law 11/2004 applies to ROCs, TOCs and external auditors. In addition to customer identification requirement, they are also required to report any operation susceptible of constituting, suggesting or suspecting the practice of a ML offence, as soon as such operation is known to them in the exercise of their duties (Article 30).

596. DNFBPs, including ROCs and TOCs (but excepting lawyers and *solicitadores,* that report firstly to the Bar and the Chamber), are required to report to the AG any transaction susceptible of constituting or suggesting the suspicion of ML (Article 30 of Law 11/2004), regardless of the fact that the predicate offence may or may not have occurred within the Portuguese territory (Article 368-A (4) of the Criminal Code).

4.2.2 Recommendations and Comments

597. DNFBPs are required to comply with a limited number of requirements of Recommendation 16. The obligation to report STRs is the same as for financial institutions and is largely compliant with the standard required of Recommendation 13. However, to date there have been very few reports submitted which raises questions of the effectiveness of the measure, in part, that is designed to help identify potential STRs. With regard to Recommendations 15 and 21 in respect of DNFBPs, significant improvements are required before the application of these measures reaches the FATF standards.

598. The extension of AML/CFT obligations to the non-financial sector will require comprehensive awareness raising and training to ensure DNFBPs understand their obligations.

[42]Since the evaluation ASAE has created a working group on AML (WGAML) composed by an intelligence analysis expert, two inspectors on AML investigation and a law enforcement expert. The WGAML aim to improve the investigation and the performance for inspections to prevent and detect AML activities. The ASAE now employs 228 inspectors.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	PC	• All DNFBPs are subject to comprehensive legislation with regard to reporting duties. However only 10 suspicious transactions were reported from 2003 to 2005. • No co-operation procedures have been so far established between the Bar Association and the Chamber of *Solicitadores* on the one hand, and the DCIAP or FIU/PJ, on the other hand. • Even though training is not satisfactory yet except in the area of casinos, the evaluation team noted the planning for improvements concerning this matter. • There is no obligation to give special attention to business relationships and transactions with persons (including legal persons) from or in countries which do not or insufficiently apply the FATF Recommendations. • Sanctions provided by law are in particular proportionate, as fines have a wide range of amounts and Article 47 of Law 11/2004 allows to imposition of supplementary penalties. However no sanctions have been imposed yet, except in the supervisory area of ASAE (formerly the IGAE).

4.3 Regulation, supervision and monitoring (R.24-25)

4.3.1 Description and Analysis

599. Monitoring of compliance requirements by the different DNFBPs is made either by government authorities or Self-Regulatory Organizations (SRO). Under Article 32 of Law 11/2004, monitoring authorities are responsible for ensuring the effective monitoring of compliance requirements preventing of ML the following entities:

600. **Casinos**: are licensed by the General Inspectorate for Gambling, a public authority with exclusive competence in this field. Oversight and monitoring of casinos, is exercised by the State through IGJ (Article 95 of Decree-Law 422/89). There is a permanent oversight service in every casino entrusted to IGJ inspectors, who control their day-to-day activity. These inspectors are entitled to examine any books, documents and request any information necessary to monitoring compliance with Law, including in relation to ML preventive measures and licensing contracts (Articles 95 and 97 of Decree-Law 422/89, Article 13 (1)-a) of Decree-Law 184/88, and also Article 32 (1) a) of Law 11/2004).

601. The IGJ also has a broad range of powers that can be applied for AML monitoring. These include:

- Controlling the movement of funds and values in connection with the operation of playrooms;
- Auditing the accounting records of licensee entities in order to ascertain compliance with both legal and contractual rules applying;
- Overseeing the special accounting records of business exploitation of gambling zones;
- Conducting enquiries, investigation and examination with regard to the full compliance with the regulatory legislation governing licensing contracts for the exploitation of gambling;
- Assessing and instruct infringement proceedings against licensees, in particular in respect of rules of Law 11/2004 (Article 13 of Decree-Law 184/88, and Article 32 of Law 11/2004).

602. Under the legal regime applying to casinos, special attention is given to both personal and capital requirements to be complied with by licensing applicants and licensees. According to Decree-Law 422/89, at least 60% of the capital stock in the licensed company is always required to be represented by nominative shares or registered bearer shares; at the same time, any transfer of ownership thereof must be reported to IGJ within 30 days after its entry into the records of the company (Article 17). The acquisition of more than 10% of the capital stock in the licensed company or any other assets insofar as there is, directly or indirectly, a change in its control is subject to an authorisation to be granted by the member of the Government responsible for the area of tourism; otherwise, the acquiring person or persons shall not be allowed to exercise their corporate rights (Article 17). Any person having been convicted of wilful offence subject to imprisonment for more than six months or of breach of certain rules of Decree-Law 422/89 concerning the prohibition to grant loans or the ordinary gambling practice, shall not be allowed to take part in the corporate bodies of casinos, or to be a director (Article 70).

603. Oversight of casinos by the IGJ includes oversight and monitoring of internet casinos. On line gambling is not authorized in Portugal. Any online gambling exploitation is illegal and punishable by law, according to Article 108 of Decree-Law no 4232/89 that regulates the exploitation of all the games of chance; Article 108 states "*Any person exploring games of chance without a prior legal authorisation shall be subject to punishment by confinement up to 2 years and a penalty up to 200 days*". The IGJ may ask for the intervention of the Police Forces to ensure the application of the law and to cooperate with the authorities or police forces in the control and repression of illegal gaming. Non-compliance by any gambling licence with any legally or contractually established obligation constitutes an administrative offence that may, furthermore, result in the termination of the licensing agreement (Article 118 of Decree-Law 422/89).

604. **Real estate agency, buying and selling of real estate, selling of precious stones and metals:** The General Inspectorate for Economic Activities (IGAE). Since 1 January 2006, the duties of the IGAE have passed to the ASAE that was created by Decree Law 237/2005. The ASAE is a criminal police body according to its organic law and the Criminal Procedure Code and has the following inspection powers: (1) enter in places subject to inspections (2) examine all documents, accounting books and records to obtain information deemed relevant (3) collect all supporting evidence.

605. IGAE resources included 170 inspectors to carry out its oversight and monitoring activities which go beyond the ML prevention. Between 2002 and 2005, inspections of the following professional activities took place: real estate agencies (42% of the control actions), selling of vehicles and boats (23% of the actions), selling of precious stones and metals (15%), construction and selling of real estate (13% of the actions), selling of antiques and works of art (2%). Within the framework of its activities, the IGAE published a newsletter referring to all control actions to the entities subject to the ML preventive regime.

606. In the same period, the IGAE sent to the FIU 4,058 reports in 2005 within the framework of ML prevention. It carried out the following compliance checks of duties imposed by Law 11/2004:

	2002	2003	2004	2005	**TOTAL**
Economic agents checked	399	993	319	395	**1,857**
Cases of failure to comply with Decree-Law 325/95 and Law 11/2004	30	54	12	27	**99**

607. Within the framework of these operations, carried out in the whole of the national territory, the following shortcomings were detected: 40 cases of failure to report the start of an activity (Article 23 (2) a), 53 cases of failure to send semester lists of transactions (Article 23 (2) b) and 11 cases of failure to identify contracting parties (Article 23 (2) a and i) and 13 instances of failure to report suspicious transactions and 6 record keeping violations (in total 123). In 2005, the General Directorate for Customs and Special Taxes on Consumption (DGAIEC) sent to the FIU 264 reports

within the framework of ML prevention, whereas the General Inspectorate for Gambling (IGJ) sent 39.923 reports. During the on-site visit, the evaluation team were informed of a structural re-organisation of the IGAE with all their AML responsibilities being passed to the ASAE. The new administration received all human resources available in IGAE, and was programmed to receive 58 more inspectors, from the merged services.

608. **Registers and Notaries**: Registrars are public officials subject to the monitor and disciplinary procedures and powers of the Directorate General of Registers and Notaries and the Minister of Justice. Any wilfully violation committed in the exercise of their duties, as well as the non-compliance with obligations imposed by Law 11/2004 is punishable by Decree-Law 24/84 (a law that approved the Disciplinary Statute for Officials and Agents of Central, Regional and Local Administration). The same would apply to any public notary, who was not a public official.

609. A thorough reform of notaries is presently underway in Portugal, with the aim of changing the notaries from a public to private profession. For the most part, notaries are currently still public officials. Notaries who exercise their activity independently (presently just 170) are subject to monitoring and disciplinary action of the Minister of Justice and Professional Order of Notaries (Article 3 of Decree-Law 26/2004).

610. **Lawyers:** The Bar Association has the exclusive right of exercising disciplinary powers in accordance with the provisions of Article 109 of respective Statutes, under Law 15/2005.

611. ***Solicitadores*:** The Chamber of Solicitadores has the exclusive right to exercise disciplinary powers in accordance with the provisions of Article 132, as set out by Decree-Law 88/2003. Under Article 32 of Law 11/2004, the Chamber of *Solicitadores* is entrusted with powers to monitor compliance by these professionals with their AML duties. Non-compliance is deemed a disciplinary infraction punishable under the terms of applicable statutes (Article 51 of Law 11/2004). Sanctions range from a fine to strike-off the roll from the Chamber thereby precluding the exercise of this profession (Article 51 (2) of above Law).

Recommendation 25:

612. Obligations on DNFBPs are communicated to them through their supervisor or SRO. The IGAE (since 2006, the ASAE) issued a guidance letter on March 2003 explaining the applicable rules for complying with AML requirements, as provided for by Decree-Law 325/95, for at real estate agents and companies engaged in buying and selling of real estate, dealers in precious stones and metals, works of art, aircraft, boats and cars, as well as accountants, external auditors and companies providing money transport services. A Circular letter was also sent on March 2005 (no 5031/2005).

613. The text of Law 11/2004 has been published on the website of the ROCs (statutory accountants) Professional Order, and guidance in respect of its application will be published in the future. Moreover, the Professional Order includes in the continuous training activities for these professionals the AML duties incumbent upon them under Law 11/2004. In training delivered by the Chamber of TOCs (chartered accountants) to its 40,000 members, the SRO has called for the accountants to fully comply with the requirements of Law 11/2004. The Chamber has also published in the press and in the magazine "TOC" opinion articles on the subject.

614. The Bar Association has also published the text of Law 11/2004 on its website, as well as opinion articles by some of its members and articles on the interpretation and application of Law 11/2004 and relevant and EC Directives concerning AML.

4.3.2 Recommendations and Comments

615. Most DNFBPs are subjected to a degree of supervision and all have an assigned body responsible for supervision for AML/CFT purposes. The establishment of the ASAE provides the opportunity for effective supervision although it is important to ensure resourcing for ASAE inspections (see footnote 42).

616. The degree of supervision for DNFBPs not supervised by the ASAE and IGJ is limited. In particular the supervision for lawyers, solicitadores, notaries, ROCs and TOCs whose supervision could be improved and where enhanced monitoring and supervision action for AML/CFT is needed. Guidance and awareness raising should continue to ensure that recent changes to the obligations for DNFBPs are thoroughly understood. Oversight bodies and SROs should consider the issuance of sector specific guidance as envisaged under Recommendation 25.

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	PC	• With regard to all DNFBPs competent authorities or SROs are designated to perform monitoring and ensuring compliance of DNFBPs with AML/CFT requirements. However except for the IGJ and IGAE/ASAE, no inspections or other monitoring activities were carried out by the competent authorities. • Where an oversight role exists the SROs do not have sufficient resources to perform these functions.
R.25	PC	• There is very little guidance provided to the DNFBPs under the new Law 11/2004 by the competent authorities, except for IGAE/ASAE and casinos.

