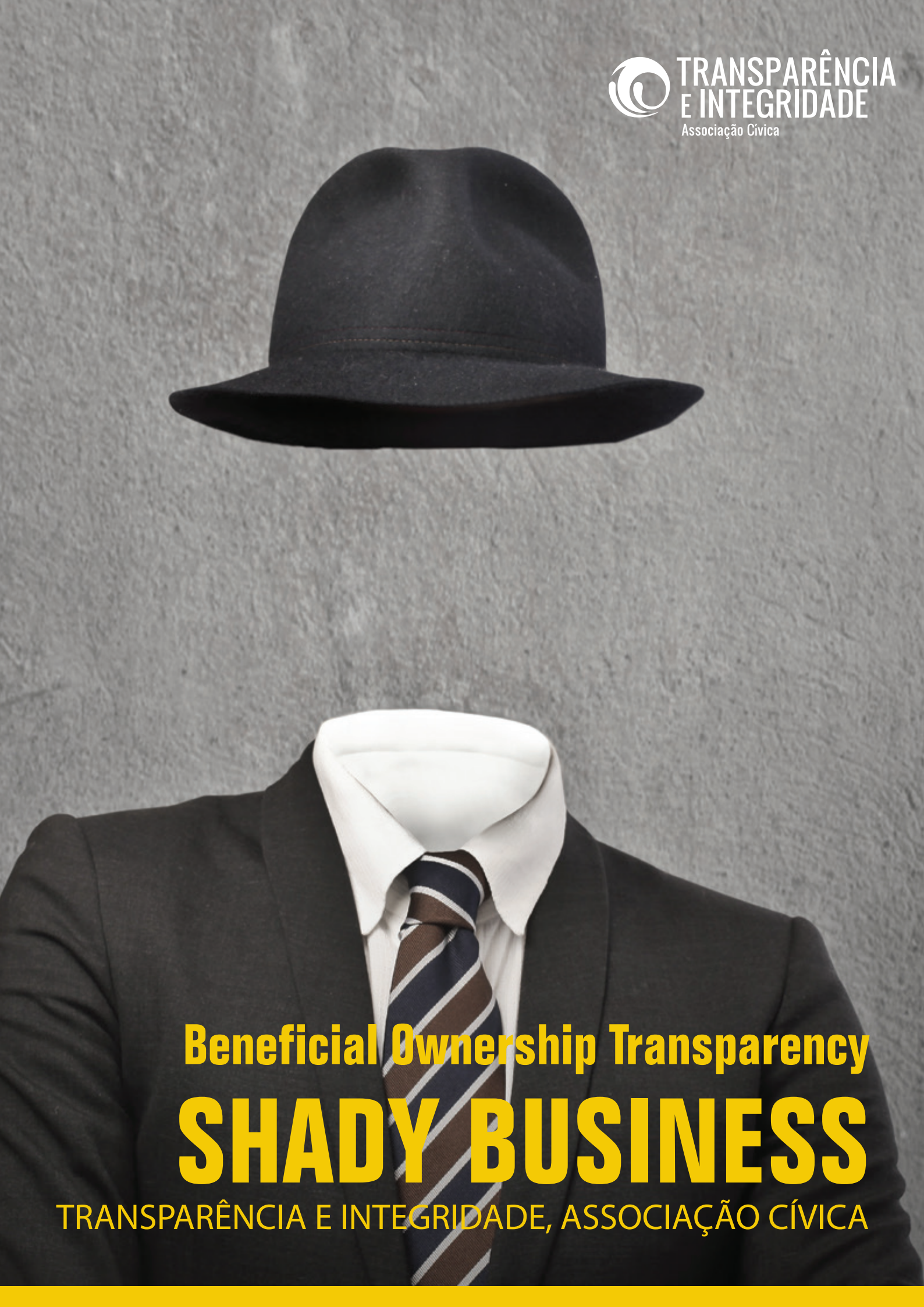

TRANSPARÊNCIA E INTEGRIDADE
Associação Cívica

Beneficial Ownership Transparency

SHADY BUSINESS

TRANSPARÊNCIA E INTEGRIDADE, ASSOCIAÇÃO CÍVICA

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BENEFICIÁRIOS EFETIVOS E TRANSPARÊNCIA FISCAL

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GLOSSARY

4MLD – 4th Anti-Money Laundering Directive
AML/CFT – Anti-Money Laundering and Counter Financing of Terrorism
ASAE – Authority for Economic and Food Safety
AT – Tax Authority
CDD – Customer Due Diligence
CMVM – Securities and Exchange Commission
DCIAP – Central Bureau of Investigation and Prosecution
DIAP – Bureau of Investigation and Prosecution
DNFBPs – Designated Non-Financial Businesses and Professions
FATF – Financial Action Task Force
FATCA – Foreign Account Tax Compliance
FI – Financial Institution
FIU/UIF – Financial Intelligence Unit
IMPIC – Real Estate and Construction Institute
IRN – Registration and Notary Institute
MFTZ – Madeira Free Trade Zone
ML/FT - Money Laundering and Financing of Terrorism
NRA – National Risk Assessment
OROC – Association of Chartered Certified Accountants
PEP – Political Exposed Person
PGR – Public Prosecutor
PJ – Criminal Police
RERT – Tax Regularization Exceptional Regime
RNPC – National Registry of Companies
STR – Suspicious Transaction Report
TCSP – Trust or Company Service Providers