4.4 Other non-financial businesses and professions

Modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

617. The sectors and operations where the amounts involved are comparatively high, may have a greater risk of being used for ML. The FATF second round mutual evaluation report noted that Portugal had taken steps to extend AML obligations to some DNFBPs. The broad working of Article 20 of Law 11/2004 requires a range of activities vulnerable to ML to be subject to AML obligations. DNFBPs are therefore subject to general requirements set out under Law 11/2004, in addition to requirements provided for under FATF Recommendations. DNFBPs are currently covered under Article 20 of Law 11/2004 and are subject to preventive measures. Portuguese authorities have taken steps to include sectors considered to be higher risk for ML that are outside the FATF group of DNFBPs such as sports agents.

618. Regarding developments related to more sophisticated and secure means of payment, the preference for electronic means of payment has increased considerably, and the use of cash in the system of payment in Portugal has decreased, thereby to reducing some of the risk of ML. From 1989 to 2003 the use of monetary means and payment instruments in Portugal has changed, and the ratio of cash in relation to the GIP of 6.8% in 1989 was reduced to 3.3% in 2003, meaning a reduction by more than 50%. In 1989 cheques represented 81% of the whole volume of instruments of payment; in 2003 they represented only 20.8%, having been increasingly replaced by credit and debit cards. Payment cards representing in 1989 just 3% of instruments of payment amounted to 58% in 2003.

619. Additionally, Article 40, clause 3 of the law governing the State budget for 2005 was added to the general tax law, article 63-C, specifying that legal persons must from 2005 have their own bank account for their own financial resources. Those entities liable for corporation tax (IRC) and those liable for personal income tax (IRS) and obliged to have organised accounting procedures, whatever their situation at present, must have at least one bank account exclusively for handling payments and receipts related to their business activity. All payments and emoluments, advances and loans to partners, and all other payments to the benefit of partners should be recorded on the account mentioned in clause 1 above. All payments of invoices or the equivalent of more than twenty times the value of the minimum monthly wage[43] should be made through a form of payment allowing for the identification of the recipient, whether it is bank transfer, cheques in the recipient's name or direct debit.

4.4.2 Recommendations and Comments

620. Portugal has extended AML/CFT to other businesses and professions in accordance with EU ML Directives and has also encouraged the development and use of modern and secure techniques for conducing financial transactions that are less vulnerable to ML.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	C	This Recommendation is fully met

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

621. Under provisions of the Portuguese Civil Code, legal persons of a private nature can be divided into *associations, foundations* and *unincorporated associations*. The Company Code includes different types of companies – *general partnerships, limited liability companies, joint-stock companies, limited partnerships* and *partnerships limited by shares*. All companies operating in Portugal must be recorded in the National Register of Legal Persons (RNPC) and in the Commercial Register. The register is a central database of legal persons and determines whether companies and names are admissible (under Article 1, Decree-Law 129/98) to operate in Portugal. Under the provisions of Article 6, the following information relating to associations, foundations, unincorporated associations and trading companies, co-operatives and state enterprises must be recorded in the central database of the RNPC:

- Details of the set-up;
- Any amendments relating to the business name or name;
- Change of purpose or capital;
- Change of registered office or postal address;
- Merger, demerger or transformation;
- Winding-up;
- Liquidation or restart.

[43] Currently, the minimum monthly amount is €374,70 according to Decree-Law 242/2004.

622. Public services and entities of a personal nature, organisations representing international legal persons or those registered under foreign law operating in Portugal are also registered with the RNPC (Articles 1 and 7). The General Directorate of Registries and Notaries is responsible for managing the RNPC database, within the terms of the Protection of Computerised Data Law (Article 30). A number is given to every entity registered at the RNPC, and this becomes its specific number - its *Legal Person Identification Number* (NIPC) (Article 13 of Decree-Law 129/98). The RNPC can issue a certificate confirming that business names and names are valid, if this is requested (Article 45 of Decree-Law 129/98).

623. Any person can have access to the data recorded in the RNPC and in the Commercial Register (Article 73 Commercial Registration Code). The data do not include information about the identity of the beneficial owners that may control the legal person but contain information on the stakeholders of legal persons. This information is publicly available in the Commercial Register; however the Commercial Register contains only information on commercial companies.

Bearer shares

624. Bearer shares are characterised by a special regime of transfer and legitimating: Holding the security grants the legitimacy to exercise embodied rights and the transfer of the ownership results of the transmission of the share, without registration. In the Portuguese law there is a clear preference to the issuance of nominative shares, because the law states that in the absence of a bylaws clause or the decision of the issuer, shares are considered to be nominative (Article 52 (2) of the Securities Code). In addition, there are also some cases when it is mandatory to issue nominative shares, such as: (1) when they are not fully paid, (2) when they can not be transmitted without the consent of the company and (3) when the owner is obliged by the bylaws to make additional contributions to the company.

625. Joint-stock companies represent only 4% of all companies registered in Portugal (25,993 companies). Joint-stock companies are able to issue two different types of shares: nominative shares and bearer shares; nominative share information on ownership can be obtained at any time. Owners of nominative shares always have to be registered. Information on bearer shares issued by joint-stock public companies (*sociedades abertas*) can be obtained at any time in accordance with the provision of Article 52 of the Securities Code and the shares are registered with the issuer (Article 64 (1) of the Securities Code and Executive Order nº 289/2000, of 25 of March. Public companies are companies (1) whose capital is open to public investment and are incorporated through a public offering for subscription directed to residents in Portugal (2) companies issuing securities granting the right to subscription or acquisition of shares subject to a public offering directed at residents in Portugal (3) companies issuing securities granting the right to subscription or acquisition of shares admitted to trading on a regulated market in Portugal (4) companies issuing shares representing more than 10% of their share capital through a public offering directed at residents in Portugal and (5) companies resulting from the splitting up or merging of public companies.

626. Nevertheless non-public companies' owners of bearer shares have an obligation to inform the company of the number of shares held by them if they represent more than 10%, 33% or 50% of the share capital. This obligation also applies to shares held by the spouse, minors etc. Shareholders of a public company must report their holdings if they exceed 10%, 20%, 33%, 50%, 66% and 90 % of the voting rights or under certain circumstances if they exceed 2 or 5 %. Owners of bearer shares of less than 10% of the share capital are normally disclosed in the general meeting as the owners have to identify themselves to exercise their voting rights. The minutes of the general meeting — containing the names of the partners present — are filed with the company for ten years.

627. In other commercial companies (partnerships, limited liability companies and limited partnerships) all partners are identified in the by-laws which are subject to compulsory commercial registration and publicly available. The transfer of company shares is also subject to compulsory

commercial registration. However, there is no obligation to register information concerning the beneficial ownership and the control of the legal persons.

628. Partners of commercial companies not issuing bearer shares of a non public company are identified and subject to commercial registration and the transfer of company shares is subject to compulsory registration. Any person has access to the data recorded in the commercial register (under Article 73 Commercial Registration Code). Therefore competent authorities have access to all relevant data in terms of commercial companies not holding bearer shares and non public, even when they issue this type of shares.

629. There is no appropriate provision to ensure total transparency of share ownership of non public companies that have issued bearer shares (except in all the case, in which all persons holding more than 10 percent of voting rights must declare themselves.). An owner of bearer shares is required to make himself known in order to receive his dividends through a financial institution (who are required to identify its customers). Nevertheless there is a possibility that persons holding more than 10 % of voting rights may not choose to participate in the general meeting and will therefore be under no obligation to make themselves known. The ease of transferring bearer shares, the attendance list for general shareholders' meetings only allows determination of control of the company for the day of the particular shareholders' meeting. The attendance list is considered to be generally inadequate for determining the control of the company between two shareholders' meetings. This method (using attendance lists) would not meet the conditions whereby competent authorities should be able to obtain current and timely information on the control of legal entities.

5.1.2 Recommendations and Comments

630. Competent authorities do have access to the National Register of Legal Persons and to the Commercial Register. However, as previously mentioned, this does not include all information needed to reveal the beneficial ownership of associations, foundations and cooperatives. However banks and financial institutions are obliged to obtain and record information on the identity of the significant shareholders and management of companies and those who hold more than 25% of a company, even when they hold bearer shares, which is a measure to restrain the risk of bearer shares being used for ML. Portugal should extent the range of information collected in the National Register of Legal Persons and/or in the Commercial Register to data concerning the beneficial ownership.

631. Portugal should also consider measures to ensure the knowledge of identity of holders of bearer shares issued by the small number of companies and to make this information available to competent authorities, as mentioned in the previous paragraph.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	PC	• The National Register of Legal Persons does not include information on the beneficial ownership and the persons who control a legal person. • There is not full transparency of the shareholders of companies that have issued bearer shares.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

632. The Portuguese Legal system does not allow for the creation of trusts, and the legal concept of trust does not exist under Portuguese law (Articles 1306 and 601 of the Civil Code). However, trusts that have been legally constituted under foreign legal regimes, and whose settlor and beneficiaries are non residents in Portugal, can be recognised and authorised to perform business activities exclusively in the Madeira Free Trade Zone, under the provisions of Decree-Law 352-A/88 (see annex).

633. Those trusts authorised to act in the Madeira Free Trade Zone must be registered in the Commercial Registry in the Free Trade Zone and the documents of recognition of the trust and all the mandatory elements, such as the purpose of the trust, the date of creation, the duration period, the denomination and headquarter of the trustee, the facts modifying the trust, are all registered and publicly available. The names of the settlor and trust beneficiaries are also recorded. However, these are not publicly available, although they may be disclosed through a judicial order, according to Articles 7 and 10 of Decree-Law 352-A/88. According to Article 13 paragraph 2 and Article 15 paragraph 2 of Decree-Law 352-A/88, of 3 October, an authorisation by the Ministry of Finance has to be granted if the activity of the trust has a financial nature.

634. In the framework of a business relationship or an occasional transaction between an off-shore trust (as a customer) and a financial entity, Law 11/2004 applies (as well as Regulations of the supervisory authorities) and requires that the financial entity or DNFBP identify the customer when they are trusts and their representatives, and verify identification, including the beneficial owner. If there is knowledge or grounds to believe that the client is not acting on its own behalf, it is necessary to obtain from the customer information on the person on whose behalf he/she is effectively acting (Article 3 (2) of Law 11/2004). Financial entities are to refuse to proceed with the operation when the customer does not provide full identification or identification of the person on whose behalf he/she is effectively acting (Articles 2 b), 4 and 14 of Law 11/2004). Entities must request the identification of their customers and representatives through the presentation of a valid supporting documentation (see Recommendation 5).

635. Regulatory instruments of the BdP (3.1 to 3.3 of BdP Instruction 26/2005, Articles 9 (4) and 10 to 12 of BdP Notice 11/2005 on the opening of deposit accounts) require, in the case of trust operations carried out in Madeira's free trade zone, identification information along with respective proof to identify who administers the trust, who holds more than 25% of the capital, as well as the representative and who has the powers to carry out the operation.

5.2.2 Recommendations and Comments

636. Foreign trusts operating in the Madeira free trade zone represent a small fraction of business activity according to the Portuguese authorities. The AML laws and relevant obligations apply to such legal arrangements as indicated by Portugal. Nevertheless, the evaluation team was unable to gain first-hand knowledge of the degree to which rules are actually applied to these arrangements, and the exact nature of their economic activity was unclear (real estate holdings, "financial services", etc.). Therefore, the evaluators had some misgivings as to the effectiveness of Portuguese measures in allowing for access to information on the beneficial ownership and control of such arrangements.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	PC	• Competent authorities have limited powers to have timely access to information on the beneficial ownership and control of trusts.

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

637. NPOs[44] in Portugal can take a number of legal forms and may operate in different environments (local, regional, national and international). The large number and the broad range of types of NPOs in Portugal result from the constitutional principle of freedom of association. NPOs represent a wide scope of different activities: recreational, religious, health, family, environmental and educational, and organisations of the sector play an important social role in different areas of the civil society. The diversity of legal forms makes it is difficult to know with certainty the total number of NPOs active in Portugal. However, all legal entities in Portugal are required to be registered. Existing data in the RNPC recorded within the Central File of Legal Persons (FCPC) provides a general indication of the types of legal entities that may be operating as NPOs:

Different legal entities operating in Portugal as possible NPOs		
	2003	**2004** (and % change)
Associations	41, 607	43,117 (+ 3.63%)
Foundations	721	728 (+ 0.97%)
Legal persons of religious nature	8,061	8,194 (+ 1.65)
Total	**50,389**	**52,037**

638. Research conducted in 2004 by the Criminal Police indicated the existence of 97 Non-Government Organisations working in the area of development and that about 4,100 Private Institutions for Social Solidarity (IPSS) had been created.

Review of the sector

639. The Ministry of Justice conducted a national review of the NPO sector and the vulnerabilities in the existing legislation and submitted their findings to the FATF Working Group on Terrorist Financing in September 2005. The review concluded that although Portugal does not directly obligate the NPO sector to comply with AML/CFT requirements, existing legislation can be applied to investigate NPOs, particularly if there is a suspicion of TF.

640. Law 5/2002 allows for a special regime for the collection of evidence, for ML and TF. Law 52/2003 establishes the regime for prevention and punishment of terrorist acts, terrorist groups and organizations, internal and international terrorism and TF, foreseeing the criminal liability of legal persons, corporations and mere de facto associations for the commission of the same range of offences. Laws 5/2002 and 52/2003 allow a full range of investigative powers that would apply to suspected cases of TF. Additionally under Article 16 of Law 20/87, the police authorities can also apply measures, including the closure of the activities of corporations, groups, organisations or associations dedicated to the commission of offences connected with organized crime: sabotage,

[44] Political parties and trade unions are subject to specific legislation and, consequently, were not included in the scope of this review.

spying or terrorism or the commission of offences with the aim of training or recruitment of individuals for the mentioned purposes.

641. The provisions of Law 52/2003 are applicable to the NPO sector whenever legal persons are liable for the offence of TF. Liability of legal entities does not exclude the individual liability of the respective offenders. The penalty of dissolution could be applied if the founders of the legal person, regardless its type, had the intention, exclusively or predominantly, of using it to commit the offence of TF or if repeated commission of such offence shows that the legal person is being used, exclusively or predominantly, for that purpose, either by its members or by the executive director.

642. The monitoring of NPOs, mainly NPOs for development registered and acting in Portugal, indicated that so far there have been no connections with suspicious activities of international terrorism support. No foreign inquiries have been received to indicate activity that relates Portuguese NPOs with terrorism. The Portuguese authorities have concluded that the NPO sector in Portugal does not seem to represent a major threat for TF or terrorist activities. The research and investigations conduced by the Criminal Police and intelligence services conclude that no special relationships of NPO exists with foreign countries that could increase the risk of TF. Some of these organisations, however, were found to be linked to activities linked to illegal immigration, documents forgery or tax evasion.

643. In light of the national level review, Portuguese authorities support the maintenance of policies conducted to monitor the NPOs that could pose a major threat of TF by the police and intelligence authorities. At the international level Portuguese authorities indicated they favour the adoption of mechanisms of transparency, allowing the knowledge of NPO structures, state of affairs, origin of funds and donors, its destination when sent abroad, facilitating, where necessary on-site inspections or supervision and investigations by competent authorities, according to national principles.

Ensuring that terrorist organisations cannot pose as a legitimate NPO

644. Law 16/2001 implemented the Register of Legal Persons of Religious Nature that includes up-to-date information including the identification and the legal situation of entities established to pursue primarily religious aims. Registration is mandatory for incorporation; information about the statutory seat (headquarters), religious aims, goods or services that relate to the property or the identification of the administration members needs to be recorded. After registration the National Register of Legal Persons issues an identification number to these entities. Existing data in the register is subject to legal protection, although, for fiscal or criminal investigation purposes, competent authorities have access to this information.

645. The Register of Legal Persons of Religious Nature is kept within the Direction General of Registries and Notaries, of the Ministry of the Justice. Legal persons of public interest are obliged to submit their accounts annually including the individual balance sheet. Legal persons of public interest under Decree-Law 460/77 (this includes associations and foundations) are required to comply with record keeping rules and maintain organised the annual accounts and individual balance sheets. They should provide these documents to the tax authorities and other designated public authorities and be subject to supervision and inspection procedures.

646. There are no specific legal provisions and no particular restrictions in Portugal for the internal sharing of information concerning the NPO sector between competent authorities. However Law no 67/98, places restrictions on the privacy and protection of personal data, restrictions are applicable to the treatment and recording of personal data and for the use of this data. However this protection can be lifted when there is a criminal investigation.

647. The provisions of law on national security (Law 20/87) and law of the criminal procedure (Law 21/2000) allow for the use of some instruments for the prevention of terrorism, including TF. Whenever suspicions arise as to the carrying out of illegal activities by NPOs, the sharing of

complete information among criminal police, intelligence services and judiciary authorities is allowed, under prior authorisations of the competent entities to collect evidence, investigation and criminal prosecution of those entities.

648. Portugal can share information internationally in accordance with Law 144/99 on international judicial co-operation in criminal matters. Pursuant to the article 145, MLA can 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 the following: the notification of deeds and the service of documents; the procuring of evidence; searches, seizure of property, experts' examination and analysis.

649. Within the framework of 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, direct communication of information relating to criminal matters may be established between Portuguese and foreign authorities that assist judicial authorities (the Criminal Police).

Monitoring

650. No specific national authority exists for the supervision and monitoring of NPO activities for the prevention of AML/CFT. The competence for registration, incorporation, inquires and inspections fall upon several different entities within different Ministries, in accordance with the aims pursued by the NPOs. All information concerning associations, foundations, corporations and other legal entities under the Portuguese law, or under foreign law acting in Portugal, is recorded in the FCPC - Central File Legal of Persons, within the National Registry Legal of Persons.

651. Research and monitoring undertaken by the Criminal Police on NPOs has focused on those operating in the national territory, the scope of these initial investigations was subsequently enlarged to examine other NPOs that it was believed could be abused for the aim of allegedly TF. In cases where suspicious money transfers involving associations of religious nature were detected, the suspicions indicated that individuals inside those entities had abused them for illegal aims. Investigations only indicated the perpetration of non serious offences and offences not related to terrorism.

652. Other detected suspicious activities, observed the financing of active political party structures in conflict zones in the Asian Southwest, through money remittances and contributions made by merchants' and contributions with the aim of supporting the victims of the Middle Eastern and Asian political movements in several countries. In both cases, the individuals' involvement leads to the conclusion that they belong to organisations of cultural or religious nature, with well-known connections with political parties or political movements in the Middle East and Asian countries. Members of some associations of cultural nature investigated by national authorities were also involved in activities of supporting illegal immigration, through the lodging rendering and of forged documentation. Through these illegal activities in some cases existing indicators show that they could have been used for the financing of activities connected with terrorism or for the support of active radical organizations in the countries of origin of those individuals. The authorities suspect, although this suspicion needs to be confirmed, that for money remittance fast systems of money transfer systems or even cash couriers are being used.

Additional Elements

653. Portugal has a degree of oversight over the NPO sector through registration requirements on legal entities and through the research and monitoring by the Criminal Police and intelligence

services has conducted a review to assess the general nature of the NPO sector and to detect any cases of abuse for TF.

5.3.2 Recommendations and Comments

654. Portugal should continue to monitor the current situation in relation to ML and TF risks in the NPO sector and further consideration implementing specific measures required by the Interpretative Note to Special Recommendation VIII,[45] the Best Practices Paper to Special Recommendation VIII such as ensuring that NPOs collect all relevant information on the identity of the person(s) who own, control or direct their activities, including senior officers, board members and trustees, encourage outreach to the sector concerning TF issues, ensure adequate supervision and monitoring and effective mechanisms for international co-operation.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	LC	• NPOs in Portugal should be required to maintain information on (2) the identity of the person(s) who own, control or direct their activities, including senior officers, board members and trustees. This information should be publicly available either directly from the NPO or through appropriate authorities. • NPOs should have appropriate controls in place to ensure that all funds are fully accounted for and are spent in a manner that is consistent with the purpose and objectives of the NPO's stated activities. • NPOs should follow a "know your beneficiaries and associate NPOs" rule, maintain, for a period of at least five years, and make available to appropriate authorities, records of domestic and international transactions • Appropriate authorities should monitor the compliance of NPOs with applicable rules and regulations.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R.31 & 32)

6.1.1 Description and Analysis

Recommendation 31

655. Portugal has pursued a collaborative approach to the implementation of AML/CFT obligations, particularly in co-operation between the three national supervisory regulatory authorities in the financial sector. The National Council of Financial Supervisors (CNSF) set up in 2000 provides a forum for general co-operation among the three supervisory authorities — BdP (for credit institutions, investment firms, and other financial companies), ISP (for insurance and reinsurance companies, insurance intermediaries, pension funds and their management companies), and CMVM (for securities markets and financial intermediaries activities) , and has the following main responsibilities:

[45] The Interpretative Note to Special Recommendation VIII was issued in February 2006, and the subsequent changes to the assessment methodology were approved by the FATF Plenary in June 2006. Given the timing of the modifications to the methodology regarding SR VIII, it was not possible to include a full assessment of this recommendation according to the new standard. Therefore, while some of the new criteria have been addressed in the descriptive part of the report on Special Recommendation VIII — in anticipation of the new standard — the rating of the recommendation is according to the previous methodology criteria in effect at the start of the Portuguese evaluation process.

- To facilitate and coordinate the information exchange among the three supervisory authorities;
- To promote the development of supervisory rules and mechanisms for financial conglomerates;
- To formulate proposals for the regulation of issues related to the scope of activity of more than one of the supervisory authorities;
- To promote the definition or adoption of coordinated policy measures with foreign entities and international organisations.

656. For ML and TF prevention matters the three supervisory authorities are subject to institutional co-ordination, within the context of the Council. Order 799/96-SETF and Order 977/03-MEF established an informal working group of representatives of the Minister of State and Finance, Ministry of Justice, the three supervisory authorities in the financial sector and the financial information unit (FIU), that meets regularly, where common issues are discussed and technical proposals or acting proposals are prepared..

657. An assessment of the effectiveness of the Portuguese preventive system occurs in the informal working group that also comprises the Ministry of Justice and the FIU. It has co-ordinated a self-assessment exercise examining the degree of compliance of the Portuguese AML system with the 2003 FATF Recommendations. The gaps identified were jointly discussed and each supervisory authority defined an action plan to address those problems in 2004. Conclusions are reported to CNSF (an activity report may be found in the supervisory authority's website[46]), and on the basis of these action plans; the three supervisory authorities prepared new regulatory instruments that were issued during 2005 - BdP Instruction 26/2005[47], Portuguese Insurance Institute Regulatory Standard 10/2005-R[48] and the Market Securities Commission revision of its Regulation 12/2000[49].

658. MOUs also provide the separate regulators with the opportunity to co-operate and exchange information on operational issues. Separate co-operation arrangements relating to AML and irregular situations also exist between BdP and ISP and operate through the framework of an MOU that defines the relevant procedures (similar provisions will be incorporated in the MOU between BdP and CMVM that is in the process of being revised).

659. It is apparent in the drafting of Portuguese AML/CFT regulations that a large degree of discussion and coordination has occurred between the three supervisory authorities in the financial sector. The BdP Instructions and ISP Standing Instructions will often have the same obligations are contained in the same numbered article in each separate notice.