INTRODUCTION

Between 2007 and 2015, four Portuguese banking institutions collapsed, forcing the government to intervene and spend around 13 billion euros (7,3% of GDP) of taxpayer's money. In addition, thousands of small investors lost their money, sometimes life-long savings, up to an amount yet to be determined. This massive collapse of the banking sector led to the unveiling of an intricate net of offshore companies, funds and bank accounts connected to criminal activities currently under investigation, as well as unexplained payments to CEO of major companies and other unknown individuals. These offshore entities, belonging to the banks, associate companies and their managers, had escaped supervisory agencies and tax authorities in Portugal and other countries where these financial groups maintained operations. In 2011, another scandal broke: the operation "Monte Branco" unveiled the largest network of fiscal fraud and money laundering ever operating in Portugal. The network operated between Portugal, Switzerland and Cape Verde and was used by many of the Portuguese elite. These above examples hold two things in common that show how systemic the current state of affairs is. First, the existence of offshore entities, shell companies and anonymous bank accounts that may have facilitated the covering-up of large sums of money resulting from various crimes, namely fiscal fraud and corruption. Secondly, the persisting involvement of the elite, namely politicians, bankers, sports players and lawyers.

Although, as many repeated until exhaustion after the Panama Papers broke into the news in April 2016, the mere existence of bank accounts or companies based in tax havens does not constitute a crime per se, especially if it has been declared to national tax authorities. However, many of these companies, trusts and bank accounts are, not by chance, based in jurisdictions that protect the identity of the owners, thus attracting those who want to hide the profits of their illicit activities and encouraging those who are simply looking for "tax efficiency" to hide their assets from national tax authorities. Furthermore, it has been shown that many of those offshore entities work as Russian Dolls, one owing another which owns another and another, making the traceability of the true beneficial owner much harder, if not impossible. Because, at the end of the day, companies, trusts and bank accounts belong to one or more natural persons, who enjoy the profits and assets that are officially property of those companies.

Money laundering and the circulation of illicit funds affects all countries. Shutting the eyes and accepting illicit money from abroad for the purchase of goods in a given country, under the false rationale of "it was not stolen or gained here" or "if it was not invested here, it would have gone somewhere else anyway" is an illusion. First, criminals tend to place the profits of their activities in jurisdictions other than the ones where they committed the crime avoid being too easily caught by authorities. Therefore, if foreign criminals place their illicit proceedings in Portugal, it is only logic that those who committed illicit activity in Portugal will hide the profits somewhere else.

Moreover, in such a global economy and interconnected world, funds stolen in one country will not only impoverish it, but other that have ties with it. Let's take the case of Angola, for instance. The African country became a safe haven for Portuguese companies and workers trying to escape the economic crisis and severe unemployment that has hit Portugal for almost a decade. Angola was experiencing an economic boom due to the rise of oil prices. At the same time, its corrupt elite was enriching, buying luxury homes, goods and even planes or placing their assets abroad, including Portugal. The profits of that economic boom, which temporarily saved Portuguese companies, were not invested in the sustainability of the economy or the improvement of the living conditions of Angolans. It ended up in the pockets of that elite. Today, Angola is facing a dramatic crisis and even its President, José Eduardo dos Santos, has acknowledged the problem of the enrichment of his associates.[1] Portuguese emigrants are also facing the consequences of Angola mismanagement: 160 million euros in salaries are frozen in Angolan banks.

The problem of the opacity of beneficial owners and ghost companies has been the subject of great attention of the highest political sphere around the world. Several countries have sought to end the misuse of corporate vehicles such as shell companies or trusts, to conceal the illicit origin of financial flows in order to combat money laundering, terrorist financing and the use of funds gained through corruption. Transparency in the ownership of companies, trusts, foundations and other corporate vehicles is also important for the confidence of investors and entrepreneurs, whether domestic or foreign. The idea of having transparency of beneficial ownership is to make it easier for the authorities, other businesses and the public to identify these people. In particular, the 'competent authorities' (e.g. those charged with enforcing the law, such as police or other investigators, or the Financial Intelligence Units, which are central to anti-money laundering systems) must be able to access beneficial ownership. Banks, other financial institutions and firms in other sectors

1 http://www.mpla.ao/mpla.6/discursos.15/vii-congresso-ordinario-do-mpla-discurso-do-camarada-presidente.a2584.html

charged with carrying out due diligence on their customers for anti-money laundering must collect beneficial ownership information, so that they know with whom they are actually doing business. This is a key element for business. According to the 14th Global Fraud Survey, 91% of senior executives want to know whom they are doing business with.[2]

In 2015, following the terrorist attacks that took place in European territory, the European Parliament enhanced the efforts on the fight against terrorism financing and approved the Fourth Anti-Money Laundering Directive. Now the government is expected to present to parliament a proposal for the transposition of the directive during the first trimester of 2017, a process which has to be concluded by July. At the time of drafting the present report, the executive is still working on the proposal that will present to parliament. Therefore, in a context of a legislative changing environment, we have opted for a two-dimensional approach that examines both the current state of legislation and the future amendments.

The methodology for the national risk assessments uses techniques to assess both i) **technical compliance** and ii) **effectiveness of implementation** against international standards, including the 2012 40 Recommendations on Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) set out by the Financial Action Task Force (FATF)[3], the G20 High Level Principles on Beneficial Ownership Transparency[4] and the specific EU requirements contained in the adopted text of the 4th Anti-Money Laundering Directive (4MLD)[5], which was agreed in May 2015 and which Member States are required to implement by June 2017. The methodology also takes into account the recent proposal by the European Commission to amend the text of 4MLD, including in relation to transparency and beneficial ownership[6].