660. There also exists a biannual National Meeting of Financial Operators and Authorities where all the relevant entities involved in prevention and repression of ML gather. The meeting acts as another forum for discussion and analysis of the overall AML system.

661. A more formal co-operation between the range of agencies with an AML/CFT role could contribute to a more focused, system in Portugal.

662. A more formal co-operation between the range of agencies with a ML and TF role, overall, could contribute to a more focused, Portuguese AML/CFT system. There have been no cross agency reviews involving the whole spectrum of agencies involved in the implementation of an effective AML/CFT system, though a review of the regulations required after the implementation of Law 11/2004 was conducted

[46] http://www.isp.pt/NR/rdonlyres/1D0FFB9D-802C-421A-A374-ED4F22158316/0/cnsf_rel2004_p.pdf

[47] http://www.bportugal.pt/root/servs/sibap/application/app1/instman.asp?PVer=P&PNum=26/2005

[48] http://www.isp.pt/NR/exeres/42988000-A6C2-481E-BA6E-2508185118DA.htm

[49] http://www.cmvm.pt/NR/exeres/0B9CB940-4986-4EB9-BD3B-9421FD792DFF.htm

6.1.2 Recommendations and Comments

663. *Review of the effectiveness of domestic AML/CFT system:* The co-ordination and so-operation between the three supervisors is very good. Since the last mutual evaluation Portugal has broadened the scope of its ML and TF prevention regime, AML/CFT obligations now lie with several different government departments. There are, however, a number of horizontal co-operation and co-ordination issues relevant to the overall co-ordination of the Portuguese AML/CFT system that would benefit from increased formal co-operation between entities other than the three regulators. The Portuguese authorities have established an informal group for discussing AML/CFT issues that includes already the supervisors and the Ministry of Justice and the FIU as called for in Order 977/03 of the Minister of State and Finance.

664. The framework provided by the CNSF, particularly in examining strategic AML/CFT issues, serves as a basis for wider co-operation. The FIU, DCIAP and Criminal Police have held regular and periodic contacts and meetings on financial investigation issues. Such a forum could also serve as a mechanism for developing national typologies and providing supervisors with guidance on best practice for financial investigation, feedback and encouraging good quality STRs.

665. Although formal co-operation may take place, current efforts could be improved ensure there effective mechanisms of co-operation at national level that assist in ultimately ensuring effective prosecution of money launderers. Portugal should also conduct a comprehensive review of its AML/CFT regime in order to identify the weaknesses and shortcomings that need to be addressed.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	LC	• Although formal co-operation may take place, there is still room for improvement in more effective interagency co-operation. [Effectiveness Issue] • There is room for more formal increased interagency co-operation particularly between supervisory authorities, the FIU and prosecutors.

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

666. As noted in Section 2 of the report Portugal ratified the Vienna Convention in 1991, the International Convention for the Suppression of Terrorism Financing in 2001 and the Convention against Transnational Organized Crime in 2004. As to the Vienna and Palermo Conventions Portugal applies respectively, the articles 3-11, 15, 17, and 19 and articles 5-7, 10-16, 18-20, 24-27, 29-31 and 34 in their Criminal Code under and in Decree Law 15/93, Law 52/2003, Law 5/2002, Law 144/99 and Law 11/2004.

667. Portugal is Party to the 12 UN antiterrorist conventions and the 1999 UN International Convention for the Suppression of the Financing of Terrorism was signed and ratified by Portugal in 2001. Articles 2-18 of the International Convention for the Suppression of TF are fully implemented through the Criminal Code and Law 52/2003.

668. The approved by the UN Security Council Resolutions were implemented (where there was a gap in the Portuguese criminal law) through Regulations of the EC Council 337/2000, 467/2001, 2580/2001 and 881/2002, and by EU Common Position 2001/931/CFSP (see Special Recommendation III). Portugal has basically implemented the legal provisions of S/RES/1267 (1999) and S/RES/1373 (2001) and its successor resolutions that relate to the FATF Recommendations.

669. To freeze suspected terrorist assets Portugal relies on UN and EU mechanisms as well as the judicial system; EU regulations apply directly in national law through Article 8 (3) of the Portuguese Constitution and Article 189 of the Treaty of Rome. A clear legal basis to freeze any identified funds does not exist until the EC Regulations are applied and there may be a short delay (a few days) before this is done. Financial Institutions are obliged to freeze on the basis of EC listings, of Law 11/2002 and on the basis of a judicial order. Law 11/2002 foresees the regime of sanctions applicable to the non-compliance with sanctions imposed by EU Regulations and UN Resolutions and sets out provisional measures applicable for within Portuguese territory.

670. UN lists of suspected terrorists are received first by the Portuguese Ministry of Foreign Affairs, which sends the lists to the other Ministries involved (the Ministries of Finance and Justice). EC lists are publicly available after the publication of EC Regulations in the Official Journal of the European Communities. Financial institutions, including securities and insurance institutions receive additional information from the BdP, ISP and CMVM, i.e., the supervisory authorities. Notaries and registration offices (for automobiles, boats, airplanes and Commercial Register) receive the information from the Ministry of Justice. Except for notaries and registry officials, DNFBPs do not receive any lists provided by the Government.

671. Under UN Security Council Resolutions 1267 and 1373 and EC Regulations 337/2000, 467/2001, 2580/2001 and 881/2001, 13 bank accounts were frozen, in 2001 and 2002. After the evaluation of the identity of people involved and the conclusion that the persons owning these accounts were different from the ones mentioned in the lists the suspension of the movements on these accounts was immediately lifted.

672. In addition Portugal has frozen assets under other UN Security Council Resolutions 1127 (1997), 1173 (1998) and 1295 (2000) establishing economic and financial sanctions applicable to some members of UNITA (a political party established in Angola) as well as EC Regulations 1708/98 and 2231/2001.

Additional Elements

673. Portugal has also ratified a number of other international multilateral instruments that allow it to cooperate internationally: Some examples are the European Convention for the Suppression of Terrorism, the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders, the European Convention of Extradition (1989) and its supplementary Protocols and the European Convention on MLA and its supplementary Protocol (1994), the European Agreement on the Transmission of Applications for Legal Aid, the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, the Convention on the Transfer of Sentenced Persons and the Criminal Law Convention on Corruption all in the framework of the Council of Europe[50].

6.2.2 Recommendations and Comments

674. Portugal has adequately implemented the Vienna and Palermo Conventions and TF Conventions and has basically implemented the legal provisions of S/RES/1267(1999). Portugal can seize and confiscate terrorism funds under S/RES/1373(2001) using its national legal framework and through the judicial system and can execute on its territory a decision to freeze assets issued by an authority of other State in the context of criminal proceedings, under Article 145 and following of Law 144/99. Through judicial co-operation, Portugal can freeze and confiscate assets belonging to EU nationals for which Common Position 2001/931/CFPC applies and also to citizens of non-EU countries.

[50] http://www.conventions.coe.int/Treaty/Commun/ListeTraites.asp?PO

675. It should improve the mechanisms for the freezing of assets of designated terrorists who fall outside the EU listing mechanism for freezing. It should also monitor all DNFBPs for compliance with both Resolutions, and establish a system of communicating with them concerning action taken under the freezing mechanisms.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	C	This Recommendation is fully met.
SR.I	PC	• S/RES/1267 (1999) has been implemented but S/RES/1373 (2001) has not yet been comprehensively implemented. • There is no system for effectively communicating action taken by the authorities under the freezing mechanisms to some DNFBPs. • DNFBPs are not adequately monitored for compliance with measures taken under the Resolutions.

6.3 Mutual Legal Assistance (R.36-38, SR.V)

6.3.1 Description and Analysis

676. Portugal's ability to co-operate internationally in criminal matters is outlined in Article 229 of the Criminal Procedure Code and more specifically in Law 144/99. Article 229 of the Criminal Procedure Code states that MLA in criminal matters are regulated by treaties and international conventions and, in the absence or inadequately of international treaties or conventions, the matter is dealt within a special legal instrument and in the provisions set forth in the Criminal Procedure Code.

677. Portuguese Law 144/99 is the special legal instrument that regulates international judicial co-operation in criminal matters. This law applies, as appropriate, to co-operation between Portugal and any international judicial entity established within the framework of treaties or conventions that bind the Portuguese State. The provisions of this Law apply as subsidiary provisions to co-operation in matters of a criminal nature during procedures conducted before an administrative authority, and to offences of a regulatory nature, that give rise to proceedings that allow the review before a court of law. Law 144/99 regulates the following forms of international judicial co-operation in criminal matters:

a) Extradition
b) Transfer of proceedings in criminal matters
c) Enforcement of criminal judgments;
d) Transfer of persons sentenced to any punishment or measure, involving deprivation of liberty
e) Supervision of conditionally sentenced or conditionally released persons;
f) MLA in criminal matters.

678. Law 144/99 also regulates the possibility of using joint criminal investigation teams and some special investigation techniques such as controlled and surveyed deliveries, undercover actions and interception of telecommunications.

679. According to Article 145 and following of Law 144/99, Portugal is obliged to render the widest MLA in the investigations and proceedings of criminal nature and connected proceedings, in a constructive, effective and timely way. Assistance can include:

a) the notification of deeds and the service of documents;

b) the procuring of evidence;
c) searches, seizure of property, experts examination and analysis;
d) the service of writs to and hearing of suspects, accused persons, witnesses or experts;
e) the transit of persons;
f) the communication of information on Portuguese law or the law of a foreign State, as well as the communication of information relating to the judicial record of suspect, accused or sentenced persons.

680. According to this article therefore, the scope of the legal assistance request can be the procuring of evidence, searches, seizures or examinations, while according to Article 160 steps may be taken in order to trace if proceedings, objects or instrumentalities of an offence allegedly committed might be located in Portugal.

681. According to Articles 22 and 29 of Law 144/99, if the case is urgent, foreign judicial authorities may communicate with Portuguese judicial authorities directly and request provisional measures. Answers to a co-operation request are based on the principle of celerity. Under Article 29, the foreign judicial authorities can communicate directly with Portuguese judicial authorities, through Interpol or through the central competent international police bodies designated to facilitate requests for urgent provisional measures – that is provisional measures or other actions that cannot be delayed – stating the reasons for urgency and observing the requirements referred in Article 23.

682. There are no grounds for refusing a MLA request on the basis of professional secrecy, nor is this a ground for refusal foreseen in Law 144/99. A request for co-operation cannot be refused solely on the grounds that the offence is also considered to involve fiscal offences.

683. At the request of a foreign State, proceedings relating to an act committed outside the Portuguese territory may be initiated or continued in Portugal. Law 144/99 also foresees the possibility of delegating, in a foreign State, the initiation of the proceedings or the continuation of proceedings initiated in Portugal when related to a fact that is considered to be a domestic offence.

684. Portuguese legislation also has special mechanisms to identify, freeze, seize and confiscate ML assets or the proceeds, objects and instruments used in the commission of ML or TF offences. Arrangements for co-ordinating proceedings related to seizure and confiscation are not explicitly provided for in the existing legislation. Nevertheless it is always possible to seize and confiscate assets or its proceeds in Portugal at the request of another country on the basis of a mutual legal assistance according to Articles 145 and 160 of Law 144/99.

685. Article 145 of Law 144/99 states that Portugal can render MLA when that assistance is necessary to recover proceeds from objects of or instrumentalities of an offence. Article 160 of the same Law states that Portuguese authorities may take such steps as necessary in order to enforce any decision of a foreign court. This includes a foreign court decision that imposes a confiscation of proceeds from an offence. However, these dispositions only apply to court decisions of a criminal nature.

686. The authorisation to share confiscated assets with other countries is a legislative policy option, within the power of discretion of the countries involved. Article 160 also foresees the possibility that, at request of a foreign competent authority, Portuguese authorities may execute a decision issued by a foreign court to confiscate assets, instruments or proceeds of crime and send them to the requesting State.

687. The possibility of sharing confiscated assets with other States, in particular with those which have contributed to the successful outcome of the investigation or the court decision on confiscation is foreseen in Decree-Law 15/93 where, in drug trafficking related offences and in the absence of an international convention stating otherwise, the assets and the proceeds or the result of their sale could be shared equally between the requesting and requested State. Usually the State receives the

confiscated assets, and in the situations of illicit drug trafficking, funds may then be distributed to the:

- National Drug Combat Programme (support to actions, measures and abuse prevention programmes),
- Ministry of Health (for the creation of advising, treatment and rehabilitation structures for drug addicts);
- Ministry of Justice (treatment and social rehabilitation of drug addicts following penal and tutorship measures).

688. Portugal has a number of MLA agreements in criminal matters, in particular with Spain, Luxemburg, Cape Verde, Morocco, Mozambique, Tunisia, Canada, Mexico, Macao-China, Australia Thailand, Uruguay, Venezuela, Paraguay, India, Brazil, Cuba, Angola, Russian Federation, United States and South Africa[51]. Currently other agreements are also in negotiation with, among others, Argentina, Romania, Slovakia and Peru.

689. The Portuguese MLA framework is consistent and provides for a wide range of possible assistance actions. It does not impose unjustified or restrictive conditions in criminal judicial co-operation matters. The data on requests for assistance, according to Portuguese authorities, is likely to be incomplete, as the requests of judicial authorities, in the framework of the EU, may be transmitted directly and not through the central authority, as designated in Law 144/99.

Additional Elements

690. Articles 145 and following of Law 144/99 also regulates the various available forms of assistance. These obligations are based on the Strasbourg Convention of 1990 (European Convention on Mutual Legal Assistance) and in EU Convention on Mutual Legal Assistance and are therefore already in force in Portugal. Additionally, Portugal also relies in EUROJUST, at least for EU member states. This entity has among its most important functions the follow-up of those cases involving more than two member states, especially cases on organised transnational crime, in order to determine the best venue for prosecution. Portugal is a Party in the IberRED – Ibero-American Judicial Network, launched together with Spain and the Latin American countries with the aim to facilitate and improve the judicial co-operation in criminal matters.

Statistics (relating to mutual legal assistance involving money laundering cases)

Year	Number of requests	Requesting State	Requested State	Offence
2002	2	United Kingdom	Portugal	Money laundering
		DCIAP / Portugal	United Kingdom	Money laundering
2003	0			
2004	6	Switzerland, United Kingdom (2), Scotland and Italy	Portugal	Money laundering
		DCIAP /Portugal	Switzerland	Money laundering and corruption

[51] http://www.gddc.pt/cooperação/instrumentos-bilaterais.html

2005	3	Italy (2) and Poland	Portugal	Money laundering
TOTAL	11	All the requests are in the format of rogatory letter		

The referred requests, in its active or passive form, were all granted[52].

Recommendation 37 and Special Recommendation V

691. With regard to extradition (see below), dual criminality is required for the surrender of a person requested for criminal proceedings or for serving a penalty however is only when the offence, even an attempted offence, is punishable by Portuguese law and by the law of the requesting State with a sanction or a measure involving imprisonment for a maximum period of at least one year.

692. If the request for extradition includes several separate offences each of these must be punishable under Portuguese law and the law of the requesting State by imprisonment. If one or more of the offences do not fulfil the conditions mentioned in the preceding paragraph, extradition for the latter offences is also possible.

693. The legal regime of Law 65/2003, which transposes the EU Framework Decision on the European Arrest Warrant (EAW) into Portuguese law, substitutes the formal extradition procedure between the member states of the EU. Dual criminality is not required whenever the acts defined by the law of the issuing member state as one of the offences listed in paragraph 1 of the Article. Money laundering and terrorism financing are included. The Decision on EAW provides for a relaxation of the dual criminality requirement for offences listed on the so called positive list as contained in Article 2.2 of the Decision. However, outside the EU dual criminality is a fundamental requirement with regard to extradition.

Recommendation 38 and Special Recommendation V

694. Besides the general provisions foreseen in Article 178 (and following) of the Penal Procedure Code and Articles 109 to 111 of the Criminal Code as well as Article 7 (and following) of Law 5/2002, Articles 145 and Article 160 of Law 144/99 also regulate the different forms of MLA. These obligations are based on the Strasbourg Convention of 1990 (European Convention on Mutual Legal Assistance) and in EU Convention on Mutual Legal Assistance and are already in force in Portugal.

695. According to Article 160 of Law 144/99 Portuguese authorities have the ability to enforce decisions of a foreign court imposing the confiscation of proceeds from an offence and can take all necessary steps as are consistent with 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. The small number of MLA requests received could probably be related to the small number of offences related to organised crime in Portugal, a country that does not have a significant financial centre, or a known haven to international criminals.

6.3.2 Recommendations and Comments

696. Portugal should consider continuing to establish and improve bilateral instruments in special with countries with which has economic ties.

[52] Portuguese authorities stress that the possibility of direct transmission of the requests among judiciary authorities in the framework of the EU could mean that existing statistic data in central authorities could be incomplete.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	C	This Recommendation is fully met.
R.37	C	This Recommendation is fully met.
R 38	C	This Recommendation is fully met.
SR.V	LC	• Since dual criminality may be required in for international co-operation it is not clear how Portugal would execute requests for MLA or extradition involving the collection/provision of funds/assets to be used by an individual terrorist.

6.4 Extradition (R.37, 39, SR.V)

6.4.1 Description and Analysis

697. Extradition is one of the forms of MLA in criminal matters foreseen in Law 144/99 related with international judicial co-operation in criminal matters. Under Article 31 of the Law, extradition may be granted only for the purpose either of instituting criminal proceedings or for executing a sanction or measure involving deprivation of liberty, for an offence that the courts of the requesting State have jurisdiction to try. For any such purpose, surrender of a person shall be possible only in respect of offences, including attempted offences, which are punishable under both the Portuguese law and the law of the requesting State by a sanction or measure involving deprivation of liberty for a maximum period of at least one year. However, the provisions of law 144/99 do not preclude extradition where conventions, treaties or agreements to which Portugal is a Party establish lower limits than 1 year of imprisonment that may not require dual criminality.

698. If the request for extradition includes several separate offences each of which is punishable under the Portuguese law and the law of the requesting State by imprisonment, but of which one or some do not fulfil the condition mentioned in the preceding paragraph, extradition for the latter offences shall also be possible.

699. Persons that commit a ML or a TF offence may be extradited. Article 368-A (2) of Penal Code defines ML as an offence that is punishable with imprisonment for a term of 2 to 12 years. Article 2 (2) of law 52/2003 defines terrorism financing as an offence punishable with imprisonment for a term of 8 to 15 years. Any person that commits these offences could be extradited, in accordance with the provision set forth in the Article 31 of Law 144/99.

700. The extradition of nationals is allowed under Portuguese legislation. According to the Constitution of the Portuguese Republic and Article 32 (2) of Law 144/99 extradition of nationals shall not be excluded where is provided for in a treaty, convention or agreement to which Portugal is a party and extradition is sought for offences of terrorism or international organised crime, and the legal system of the requesting State embodies guarantees of a fair trail.

701. In these circumstances, extradition may only take place for purposes of criminal proceedings and provided that the requesting State gives assurances that it will return the extradited person to Portugal for that person to serve in Portugal the sanction or measure eventually imposed on him, once the sentenced is reviewed and confirmed in accordance with the Portuguese law, unless the extradited person expressly refuses to be returned.

European Arrest Warrant (EAW)

702. The European Arrest Warrant Act (2003) came into operation in 1 January 2004 through Law 65/2003. From this date Portugal has operated the surrender procedures contained in the Framework Decision on the EAW with those other Member States which have also implemented the EU Framework Decision. The surrender of nationals is also foreseen in the EAW and in Law 65/2003. Among the offences specified in the EU Framework Decision which do not require dual criminality are:

- Terrorism;
- Drug trafficking,
- Fraud;
- ML and swindling.

703. The EAW should be in the form set out in the Framework Decision. It must contain the following particulars:

- the name and nationality of the person sought;
- details of the issuing judicial authority;
- details of the offences, the date, time and circumstances in which committed and the degree of involvement of the person sought.

704. Law 65/2003 regulates the EAW and is a mechanism which replaces extradition between member States of the EU, foreseeing in a simplified, faster way and for a list of offences the arrest and surrender of a person requested in another Member State of the EU for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention. The EAW is also of an urgent nature and a request can be processed even outside working days, the normal working hours of the Justice Departments, as well as outside the judicial vacations.

705. In case of urgency, according to Law 144/99, the foreign authorities may communicate with the Portuguese judicial authorities, either directly or through INTERPOL or through central agencies designated to that effect, for the purpose of requesting provisional measures or measures that cannot be delayed.

ML and TF as extraditable offence:

706. Persons that commit a money laundering or a terrorist financing offence may be extradited. Article 368-A (2) of Penal Code defines money laundering as an offence punishable with imprisonment for a term of 2 to 12 years. Article 2 (2) of Law 52/2003 defines terrorism financing as an offence punishable with imprisonment for a term of 8 to 15 years - any person that commits these offences could be extradited, in accordance with the provision set forth in the Article 31 of Law 144/99.

707. The arrest and surrender of a requested person in a member State of the EU for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order is also possible for the cases which involve ML and terrorism offences. According to Law 65/2003 Portugal can extradite its nationals through a warrant is a judicial decision issued by a Member State.

708. The issuing judicial authority may transmit the EAW directly to the executing judicial authority, identified in Portugal as the appeal courts (*Tribunais de Relação*). Although favouring direct transmission between the authorities, the AG Office was also designated as a central authority for some of the purposes stated in the mentioned law.

709. Law 144/99 foresees the possibility of an extradition proceeding without undue delay according to Article 46, which states that the extradition procedure shall be of an urgent nature. One

of the main objectives of the Law 65/2003, which approved the European Arrest Warrant, is to introduce delivery procedures between the member states of the EU to be handled without undue delay. The simplified procedure of extradition is foreseen in Articles 74 and 75 of Law 144/99. The person involved can be extradited based on warrants of arrest or judgements, whenever he/she has freely and willingly renounced the formal extradition procedure.

710. According to Article 147 of Law 144/99, whenever the co-operation request involves the use of compulsory measures, dual criminality is required and therefore the facts stated in the request can only be practiced if they are considered to be an offence also by Portuguese law. It is only in these conditions that the requirement of dual criminality is necessary. Dual criminality is not be required whenever the acts defined by the law of the issuing member state as one of the offences listed in paragraph 1 of the same article, where ML and terrorism are included, are punishable in the issuing member state by a custodial sentence or a detention order for a maximum period of at least three years. The same requirements are applicable to terrorism financing – an offence punished with imprisonment from 8 up to 15 years according to Article 2 (4) of Law 52/2003.

711. The simplified extradition procedure is foreseen in Articles 74 and 75 of Law 144/99. The person involved can be extradited based on detention warrants of arrest or judgements, whenever he/she has freely and willingly renounced to the formal extradition procedure.

712. Portugal has entered into a number of bilateral extradition agreements, in particular with: Botswana, Tunisia, Argentina; Bolivia, Brazil, United States of America, Mexico and Australia. A treaty on extradition is under negotiation with Uruguay. Portugal has also ratified the European Convention on Extradition and its First and Second Supplementary Protocols, the Convention on Extradition between the Member States of EU and the Convention regarding the Simplified Process of Extradition between the Member States of the EU. The Convention on Extradition between the Member States of CPLP (Portugal, Brazil, Angola, Mozambique, Guinea-Bissau, Cape Verde, S. Tome and Prince and East-Timor) is already signed and is only waiting for the ratification or approval of three States Parties to enter in force.