The national risk assessments are assorted with case studies identified on the basis on their significance in relation to the weaknesses and vulnerabilities identified in certain sectors through the technical and effectiveness evaluations.

2 http://www.ey.com/Publication/vwLUAssets/ey-global-fraud-survey-2016-global-summary/$FILE/EY-Global-Fraud-Survey-2016-Global-summary.pdf

3 http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html

4 http://www.g20australia.org/official_resources/g20_high_level_principles_beneficial_ownership_transparency.html

5 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L0849

6 http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-450-EN-F1-1.PDF

TECHNICAL EVALUATION

In terms of compliance with G20 Beneficial Ownership Transparency Principles, Portugal shows a very strong compliance with Principle 2 on identifying and mitigating risks, which states: "Countries should assess the existing and emerging risks associated with different types of persons and arrangements, which should be addressed from a domestic and international perspective. a) Appropriate information on the results of the risk assessments should be shared with competent authorities, financial institutions and designated nonfinancial businesses and professions (DNFBPs) and, as appropriate, other jurisdictions. b) Effective and proportionate measures should be taken to mitigate the risks identified. c) Countries should identify high-risk sectors, and enhanced due diligence could be appropriately considered for such sectors."

The country performs worse against Principle 4 related to accessibility of information about beneficial ownership of companies and Principle 10 related to the use of specific shareholding mechanisms such as bearer shares and nominee shareholders or directors. Companies are not obliged by law to disclose such information. Performance related to trusts is relatively high, but that has to do with the fact that such legal arrangement is not recognised in the Portuguese legal system, with the exception of Madeira's free trade zone.

Table 1 summarizes the dimensions of analysis and the respective scores. We analysed the current state of compliance with G20 Principles, the commitment the authorities are showing in improving the country's compliance and the adequacy of potential legal and policy changes emanating from that commitment.

CURRENT	COMMITMENT	ADEQUACY	PRINCIPLE	CURRENT	ADEQUACY	RISK
63%	63%	63%	1	Strong	Strong	Medium-Low
93%	93%	93%	2	Very Strong	Very Strong	Low
30%	30%	45%	3	Weak	Average	Average
38%	78%	81%	4	Weak	Very Strong	Low
75%	75%	75%	5	Strong	Strong	Medium-Low
55%	75%	70%	6	Average	Strong	Medium-Low
69%	95%	95%	7	Strong	Very Strong	Low
57%	61%	50%	8	Average	Average	Average
58%	83%	83%	9	Average	Very Strong	Low
38%	100%	100%	10	Weak	Very Strong	Low
RESULTADO TOTAL				**58%**	**76%**	
				Average	Strong	Medium-Low

G20 PRINCIPLE 1: BENEFICIAL OWNERSHIP DEFINITION

Portugal is strongly compliant with the Principle 1. The Law on Anti-Money Laundering and Combating of Financing of Terrorism states that the beneficial owner is "the natural person who controls, directly or indirectly, the customer or the natural person on behalf of whom a transaction is being conducted or an activity is being performed", further explaining that control means, among other features:

1) the holding by a natural person of 25% of shares plus one share or participation in customer capital exceeding 25% is an indication of direct property;
2) The holding of 25% of shares plus one or a stake in the client's capital of more than 25% by a corporate entity that is under the control of one or more individuals, or by various corporate entities that are under the control of the same natural person is an indication of indirect ownership;"

Nevertheless, for any entity reaching or exceeding a holding of 10% of the voting rights in the capital of public companies or reducing its holding to a value lower than that threshold must report about the ownership changes to the company holding the participating interest and the Securities and Exchange Commission (CMVM). Similar reports shall occur in relation to the threshold of 2% of the voting rights, regarding listed companies' ownership changes according to art. 16 of the Portuguese Securities Code.

G20 PRINCIPLE 2: IDENTIFYING AND MITIGATING RISK

Portugal shows a very strong compliance with Principle 2. The government, along with relevant authorities and sector representatives, conducted a national assessment of anti-money laundering risks in 2015. It should be noted though that if banking institutions were consulted, no representative of DNFBPs or civil society organizations, with the exception of the Bar Association and the Chartered Accounts Association, took part. Moreover, the full report was not made publicly available, only an executive summary, which can be found on the website of public authorities.

Following the assessment, a Coordination Commission was set up at the Ministry of Finances and is headed by the Secretary of State of Tax Affairs, with the participation of the bodies that took part in the risk assessment working group. The Commission has a narrower Executive Committee in charge of monitoring the daily work and a Permanent Technical Secretariat. The Commission gathers on a regular basis and is expected to issue new assessments periodically.

G20 PRINCIPLE 3: ACQUIRING ACCURATE BENEFICIAL OWNERSHIP INFORMATION

The degree of information disclosure on owners depends on the type of legal entity concerned (public or private liability companies, etc.). There is no distinction, however, between legal ownership and beneficial ownership. Private liability companies are required to maintain and, in some cases, publicly disclose through the company registry information on the legal owners of the quotas (private liability companies). However they may not necessarily be natural persons. Listed public liability companies, under the supervision of CMVM, the stock market regulator, are required to collect and report information about the legal and beneficial ownership of the shares. Shareholders of listed companies are also required to publicly disclose through the CMVM's information disclosure system website on any of those relevant changes to legal and beneficial ownership when they occur as well as to declare when they administer shares on behalf of a third person.