713. The Portuguese framework on extradition does not impose unjustified or restrictive measures to it and a number of bilateral treaties exist in this area. The system is consistent with the FATF Recommendations.

Additional Elements

714. A simplified procedure for extradition is provided for in the Articles 74 and 75 of Law 144/99 and is applicable to the cases of TF. Persons can be extradited based on warrants of arrest or judgments, whenever they have freely and willingly renounced the formal extradition procedure.

Statistics

	2002	2003	2004	2005
Nº of requests	2134	2339	2004	2054

(The table above indicates existing data in the central authority for that purpose, as designated by Law nº 144/99 - Attorney General Office (*Procuradoria-Geral da República*) – related, among others, with rogatory letters, extraditions or EAW)

6.4.2 Recommendations and Comments

715. Portugal should consider continuing to establish and improve bilateral treaties with other countries in especially with countries with which they have important economic ties.

6.4.3 Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	C	This Recommendation is fully met.
R.37	C	This Recommendation is fully met.
SR.V	LC	• Since dual criminality may be required in for international co-operation it is not clear how Portugal would execute requests for MLA or extradition involving the collection/provision of funds/assets to be used by an individual terrorist.

6.5 Other Forms of International Co-operation (R.40 & SR.V)

6.5.1 Description and Analysis

716. ***Law Enforcement Authorities***: The Criminal Police are able to co-operate through normal police to police information exchange channels. Inquiries can be made through counterparts and through Europol and Interpol. The Criminal Police have the authority to conduct investigations on behalf of foreign counterparts and joint investigations are possible.

717. ***Criminal Police***: Following Articles 229 and of the Code of Criminal Procedure, the Law 144/1999 and Article 37 of the Decree Law 275/2000 provide a legal framework for international police co-operation. The central service in charge of the international co-operation within the Portuguese Criminal Police is the Central Department of International Co-operation and has the role of ensuring coordination with the OIPC/Interpol, Europol and all the other international organisations. The exchange of information between this service and its counterparts abroad is carried out within the framework of the national legislation mentioned above and the principles of reciprocity and professional secrecy.

718. The FIU has been a member of the Egmont Group since 1999 and exchanges information spontaneously and on request with counterparts. The FIU has MOUs with the FIUs from Albania, Andorra, Argentina, Australia, Belgium, Bolivia, Brazil, Canada, Colombia, Korea, Spain, France, Guernsey, Ireland, Israel, Monaco, Poland, Romania, Russia, Thailand, Ukraine and Venezuela.

719. ***Supervisory Authorities:*** All of the three supervisory authorities in Portugal are able to provide international co-operation to supervisory and other authorities in EU-member states as well as to supervisory authorities in non-EU member states. Moreover, they may also exchange information as members of other international organizations.

720. The BdP exchanges information with authorities, organisations and persons performing equivalent duties in other EU member states, with central banks and other similar monetary authorities as well as other authorities responsible for the oversight of payment systems and, in the case of supervisory authorities of non-EU member states, within the scope of reciprocal co-operation agreements concluded between the BdP and those authorities, in accordance with the principle of reciprocity (see Article 81 (1) (e), and (f) and (2) of Decree Law 298/92). Co-operation agreements between BdP and the supervisory authorities of non-EU member states may be concluded if the information to be disclosed is subject to duties of secrecy at least equivalent to those established under Portuguese law and if the exchange is for the purpose of supervisory functions entrusted to the requesting authority (Article 82 of Decree Law 298/92). The obligation of professional secrecy does not prevent BdP from exchanging information with other financial system supervisory authorities, provided that they are subject to a similar obligation (Article 81 (1), (2) and (3) of Decree Law 298/92).

721. To facilitate the exchange of information BdP has entered into or is currently negotiating several MOUs with other foreign supervisory authorities. Criteria for the signing of MOUs are mainly based on the relevance of a certain country as regards the consolidated supervision of institutions.

722. Article 159 of Decree Law 94-B/98 expressly allows co-operation and information exchange for the supervision for insurance activity, either with the competent authorities of the Member States of the EU (Article 159 (1)) or with the competent authorities of the non-member countries (Article 159 (5)). The co-operation of the ISP with other foreign authorities of prudential supervision is organized according to professional secrecy rules (Article 159 (1)).

723. The CdVM allows the CMVM to exchange information with other supervision authorities, with EU member states (Article 355 (2) of CdVM) or supervision authorities of non-member States of the EU (Article 355 (3) of CdVM), in accordance with the principles of reciprocity and secrecy, equivalent to those established under Portuguese law. Furthermore the CMVM has the direct authority to engage in international co-operation with foreign equivalent authorities. Article 376 of the Code of Securities (CdVM) defines this co-operation where the conclusion of co-operation agreements is included. The CMVM can conclude bilateral or multilateral agreements (Article 376 (2) of CdVM). This co-operation is based on mutual exchange of information, professional secrecy and restricts the use of information to the purposes of supervision (article 373 of CdVM).

724. Portuguese law permits the BdP, ISP and CMVM to share information widely with counterparts in foreign countries and does not restrict the organisations with which they can share information. Information exchange can take place in a rapid and timely manner. Decree Law 298/92, Decree Law 94-B/98 and the CdVM outline the provisions under which BdP, ISP and CMVM may communicate information to foreign supervisory authorities. They provide that the supervisors may communicate such information if satisfied that the foreign country has given appropriate commitments for protecting the confidentiality of the information, monitoring the use that will be made of it and ensuring that the information will be used only for the purpose for which it is communicated. All three supervisors give equivalent international entities access to information without needing approval for this decision by any other organ or entity.

725. The BdP has signed 9 MOUs (5 other MOUs are under negotiation), and CMVM has signed 28 bilateral MOUs. Moreover the ISP and CMVM are party to several multilateral MOUs.

726. Portuguese supervisory authorities may exchange information with national and international authorities, either upon request, or voluntarily, including on issues related to ML and the underlying predicate offences. Informal co-operation is possible even in cases of non-existence of a prior co-operation agreement. However, this co-operation must respect the limits imposed by the applicable domestic law, European law and international conventions rules, as well as other co-operation practices. Furthermore, informal co-operation must respect the co-operation principles mentioned above (reciprocity, professional secrecy and restrictive use of the information for supervision purposes - Article 373 and also the principles contained in Article 358 of CdVM, Articles 81 and 82 of Decree Law 298/92. See also Article 4 (1) of ISP statutes).

727. Article 137 (2) of Decree Law 298/92 states clearly that if a supervisory authority of another EU Member State requests the checking of information relating to institutions which are subject to BdP's supervision and have their head office within the Portuguese territory, BdP shall carry out this check or allow it to be carried out by the authority which requested it, either directly or through the intermediary of a person or entity appointed for that purpose. According to Article 138 of Decree Law 298/92 the collaboration referred to in Article 137 may likewise take place with the supervisory authorities of non-EU member states within the scope of reciprocal co-operation agreements which may have been concluded.

728. Article 376 (2) CdVM allows the conclusion of bilateral and multilateral agreements on whose basis it is also possible to provide assistance to the foreign counterparts also in relation to investigations. The CMVM can obtain information on data, records and documents regarding the identification of the clients and transactions within its powers of investigation requested by foreign similar entities. In these cases, the duty of co-operation of the CMVM, set in Article 376 (3) of CdVM, applies. The CMVM has already developed this kind of initiative within its activity of investigation upon request from foreign equivalent entities. The MOU's contain clauses that clearly allow this to occur.

729. There are neither disproportionate or unduly restrictive conditions for the exchange of information in the Portuguese system nor are requests refused solely on the grounds that the request is also considered to involve fiscal matters. According to Articles 81 Decree Law 298/92 and 159 of Decree Law 94-B/98 disclosure of information can not be refused based on banking secrecy or professional secrecy. Article 373 of the CdVM foresees that the information exchange developed by the CMVM should obey to the principles of reciprocity, secrecy and restrictive use of information. The CMVM does not set limits to international co-operation other than the ones that are foreseen by law, that is, reciprocity, confidentiality and purpose.

730. Information to be exchanged on the basis of co-operation agreements between BdP and the supervisory authorities of non-EU countries is subject to reciprocity and secrecy duties at least equivalent to those established by the Portuguese law, which means that the information received benefits from the same protection regime as the one in force in the Portuguese banking system (Article 81 and 82 of Decree Law 298/92). Furthermore, the supplied or received information can only be used for the performance of supervisory and control functions of financial entities, and is subject to equivalent duties of secrecy. The BdP may only disclose information that originates from a body in another member state of the EU –with the express agreement of such body (Article. 81 (5) Decree Law 298/92).

731. All information provided to ISP is subject to professional secrecy (Article 159 Decree Law nº 94-B/98). The exchange of information with the supervisory authorities of non-EU member states is also subject to reciprocity and secrecy obligations which offer protection at a national level. Furthermore, this information can only be used for the performance of supervisory functions of insurance activity. Moreover members of the governing bodies of the ISP, as well as all persons working or who have worked for the Institute, shall be bound by the obligation of professional secrecy in respect of all information they may exclusively acquire in the performance of their duties (Article. 158 (1) Decree Law 94-B/98).

732. As a matter of principle the co-operation developed by the CMVM should obey the principles of reciprocity, respect for the professional duty of secrecy and restricted use of information for the purposes of supervision (Article. 373 of CdVM). Additionally the CMVM's bodies and their members, employees and the individuals who provide any service, directly or indirectly, permanently or occasionally, are subject to professional secrecy as to the facts or details of which they have knowledge in the performance of their functions or rendering of services, and are prohibited from disclosing this information either for individual or third party gain, directly or indirectly (Article 354 (1) CdVM). The scope of application of this duty is extended not only to assistance requests but also to the content and form of those requests, as well as any other aspects related to the proceedings of assistance rendering including any additional consultation or non requested sharing of information.

733. Received information is regulated by Article 356 (1) of CdVM, which constitutes a way of protecting information received through the co-operation mechanisms. The CMVM can only communicate to other entities information that it has received from the supervisory authorities of the EU member states or from EU entities that perform similar tasks to the ones referred to in Article 335 (1) of CdVM with express consent of those entities (Articles 356 (2) and 355 (2) of CdVM). The CMVM may disclose information either in summary or aggregate form as long as it does not permit

individual identification (Article 365 (3) of CdVM). The secrecy obligation is protected by criminal law (Articles 195 and 196 of the Code of Criminal Procedure).

734. Regarding international co-operation, in particular in the field of assistance related with investigations, enquiries and proceedings of criminal, civil and administrative nature, related to terrorism financing, terrorism acts and terrorism organizations, Criteria 40.1 to 40.9 of Recommendation 40 are also applicable. For that purpose, Law 144/99 when regulating, among others, extradition and mutual legal assistance, as well as Law 65/2003 approving the legal regime of the EAW are applicable.

Additional Elements

735. Competent authorities in Portugal have engaged in an increasing number of arrangements to ensure that they are able to co-operate with their international counterparts. The number of enquiries made by law enforcement originating in the FIU increased significantly between 2002 and 2005 with notably more spontaneous requests being initiated. The FIU can exchange information received domestically with the confidentiality and limitations of any use of the information emphasised.

Statistics (related to other forms of international co-operation):

Assistance requests sent by foreign FIUs

2002	2003	2004	2005 (1st semester)
-	66	153	81

736. Within the signed agreements, the CMVM registered 73 cases of assistance rendered to equivalent foreign entities, from January 2000 to the end of June 2005.

6.5.2 Recommendations and Comments

737. Portugal has a number of measures to facilitate a wide range of international co-operation with foreign counterpart FIUs and law enforcement agencies. Portugal's statutory framework provides competent authorities the ability to engage in generally effective international co-operation.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	C	This Recommendation is fully met.
SR.V	LC	• This Recommendation is rated in more than one section; please see sections 6.3.3 and 6.4.3 for the reason for this rating.

7. OTHER ISSUES

7.1 RESOURCES AND STATISTICS

7.1.1 Resources – Compliance with Recommendation 30

	Rating	Summary of factors underlying rating
R.30	LC	• Staff of authorities with oversight or supervisory functions for most DNFBPs are not adequately resourced to ensure AML/CFT compliance.

Remark: *the text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report primarily contains the boxes showing the rating and the factors underlying the rating.*

7.1.2 Statistics (Summary of Recommendations and Comments)

738. As far as statistics are concerned, besides the number of data provided by the Portuguese authorities, more efforts should be made in collecting comprehensive figures in the following areas: (1) number of ML/TF investigations, prosecutions and convictions; (2) data on the number of cases and the amounts of property frozen, seized and confiscated relating to money laundering, terrorist financing and criminal proceeds; (3) statistics on whether the request for mutual legal assistance was granted or refused and on how much time was required to respond; (4) number of requests for extradition for ML/TF cases and figures on whether the request was granted or refused and how much time was required to respond; and (5) number of spontaneous referrals made by the FIU to foreign authorities.

7.1.3 Compliance with Recommendation 32

	Rating	Summary of factors underlying rating
R.32	PC	• Portugal has not conducted a full and comprehensive review of its AML/CFT regime. • There are no comprehensive statistics on ML and TF investigations, prosecutions and convictions. There are no TF statistics on which to judge the effectiveness of the TF legislation as no TF cases have been tried. • More detailed statistics should be kept, particularly concerning the nature and disposition of investigations and prosecutions. • It is not possible to assess the effectiveness of freezing of terrorist funds under Special Recommendation III as no funds have been identified for freezing action. • There are very limited statistics on the number of cases and the amounts of property frozen seized and confiscated relating to ML, TF and criminal proceeds. • There are insufficient statistics upon which to assess the efficiency of the measures in place [issue of effectiveness SR IX].

7.2 Other relevant AML/CFT measures or issues

There are not other issues relevant to the Portuguese AML/CFT system.

7.3 General framework for AML/CFT system (see also Section 1.1)

There are no elements of the general framework of the Portuguese AML/CFT system that significantly impair or inhibit its effectiveness.

TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system
Table 3: Authorities' Response to the Evaluation (if necessary)

Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (NA). These ratings are based only on the essential criteria, and defined as follows:

Compliant	The Recommendation is fully observed with respect to all essential criteria.
Largely compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially compliant	The country has taken some substantive action and complies with some of the essential criteria.
Non-compliant	There are major shortcomings, with a large majority of the essential criteria not being met.
Not applicable	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country.

Table 1. Ratings of Compliance with the FATF Recommendations

8. TABLES

Table 1. Ratings of Compliance with FATF Recommendations

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Forty Recommendations	Rating	Summary of factors underlying rating[53]
Legal systems		
1. ML offence	LC	• The statistics that are available suggest doubts as to the effectiveness of the ML offences in Portugal given the low number of convictions.
2. ML offence – mental element and	LC	• Criminal liability for ML does not clearly extend to legal

1. [53] These factors are only required to be set out when the rating is less than Compliant.

corporate liability		persons. However, law 11/2004 foresees a range of proportional and dissuasive sanctions that can be applied to legal persons. • The statistics that are available suggest doubts as to the effectiveness of the ML offences in Portugal given the low number of convictions
3. Confiscation and provisional measures	LC	• Only a small amount of money has been confiscated which may reflect on the effectiveness of the system.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	C	• This Recommendation is fully met.
5. Customer due diligence	LC	• There is no specific, explicit, requirement for CDD for occasional wire transfers that are not suspicious, under SR VII below €12,500. • Identification requirements for beneficial owners are not completely contained in law, but also in supervisors instructions. • For some entities in securities sector that are not covered by BdP regulations (venture capital companies and securitisation companies) the CMVM regulations do not explicit comply with some requirements regarding identification of beneficial owners of legal persons, ongoing due diligence, failure to satisfy complete CDD. There are no provisions for securities sector that impose the duty to scrutiny transactions undertaken throughout the course of the relationship to ensure that this transactions are consistent with the institutions knowledge of the customer, their business and risk profile and where necessary, the source of funds. Regulations for the securities sector do not provide explicit mention of the refusal to open accounts or carry out transactions, or to making a suspicious transaction report. • In regard to low risk situations particularly the application of situations with EU and FATF members (when there is no suspicion of ML) some of the current exemptions mean that, rather than reduced or simplified CDD measures, no CDD measures apply whatsoever for these cases. • There is no explicit mention of TF in relation to the duty of CDD in suspicious transactions. • Issue of effectiveness of the supervisors instructions due to the short period of time since their entry into force (June/July 2005).
6. Politically exposed persons	NC	• There is no requirement for appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP. • There is no legal requirement for financial institutions to obtain senior management approval for establishing business relationships with a PEP nor to take reasonable measures to establish the source of wealth and the source of funds.

		• It is not so clear about effectiveness in practice in part due to some confusion about national versus international PEPs.
7. Correspondent banking	PC	• The obligation to gather information should be applicable to all respondent institution and not exempt institutions from EU members or FATF members. Article 2.8 of BdP Instruction 26/2005 does not include the explicit mention "including whether it has been subject to a ML or TF investigation or regulatory action." • The requirement to obtain approval from senior management is not set up in legislation or regulation. • There is no regulation with respect to payable-through accounts.
8. New technologies & non face-to-face business	C	• This Recommendation is fully met.
9. Third parties and introducers	N/A	
10. Record keeping	C	• This Recommendation is fully met.
11. Unusual transactions	LC	• There is no regulation to set forth findings in writing for those entities falling only under the regulations and supervision of the CMVM.
12. DNFBP – R.5, 6, 8-11	PC	• The deficiencies in the implementation of Recommendation 5, 6 and 11 that apply to financial institutions also apply to DNFBPs. • There are few implementation measures that clarify the specific obligations of DNFBPs (similar to regulations and circulars for financial institutions) • Portugal has not implemented explicit AML/CFT measures concerning PEPs applicable to DNFBPs. • There is no requirement that DNFBPs have policies in place to deal with the misuse of technological developments (Recommendation 8). • More generally, the implementation of the FATF requirements (both ML and TF) by DNFBPs raises concerns given the low number of STRs submitted.
13. Suspicious transaction reporting	LC	• The low number of STRs filed by the financial entities by a limited number of financial institutions raises the issue of effectiveness of the reporting requirement.
14. Protection & no tipping-off	C	• This Recommendation is fully met.
15. Internal controls, compliance & audit	LC	• There is no explicit regulation that the compliance officer should be at the management level. • Training facilities for employees have been established but effectiveness could be improved especially in the insurance sector.
16. DNFBP – R.13-15 & 21	PC	• All DNFBPs are subject to comprehensive regulations with regard to reporting duties. However only 10 suspicious transactions were reported from 2003 to 2005. • No co-operation procedures have been so far established

		between the Bar Association and the Chamber of Solicitadores on the one hand, and the DCIAP or FIU/PJ, on the other hand. • Even though training is not satisfactory yet except in the area of casinos, the evaluation team noted the planning for improvements concerning this matter. • There is no obligation to give special attention to business relationships and transactions with persons (including legal persons) from or in countries which do not or insufficiently apply the FATF Recommendations. • Sanctions provided by law are in particular proportionate, as fines have a wide range of amounts and Article 47 of Law 11/2004 allows to imposition of supplementary penalties. However no sanctions have been imposed yet, except in the supervisory area of ASAE (formerly the IGAE).
17. Sanctions	LC	• No sanctions have been imposed by the supervisors since Law 11/2004 (the main AML Law) came into effect, although some proceedings are pending.
18. Shell banks	LC	• There is no explicit regulation that obliges financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
19. Other forms of reporting	C	• This Recommendation is fully met.
20. Other NFBP & secure transaction techniques	C	• This Recommendation is fully met.
21. Special attention for higher risk countries	LC	• The requirement to monitor business relationships and transactions from or in non-cooperative countries, or for countries that do not or insufficiently apply FATF Recommendations, is not clearly articulated in the law, although the BdP is able to require this through circular letters. • There does not appear to be a mechanism for advising institutions about concerns on weakness in AML/CFT systems of other countries.
22. Foreign branches & subsidiaries	LC	• An explicit regulation that requires institutions to pay particular attention to their branches and subsidiaries in countries which do not or insufficiently apply the FATF recommendations is missing. • There is no definite legal obligation that, where the minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries are required to apply the higher standard, to the extent that local laws and regulations permit.
23. Regulation, supervision and monitoring	LC	• Even though the three supervisors exercise comprehensive supervision on the basis of information provided by the financial entities themselves and audit reports the number of AML/CFT supervisory/regulatory visits is relatively low.
24. DNFBP - regulation, supervision and monitoring	PC	• With regard to all DNFBPs competent authorities or SROs are designated to perform monitoring and ensuring

		compliance of DNFBPs with AML/CFT requirements. However except for the IGJ and IGAE/ASAE, no inspections or other monitoring activities were carried out by the competent authorities. • Where an oversight role exists the SROs do not have sufficient resources to perform these functions.
25. Guidelines & Feedback	PC	• There is very little guidance provided to the DNFBPs under the new Law 11/2004 by the competent authorities, except for IGAE/ASAE and casinos.
Institutional and other measures		
26. The FIU	LC	• The FIU is not the recognised competent authority to receive and analyse STRs in relation to TF.
27. Law enforcement authorities	LC	• There are relatively few ML prosecutions initiated. This raises effectiveness issues under the requirement of recommendation 27 to ensure that ML or TF cases are properly investigated [issue of effectiveness].
28. Powers of competent authorities	C	• This Recommendation is fully met.
29. Supervisors	LC	• Few sanctions have been imposed by the supervisory to date. The ISP and CMVM have not imposed any sanctions since the introduction of law 11/2004. Therefore it is not possible to assess the effectiveness of the sanctions regime. [issue of effectiveness]
30. Resources, integrity and training	LC	• DNFBPs are not adequately supervised for AML/CFT compliance.
31. National co-operation	LC	• Although formal co-operation may take place, there is still room for improvement in more effective interagency co-operation. [Effectiveness Issue] • There is room for more formal increased interagency co-operation particularly between supervisory authorities, the FIU and prosecutors.
32. Statistics	PC	• Portugal has not conducted a full, complete and comprehensive review of its AML/CFT regime. • There are no comprehensive statistics on ML and TF investigations, prosecutions and convictions. There are no TF statistics on which to judge the effectiveness of the TF legislation as no TF cases have been tried. • More detailed statistics should be kept, particularly concerning the nature and disposition of investigations and prosecutions. • It is not possible to assess the effectiveness of freezing of terrorist funds under Special Recommendation III as no funds have been identified for freezing action. • There are very limited statistics on the number of cases and the amounts of property frozen seized and confiscated relating to ML, TF and criminal proceeds. • There are insufficient statistics upon which to assess the efficiency of the measures in place [issue of effectiveness