Still, this information may not be sufficient for identifying the ultimate beneficial owner, especially when legal entities through various schemes and for various purposes seek to disguise that identity. In addition, even in the case where the owner declared is a natural person, the reliability of the information may be questioned, since there is no supervisory mechanism to control the veracity of the data and verify that the person declared is not a nominee or a frontman.

G20 PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Access to beneficial ownership information is the weakest point of Portugal's AML/CFT policies. There is no national beneficial ownership registry or requirement for legal entities to maintain information on beneficial ownership. Information made available by legal entities through their reporting obligations to the commercial register or the financial regulatory agencies end up being the most comprehensive source of information on company ownership, also widely used by FI and DNFBPs when trying to comply with CDD requirements. Yet, as discussed above, in many cases this will concern legal ownership rather than beneficial ownership.

The absence of a beneficial ownership registry also means that there is no indication regarding who is authorized to access that information and in which timeframe. The existing commercial and property registers are available online and, thus, provide immediate access to the general public (and free in the case of the commercial register, but not on the property one). Official sources have signalled that, in transposing the 4th Directive on AML/CFT, a register of beneficial owners will be set up. Whether the future register of beneficial ownership will have similar features is still unclear. The register is expected to be public access for basic information, while more detailed one can may only be accessed by entities with AML/CTF obligations and those who can prove legitimate interest in the data. The database is also expected to be free of charge only to criminal authorities, supervisors, financial institutions and DNFBPs.

G20 PRINCIPLE 5: TRUSTS

The legal concept of trust does not exist under Portuguese law, therefore its creation is not possible under the national jurisdiction. Madeira is granted a special status where trusts incorporated under foreign jurisdictions, with non-resident settlor and managed by a trustee based in Madeira can be recognised and authorised to perform business activities in the Madeira Free Trade Zone. In this case only, the trust must hold information about the complete identification of the settlor and beneficiaries, the purpose of the trust, the date of creation, the duration period, the name of the trust and headquarters of the trustee and the facts modifying the trust.

Which doesn't impede any of such foreign law legal arrangements to intervene in the normal scene of domestic business performance either from a national bank account holder or on cross border bank account holder perspectives. However, trusts incorporated under foreign jurisdictions, with non-resident settlor and operated by a trustee based in Madeira can be recognised and authorised to perform business activities in the Madeira Free Trade Zone. The trust must hold information about the complete identification of the settlor and beneficiaries, 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.

Despite not being of strong concern to authorities because they are not common in Portugal, in the current framework trusts raise three major concerns. First, the registry is only compulsory if the trust has a duration period of over one year, which can be considered a major legal loophole. Another concern lies on the contradiction between decree-law that regulates the registry of trusts in the Madeira Free Trade Zone and the general AML/CFT framework. The latter extends obliged entities' duty of identification of the beneficial owners to trusts and other arrangements. Financial institutions and DNFBPs are required to demand information about the beneficial owner of a trust. The decree-law, however, states that information about the settlor and the beneficiary should be collected in the moment of the registry, but remain disclosed to the public. Finally, the registration requirement does not apply to Portuguese settlors or beneficiaries of trusts managed outside Portugal. In addition to regulating trusts managed by a Madeira-based trustee, Portugal should therefore consider introducing transparency regulations for trusts incorporated under foreign jurisdictions and managed by a trustee outside Portugal, yet operating or doing business in Portugal (e.g. holding a national bank account).

G20 PRINCIPLE 6: COMPETENT AUTHORITIES' ACCESS TO TRUST INFORMATION

Trusts authorised to operate in Madeira must be registered in the Commercial Registry in the Free Trade Zone. Information is public: it is published in the regional official gazette and can be consulted on site in the notary office. It is not available online though and there is also no database on trusts. The names of the settlor and trust beneficiaries must also be registered, but are not publicly available. Access to this information can only be granted to criminal authorities through judicial order and, in certain cases, an additional permission by the Minister of Finances.

G20 PRINCIPLE 7: DUTIES OF FINANCIAL INSTITUTIONS & OTHER BUSINESSES AND PROFESSIONS

Designated Non-Financial Businesses and Professions (DNFBPs) with anti-money laundering obligations in Portugal include: real estate agents; casinos and gambling operators (including online gambling, lottery, sports bets and similar); merchants selling goods above EUR 15 000; lawyers, notaries and similar professionals, when operating as intermediaries in the following operations: real estate transactions, investment in funds, opening of bank accounts, sports transactions and trusts; and chartered accountants.

Both Financial Institutions and DNFBP are required to identify their costumer and beneficial owner involved in the business transaction, enhance their due diligence in case of PEPs and report suspicious transactions to designated authorities. However, the absence of a beneficial owner registry publicly available makes the fulfilment of their obligations somewhat difficult. Recent legislation has been introduced in order to make costumer identification and traceability more accessible to authorities: in the gold and jewellery sector, all payments above EUR 250 cannot be done in cash. It is expected that this cash payments limitation will be extended to other sectors, since at the moment it is still possible to buy real estate in cash, for instance.

Regarding Politically Exposed Persons, their family and associates, enhanced due diligence is required. Law 25/2008 of 5th June that regulates AML/CFT is not particularly clear regarding enhanced due diligence in this particular case. While the law clearly defines PEPs and their family members or close associates without establishing a difference between foreign and domestic PEPs (art. 2, no 6), it only makes reference to "PEPs residing outside national territory", when stating the requirements for enhanced due diligence (art. 12, no 2). Authorities argue that the reasoning behind this differentiation is the fact that only PEPs residing outside the country deserve such kind of diligence, considering the higher abstract risk degree they pose. Moreover, the articles relating to the specific obligations of financial institutions do not include any reference to PEPs. However, the Bank of Portugal, has issued an ordinance for its regulated financial institutions that requires them to conduct enhanced due diligence when dealing with PEPs. Although it focuses more specifically on foreign individuals, the ordinance also states requirements of enhanced due diligence when conducting business with domestic PEPs.

The real estate, gambling and high value goods sectors are regulated by public bodies, which do not hold the statute of independent regulatory agency and it's only been recently that they have been made subject to AML policies. They do not have the same level of know-how as financial supervisors and, to a certain extent, nor the means to conduct the desirable monitoring and enforcement, particularly in sectors with a high number of operators, as is the case of the real estate and luxury goods.

Independent professionals, such as lawyers and solicitors, are supervised by self-regulatory bodies, which have the means, for instance, to lift the confidentiality obligations they are tied to. Obligation to report suspicious behaviour imposed on lawyers created a dramatic controversy over confidentiality rules and, so far, STRs from those professionals have been residual (although no concrete numbers have been advanced by authorities).

Both FI and DNFBPs are subject to criminal liability as legal entities for not complying with AML obligations, as well as the individuals in charge for not complying with their obligations. Penalties can go from EUR 500 to 5 000 000 for legal persons and EUR 2 500 to 5 000 000 for individuals, combined with a ban from taking any administration position in companies or similar.

G20 PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION

Current State Average 57% | Future Plans Average 50%

In Portugal, there is no centralised database on legal and beneficial ownership to be used by domestic or foreign authorities to consult information on legal ownership and ultimate control. There is no significant restriction to share information across domestic authorities. Authorities can consult the commercial, property and companies' management documents registries containing limited information on legal owners and shareholders. Cooperation between entities allows criminal authorities to access information held by the financial intelligence unit and the Central Bureau of Investigation and Prosecution (DCIAP).

On what concerns international cooperation, intergovernmental and EU treaties in place are functioning properly. EUROJUST, INTERPOL and SIRENE National Offices are based in the Judiciary Police. Even though authorities do not have guidelines on their websites instructing foreign authorities on how to request cooperation, contact points, mechanisms and protocols between domestic and foreign authorities are established and communication seems to flow easily, with the exception of a small number of jurisdictions, namely China or the United Kingdom.

Concerning future plans, there seems to be no signal or indication that current cooperation arrangements will be modified in the near future.

G20 PRINCIPLE 9: TAX AUTHORITIES

Current State Average 58% | Future Plans Very Strong 83%

With regard to access to beneficial ownership information by tax authorities at the domestic level, the Tax Authority has to request access to information to law enforcement authorities on criminal investigations and grant permission to criminal authorities for them to access tax information.

According to the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, as of 26 July 2016, Portugal was one of the jurisdictions undertaking first exchanges by 2017. In October 2016, the bill transposing EU Directive DAC2 came into force. The new legislation provides for the automatic access and exchange of financial information between the Portuguese Tax Authorities and its foreign counterparts regarding bank accounts held in Portugal by non-residents and accounts held by Portuguese residents abroad. The regulation associated with the implementation of FATCA agreement with the US was also enacted. This agreement grants access by the Portuguese Tax Authority, and allows information sharing with US tax authorities, of bank balances and investments data based in Portugal, secured by American citizens residing in Portugal, resident in the United States and Portuguese citizens who have had a residence permit in the US. There is, however, a minimum threshold of USD 50,000 per bank account balance for the obligation to report to be triggered.

G20 PRINCIPLE 10: BEARER SHARES AND NOMINEES

Current State Weak 38% | Future Plans Very Strong 100%

BEARER SHARES

Although the law governing societies places a preference for nominal shares, bearer shares are still legal in Portugal. Parliament is debating the end of bearer shares and two bills are on the table. The differentiating element between the Socialist bill and the BE's bill is the length of the transition period for the conversion of shares. The latter proposes a 120-day period, after which sanctions could be applied, while the former leaves it to the executive to create an extended transition phase.

NOMINEE SHAREHOLDERS AND DIRECTORS

The law also protects the identity of those who choose to conduct business through nominee directors and representatives.

EFFECTIVENESS EVALUATION

OUTCOME 1 BASED ON G20 PRINCIPLE 2 (UNDERSTANDING RISKS):

Outcome: *The country properly identifies, assesses and understands the risks associated with different types of legal persons and arrangements, from both a domestic and international perspective and co-ordinates domestically to put in place actions to mitigate these risks. This includes the involvement of competent authorities and other relevant authorities; using a wide range of reliable information sources; using the assessment(s) of risks as a basis for developing and prioritising policies and activities on transparency and beneficial ownership of legal persons and arrangements; communicating and implementing those policies and activities in a co-ordinated way across appropriate channels; sharing the outcomes of the risk assessment with financial institutions and DFNBPs; and identifying high risk sectors, for which enhanced due diligence measures are considered.*