		SR IX].
33. Legal persons – beneficial owners	PC	• The National Register of Legal Persons does not include information on the beneficial ownership and the persons who control a legal person. • There is not full transparency of the shareholders of companies that have issued bearer shares.
34. Legal arrangements – beneficial owners	PC	• Competent authorities have limited powers to have timely access to information on the beneficial ownership and control of trusts.
International Co-operation		
35. Conventions	C	• This Recommendation is fully met.
36. Mutual legal assistance (MLA)	C	• This Recommendation is fully met.
37. Dual criminality	C	• This Recommendation is fully met.
38. MLA on confiscation and freezing	C	• This Recommendation is fully met.
39. Extradition	C	• This Recommendation is fully met.
40. Other forms of co-operation	C	• This Recommendation is fully met.
Nine Special Recommendations		
SR.I Implement UN instruments	PC	• S/RES/1267 has been implemented but S/RES/1373 (2001) is not yet comprehensively implemented. • There is no system for effectively communicating action taken by the authorities under the freezing mechanisms to some designated non-financial business and professions. • Designated non-financial businesses and professions are not adequately monitored for compliance with measures taken under the Resolutions.
SR.II Criminalise TF	LC	• The TF offence does not extend to the provision or collection of funds for the benefit of a single terrorist. • It is too early to assess the effective implementation of the TF offence provisions.
SR.III Freeze and confiscate terrorist assets	PC	• Portugal has a limited ability to freeze funds in accordance with S/RES/1373 (2001) of designated terrorists outside the EU listing system. • Communication mechanisms to some DNFBPs are limited. • Portugal does not adequately monitor DNFBPs for compliance with the relevant laws for freezing of terrorist funds.
SR.IV Suspicious transaction reporting	LC	• As the reporting obligation relates to suspected TF offences, the evaluation team had concerns regarding the scope of the TF offence (as discussed in section 2.2). This could limit the reporting obligation
SR.V International co-operation	LC	• Since dual criminality may be required in for international co-operation it is not clear how Portugal would execute requests for MLA or extradition involving the collection/provision of funds/assets to be used by an

		individual terrorist.
SR VI AML requirements for money/value transfer services	LC	• There is an absence of STRs coming from exchange offices [Effectiveness issue in relation to application of Recommendations 11 and 13] • As with other financial institutions overall implementation of related FATF Recommendations, in particular Special Recommendation VII, negatively impacts on the effectiveness of AML/CFT measures for money transmission services.
SR VII Wire transfer rules	NC	• Portugal has not implemented the full range of requirements of SR VII. There is no legal obligation to include full originator information in the message or payment form that accompanies a cross-border or domestic wire transfer. • There are no obligations on intermediary reporting financial institutions in the payment chain to maintain all of the required originator information with the accompanying wire transfer. • There are no obligations on beneficiary reporting financial institutions to adopt risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. • There is no obligation to verify that the originator information is accurate and meaningful. • There are no obligations to require financial institutions to apply risk-based procedures when originator information is incomplete. • There are no sanctions for breaching many of the obligations under SR VII because many of the obligations themselves have not been implemented.
SR.VIII Non-profit organisations	LC	• NPOs in Portugal should be required to maintain information on (2) the identity of the person(s) who own, control or direct their activities, including senior officers, board members and trustees. This information should be publicly available either directly from the NPO or through appropriate authorities. • NPOs should have appropriate controls in place to ensure that all funds are fully accounted for and are spent in a manner that is consistent with the purpose and objectives of the NPO's stated activities. • NPOs should follow a "know your beneficiaries and associate NPOs" rule, maintain, for a period of at least five years, and make available to appropriate authorities, records of domestic and international transactions • Appropriate authorities should monitor the compliance of NPOs with applicable rules and regulations.
SR. IX Cash Couriers	LC	• There are insufficient statistics upon which to assess the efficiency of the measures in place [issue of effectiveness].

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional Measures	
Criminalisation of ML (R.1 & 2)	• Seek to extend more comprehensively the criminal liability for ML to legal persons. • Ascertain why the number of ML cases remains low. • Ensure that comprehensive statistics on ML prosecutions and convictions are kept.
Criminalisation of TF (SR.II)	• Specifically criminalise the collection or provision of funds for an individual terrorist.
Confiscation, freezing and seizing of proceeds of crime (R.3)	• Portugal should continue collect statistics on the number of cases and the amount assets seized in relation to criminal confiscation. • Ascertain why the amount of money confiscated is low.
Freezing of funds used for TF (SR.III)	• Portugal should extend its current limited ability to freeze funds in accordance with S/RES/1373 and ensure that all freezing actions are communicated to relevant DNFBPs. There should be adequate monitoring of DNFBPs to ensure they comply with required freezing actions.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	• The FIU should seek to become the recognized competent authority to received and analyse STRs in relation to TF. • The FIU should seek and encourage regular feedback from partner agencies on the quality of the information / intelligence provided and the overall level of service of the FIU; in addition the benefits and results derived from FIU information should be fed back to the FIU. • In consultation with partner agencies, the FIU should consider how information / results can optimally be shared with reporting entities. • The FIU should continue to proactively negotiate MOUs with foreign FIUs
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	• Investigative and prosecutorial authorities need to focus more on investigating and prosecuting ML offences. Portuguese authorities are encouraged to make this an objective. • There is a need for Portuguese authorities to keep clearer statistics on investigations and prosecutions of the ML offence
3. Preventive Measures – Financial Institutions	
Risk of ML or TF	
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• All Customer Due Diligence requirements should be extended to clearly reflect the risk related to TF. • Portugal needs to require financial institutions to identify occasional customers as contemplated in SR VII for domestic transfers and in the cases where there is a suspicion of TF. • Adopt explicit requirements for financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationships and transactions. • Monitor the effectiveness of the BdP, ISP and CMVM regulations implemented in 2005.

	• Adopt requirements for PEPs as contemplated in Recommendation 6 and measures for correspondent relationships as contemplated in Recommendation 7.
Third parties and introduced business (R.9)	• No recommended action.
Financial institution secrecy or confidentiality (R.4)	• No recommended action.
Record keeping and wire transfer rules (R.10 & SR.VII)	• SR VII has not been implemented in most respects. Portugal should implement the provisions of SR VII as soon as possible
Monitoring of transactions and relationships (R.11 & 21)	• Ensure that enforceable regulations or guidelines are clear on the obligations of Recommendation 21
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• Expand the definition of the TF offence to include the provision/collection of funds for an individual terrorist so as to ensure that transactions related to these activities are reportable.
Cross-border declaration or disclosure (SR.IX)	• Ascertain why the amount of cash/bearer negotiable bonds intercepted at the border remains low. • Ensure that comprehensive statistics on cross-border declarations of cash are kept.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	• Ensure that there are explicit requirements that a compliance officer should be a position at a senior management level. • Ensure that ongoing training of employees in AML/CFT continues to update employees on the requirements of the new legislation / regulations. • Consider an explicit regulation that requires institutions to to pay particular attention to their branches and subsidiaries in countries which do not or insufficiently apply the FATF recommendations is missing. • Ensure there is a definite legal obligation that, where the minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries are required to apply the higher standard, to the extent that local laws and regulations permit.
Shell banks (R.18)	• Require financial institutions to satisfy themselves that respondent institutions in a foreign country do no permit their account to be used by shell banks.
The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R. 23, 30, 29, 17, 32, & 25).	• Ensure that comprehensive statistics on supervisory sanctions in relation to ML and TF breaches. • Portugal should ensure that the sanctions regime in place is adequately implemented and fully effective.
Money value transfer services (SR.VI)	• Portugal should ensure that the measures in place are adequately implemented and fully effective.
4. Preventive Measures –Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	• Portugal should implement Recommendation 5 and 6 fully to all DNFBPs. • Portugal should bring in legislative changes to ensure that all DNFBPs have adequate CDD and record keeping obligations in situations required by Recommendation 12. • DNFBPs should be required to establish and maintain internal procedures, policies and controls to prevent ML and TF, and to communicate these to their employers. These procedures, policies

	and controls should cover: CDD and the detection of unusual and suspicious transactions and the reporting obligation. DNFBPs should be required to maintain an independent audit function and establish ongoing employee training.
Monitoring of transactions and relationships (R.12 & 16)	• All Customer Due Diligence requirements should be extended to clearly reflect the risk related to terrorist financing. • The requirement to identify beneficial ownership should be fully applicable to DNFBPs as well as the obligation to carry out additional identification/know-your-customer rules. • Requirements in relation to ongoing due diligence and the obligation for DNFBPs to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant should be clarified and impose direct obligations as asked for in Recommendation 5. • With regard to higher risk situations, measures in place should be completed. Portugal should also address whether or not DNFBPs should be permitted to apply simplified or reduced CDD measures, and issue appropriate guidance.
Suspicious transaction reporting (R.16)	• Portugal should ensure that the measures in place are adequately implemented and fully effective.
Internal controls, compliance & audit (R.16)	• Portugal should ensure that the measures in place are adequately implemented and fully effective.
Regulation, supervision and monitoring (R.17, 24-25)	• Portugal should provide more specific, timely and systematic feedback to reporting entities and should develop further its effort to raise AML/CFT awareness within the DNFBPs, especially through sectoral and very practical guidelines (especially in the CFT area). • Portugal should ensure an adequate number of inspections are conducted on a representative sample of financial institutions. • Portugal should ensure that the measures in place are adequately implemented and fully effective
Other designated non-financial businesses and professions (R.20)	• No recommended action.
5. Legal Persons and Arrangements & Non-Profit Organisations	
Legal Persons – Access to beneficial ownership and control information (R.33)	• Portugal should ensure information on the beneficial ownership and the persons who control a legal person and there is full transparency of the shareholders of companies that have issued bearer shares.
Legal Arrangements – Access to beneficial ownership and control information (R.34)	• Portugal should ensure that competent authorities have adequate powers to have timely access to information on the beneficial ownership and control of trusts.
Non-profit organisations (SR.VIII)	• Portugal should ensure that the measures in place are adequately implemented and fully effective. • Portugal should adopt new mechanisms to properly and fully implement the requirements under SR VIII as identified in its Interpretative Note. • Portugal should give further consideration to implementing other specific measures from the Best Practices Paper to SR VIII or other measures to ensure that funds or other assets collected by or transferred through non-profit organisations are not diverted to support the activities of terrorist organisations.

6. National and International Co-operation	
National co-operation and co-ordination (R.31)	• Portugal should ensure that all existing co-operation mechanisms are functioning effectively. • Portugal should ensure that more formal increased interagency co-operation particularly between supervisory authorities, the FIU and prosecutors.
The Conventions and UN Special Resolutions (R.35 & SR.I)	• Ensure that DNFBP's are advised of their obligations under S/RES/1267 (1999) and S/RES/1373 (2001).
Mutual Legal Assistance (R.32, 36-38, SR.V)	• Specifically criminalise the provision / collection of funds involving a single terrorist, to ensure that the discretionary grounds of dual criminality are not used in the future to refuse legal assistance requests.
Extradition (R.32, 37 & 39, & SR.V)	• Specifically criminalise the provision / collection of funds to be used by a single terrorist, to ensure that no doubt exists on the provision of extradition in such cases.
Other Forms of Co-operation (R.32 & 40, & SR.V)	• Portugal should continue to pro-actively seen co-operation arrangements for ML and TF exchanges of information.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	• Ensure that comprehensive statistics on ML prosecutions an convictions are kept. • Portugal should also maintain more statistics in the following areas: (1) data on the amounts of property frozen, seized and confiscated relating to money laundering, terrorist financing and criminal proceeds; (2) statistics cross-border transportation of currency and bearer negotiable instruments; (3) statistics on whether the request for mutual legal assistance was granted or refused and on how much time was required to respond; (4) number of requests for extradition for ML/TF cases and figures on whether the request was granted or refused and how much time was required to respond.

Table 3 Authorities' Response to the Evaluation (if necessary)

Relevant sections and paragraphs	Country comments
Overall Report	