SUBSTANTIAL LEVEL OF EFFECTIVENESS

There seems to be a gap in the way risks are understood by higher political level and criminal or supervisory authorities. At the high political level, the measures taken mostly aim at fulfilling international obligations. A focus on formal compliance prevents a good understanding of risks, while creating the opportunity for loopholes in legislation and inadequate setting of policy priorities. The 2015-2017 Criminal Policy Framework Law establishes the fight against terrorism as the top priority, while criminal authorities such as the Central Bureau of Investigation and Prosecution (DCIAP) has placed a stronger focus on financial and economic criminality.[7]

In 2013, the government set up a working group for the creation of a programme aiming to analyse and implement FATF recommendations and the EU 4th Anti-Money Laundering Directive.[8] Participants were public entities (criminal authorities, supervisors, among others) and sectorial self-regulators. Some FI were consulted, but there is no reference to the participation of representatives of DNFBPs or the civil society. According to authorities, the supervisory and self-regulatory bodies for each category of DNFBPs, consulted their respective regulated entities or the representative associations about their perception and assessment of ML/FT risks and the preventive measures to be considered within the National Risk Assessment (NRA). In 2015, the working group presented the National Risk Assessment report, an executive summary of which was made public. According to the stakeholders interviewed, the assessment was well conducted and comprehensive. The NRA identifies a number of vulnerabilities and risks, particularly in relation with high risk profile practices and sectors such as business relations with offshore and free trade zones, the use of the intricate network of companies and the existence of bearer shares. The NRA executive summary does not elaborate though on the specific risks associated with the use of legal persons or arrangements.

Another gap is the way risks are understood by FI and DNFBPs. Authorities and sectorial regulators are responsible for the dissemination of information related to the NRA. Proactivity on reaching out to their regulatees varies considerably among institutions. Supervisory bodies that are part of the public administration are more proactive than those based on a self-regulation model. This means that financial regulators and public entities such as the construction and real estate institute, the gambling department of the Tourism of Portugal, ASAE or the Institute of Registries and Notary have made the NRA available in their respective websites and engage or promote training related to AML/CFT. Self-regulatory bodies, namely the Bar Association, do not have any information regarding ML/FT on their websites.

The NRA led to the creation of a Coordination Committee on Preventing and Combatting Money Laundering and the Financing of Terrorism, which has the task of monitoring and coordinating the identification, assessment and response to the risks of money laundering and terrorist financing to which Portugal is or will be exposed. The Committee, which meets periodically at different expertise levels, has been an important step for making the process more inclusive by engaging with different stakeholders, in particular non-financial supervisors, identifying contact points within authorities and sharing information. While in the financial sector, both regulators and market agents have had extensive experience

7 Law no. 72/2015, of 20th July: Lei De Política Criminal - Biénio De 2015-2017; DCIAP (2015), Plano de Actividades Para o DCIAP para o Ano Judicial DE 2015/2016

8 Order no. 9125/2013 of Ministry of State and Finance

in this field for a long time, other sectors lacked know-how. The assessment has also led to the adoption of new bills addressing some of the risks identified in the NRA, namely the end of bearer shares, enhanced access to bank account information or to limit the use of high amounts of cash.[9] A new law has already been passed that limits payments in cash to EUR 250 in jewellery and goldsmith.[10]

Notwithstanding, the Public Prosecutor and the Judiciary Police have already conducted internal reorganizations to provide responses to the risks associated with ML/FT. DCIAP underwent an internal reorganization, which created specialized teams focused on financial and economic criminality with the aim of improving cooperation with other competent authorities. There was also a reinforcement in the allocation of prosecutors to this type of criminality.[11] Banco de Portugal and CMVM also have internal units dedicated to ML/FT risks.

On what concerns public authorities and institutions, activity reports and annual plans show that AML/CTF risks are recent concerns, the exception being the financial intelligence unit (UIF), Banco de Portugal (the banking supervisor) and the Public Prosecutor. Training or informational activities and the production of statistical data only started being conducted in the past two years. In 2014, Authority for Economic and Food Safety (ASAE) set up a central unit that concentrated all its competences in the field of AML, which received specific training. In 2015, The ASAE established internal procedures to increase the effectiveness of AML/FT inspections and for the first time included in its 2016 plan the objective of creating a list of ML indicators.

The establishment of the Coordination Committee of Prevention Policy, and Combat Money Laundering and the Financing of Terrorism may be considered a promising step, but it cannot be said that Portugal has defined a comprehensive national policy in this matter. Current and past government programmes are silent about the definition of AML/CTF and vague about the reinforcement of the capacities of competent authorities. External pressure, including international obligations, continues to be the main motivation behind legal amendments and political choices. Human, technical and financial resources allocated to competent authorities remain insufficient, particularly for the amount of information required for ML/FT analysis.

On another level, banking institutions and large companies are usually well aware of the risks of money laundering and terrorism financing. Small and medium size companies show less awareness to these issues. Restrained information resources and a significant dispersion make it difficult for those companies to gather the necessary know-how on these matters and for supervisors to disseminate information. In addition, the financial and economic crisis has put a significant pressure on market agents, particularly banks (in desperate need for capital), real estate and luxury good merchants that may reduce their aversion to money laundering risks and encourage them to grasp risky business opportunities.

OUTCOME 2 BASED ON G20 PRINCIPLES 3 & 5 (LEGAL PERSONS AND ARRANGEMENTS MAINTAIN ADEQUATE, ACCURATE AND CURRENT BENEFICIAL OWNERSHIP INFORMATION)

Outcome: *Legal persons and arrangements incorporated/arranged in the country maintain accurate, current, and adequate information on beneficial ownership within the jurisdiction. Companies request information from shareholders to ensure that the information held is accurate and up-to-date, and shareholders inform changes to beneficial ownership. Foreign trusts being administered or serviced and foreign companies holding assets or carrying out other activity in the jurisdiction also maintain such information.*

MODERATE LEVEL OF EFFECTIVENESS

The Portuguese Civil Code establishes that legal persons of a private nature can be divided into associations, foundations and unincorporated associations. The Company Code and the Securities Code set out the rules governing companies. There are several types of company that may be created in Portugal: Private limited companies (Lda.), Single partner

9 Comissão de Orçamento, Finanças e Modernização Administrativa, Iniciativas em Comissão. Available at http://www.parlamento.pt/sites/com/XIIILeg/5COFMA/Paginas/IniciativasEmComissao.aspx [consulted on 29 Sep. 16]

10 Law no. 98/2015, of 18th August

11 DCIAP (2014), Nova Estrutura do DCIAP. Available at http://dciap.pgr.pt/textos/NOVA_ESTRUTURA_DCIA_Pag_Internet.pdf [consulted on 22 Sep. 16]

limited companies, Public limited companies (S.A.), Limited partnership companies and General partnership companies. Branches of a corporation based in another jurisdiction are also permitted. There is no obligation of maintenance of information regarding ownership of companies and/or shareholders for public limited companies or legal arrangements. For other types of companies, the maintenance of that information arises from reporting obligations to competent authorities. Therefore, it is closely linked to the following outcome about access to information.

The process of incorporating a company in Portugal was recently amended to simplify the process. The NRA identified this simplification as vulnerability that can be exploited by money launderers and criminal organizations. A company may be set up through a private document signed by the shareholders, whose signatures must be certified by a notary or a lawyer. In the case of natural persons, the identification elements are Full name, Marital status (if married, full name of spouse and type of marriage contract concerning estate); Place of birth; Residential address; Taxpayer number; Nationality (for non-Portuguese) and an ID document. If the contracting party is a legal person, its representative must duly identify the legal person (company name, registered office, capital, registration no. and taxpayer number) and present documentary proof that he acts in the capacity of the legal person and holds sufficient powers for the act. In commercial companies, all partners are identified in the memorandum of association which are subject to compulsory commercial registration and publicly available. The transfer of shares must also be reported to the commercial registry. In order to incorporate a branch it is necessary to submit a proof of legal existence and the by-laws of the company that creates the branch; the deliberation of creation of the branch; indication of the branch's representative and documents identifying the applicant and its powers.

Although the incorporation procedure is similar for different types of companies, public limited company status offers mechanisms to guarantee confidentiality for the shareholders. In public limited companies, shares may be book-entry or titled: in the first case, the ownership must be registered in the books of the financial intermediaries; in the second case, the ownership is only reported in the registry of the company if the shares are nominative. To make it more opaque, in the case of bearer shares, they do not even appear in the company registry. This is, bearer shares ownership can be transmitted without any registration at all.

Companies operating in the securities market are subject to different disclosure rules for both the company and its shareholders. In joint-stock companies, owners of nominative shares must always be registered (although companies can still issue bearer shares). Any legal or natural person who acquires a direct or indirect holding that, in aggregate or together with the shares already held, reaches, exceeds or falls below a given threshold of share or voting rights attached to the shares of a public company is required to notify the Portuguese Securities Exchange Commission (the CMVM) and the issuer of that fact.

On what concerns legal arrangements, the concept of trust does not exist under Portuguese Civil Code. However, trusts can be recognised and authorised to perform business activities in the Madeira Free Trade Zone (MFTZ) , if they have been legally constituted under foreign legal regimes and whose settlor and beneficiaries are non-residents in Portugal.[12] Authorisation for trusts to operate is dependent on registration in the MFTZ and the declaration of the following information: the purpose of the trust, the date of creation, the duration period, the denomination and headquarters of the trustee, the assets, the facts modifying the trust and the identity of settlor and trust beneficiaries. All the above elements are made publicly available, except for the identity of the natural persons involved, i.e. the beneficial owners. In addition, trusts whose duration period is less than a year are not required to register. The creation of a trust in Madeira is made public in the regional gazette (*Jornal Oficial da Região Autónoma da Madeira*), but there is not any relevant information that allows for the immediate identification of its beneficial owners.

12 Decree-Law no. 352-A/88.

OUTCOME 3 BASED ON G20 PRINCIPLES 4 & 6 (ACCESS TO BENEFICIAL OWNERSHIP INFORMATION ON LEGAL PERSONS AND ARRANGEMENTS)

Outcome: *Competent authorities (including law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) have timely access to adequate, accurate and current information regarding the beneficial ownership of legal persons and arrangements, both domestic and foreign; financial institutions and DFNBPs have access to beneficial ownership information when carrying out CDD; other interested parties, such as journalists, have access to beneficial ownership information on legal persons when they have a legitimate interest; beneficial ownership information on legal persons is available generally to the public.*

MODERATE LEVEL OF EFFECTIVENESS

Companies operating in Portugal must be recorded in the National Register of Legal Persons (RNPC) and in the Commercial Register. These registries are managed by the Institute of Registries and Notary (IRN), a public institute under the tutelage of the Ministry of Justice. Registration must be done at the time of incorporation and when the company performs the following corporate acts: changes in capital, in the management and accounting bodies or in the by-law, among others.

The first step when incorporating a company is the inscription in the RNPC. This Register organizes and manages the central file of legal persons, including corporations, trusts and foundations. It tests the admissibility of firms and denominations, in order to avoid different legal persons to using the same (or similar) denomination. It does not provide any information about the ownership or the structure of legal persons. Registration is compulsory for companies and trusts with a validity period of over a year and optional for foundations and NGOs. Access to the database is open to the public administration, judges and public prosecutors, insolvency agents and entities that receive delegation to investigate certain activities or have the responsibility to cooperate internationally in the prevention and suppression of crime. Other entities may be allowed to consult the database, upon request based on a legitimate purpose and the subsequent permission from the IRN's director.

The second step is the inclusion in the Commercial Register, without which the company has no legal personality. Request for registration can be made via internet, but requires a declaration of commencement of trading, a legalised copy of the memorandum of association and Certificate of Admissibility of the Business Name from the RNPC, as well as the identification of partners (please refer to page 6). According to the law, the Commercial Register must be public, meaning that any person may request a certificate of documents and written or oral information about them. In addition, the Ministry of Justice currently provides an online consultation platform: the Online Publication of Corporate Act (Publicação Online de Acto Societário), which contains all relevant management acts of corporation, changes in the board of director. Information about not-for-profit organizations and foundations may also be found in this platform.

Being public, registries are accessible to competent authorities and may prove useful for tracking the activity of legal persons, including mergers and extinctions. However, their value is limited, since none of them provides any information about beneficial owners. Moreover, even though in the Online Publication of Corporate Act there is a search engine that allows for searches based on taxpayer number or name of company, corporate acts are only available through digitalized copies. Therefore, it is not possible to compare information between companies, search natural persons or make any kind of quantitative and qualitative analysis based on other variables. In case of trusts registered in the MFTZ, authorities must hold a judicial order to access information about the settlor and the beneficiary. Furthermore, if the activity of the trust has a financial nature, an additional authorisation by the Ministry of Finance has to be granted.

It is expected the creation of a central registry of companies that will include beneficial ownership information. The Parliament recommended to the executive the "creation of a central register of securities, which includes the identity of their holders, the amount of securities held, the date of your deposit, as well as all transactions made".[13] However, the discussion is still ongoing and at the moment it is not clear whether a future registry would be public or only accessible to those with "legitimate interest". There is also no sign on how the beneficial ownership platform will be constructed or how user-friendly search it will be (for instance, if only documents in pdf format will be uploaded, as in the current register).

13 President of the Parliament (9 June 2016), RESOLUÇÃO: Recomenda ao Governo a criação de um registo central de valores mobiliários no âmbito da transposição da Diretiva (UE) 2015/849 do Parlamento Europeu e do Conselho de 20 de maio de 2015. Published on [DAR II série A N.º101/XIII/1 2016.06.24 (pág. 3-3)]

When searching for information on legal and natural or other beneficial ownership information, the most frequent source of information used by authorities, financial institutions and DNFBPs is the one provided directly or published by legal persons on their own website, for instance. Entities also resort to the press or national and international databases on companies and individuals. Only OROC (chartered accountants association) admitted consulting their own international network database. Company websites publish relevant information regarding their structure and administration. However, ML investigations frequently involve legal entities that do not have any website or other online information besides the basic one published by public and private commercial registries. Respondents that conduct business with foreign companies and trusts declared facing more difficulties in identifying these clients than domestic ones.

OUTCOME 4 BASED ON G20 PRINCIPLE 7 (FINANCIAL INSTITUTIONS AND DNFBPS TO IDENTIFY AND VERIFY BENEFICIAL OWNERSHIP OF THEIR CUSTOMERS)

Outcome: *Financial institutions and DNFBPs, including trust and company service providers, accurately identify and take reasonable measures to verify the beneficial ownership of their customers in accordance with CDD requirements. These obligations are supervised and effective, proportionate and dissuasive sanctions apply to non-compliance.*

LOW LEVEL OF EFFECTIVENESS

According to official reports, suspicious transactions alerts referred to DCIAP have been increasing steadily since 2011. There is no information regarding the sources of those alerts, but it is clear from DCIAP's annual reports that the overwhelming majority originated from banks or other financial institutions. The media report that STRs received by the Financial Intelligence Unit dramatically increased in 2014, reaching over 9 000 reports: 40% originated from the financial sector, 44% from the gambling sector and 12% from the tax authority. It is worth mentioning that communications from both the financial and the gambling sectors are "mass communications", meaning that they are automatic and unfiltered, which may overwhelm the system and be counterproductive. In fact, of those 9 107 communications, less than 440 were considered suspicious by the FIU. Despite news about referrals from the Bar Association or the Accounts Association, DNFBPS are rarely mentioned in DCIAP's or FIU reports. The lack of public disaggregated data on STR filling by sector and entity obstructs a clear analysis of sector compliance with CDD duties.

The difference between beneficial owners, i.e., natural persons who exercise the ultimate control and a legal person or arrangement that owns another company remains unclear for those with identification duties. For many stakeholders, knowing their client or investor simply means knowing the name of a company or legal arrangement, not its ultimate beneficiary. In addition, DNFBPs pay more attention to suspicious behaviour or transactions than to the prior identification of the beneficial ownership of their clients. Therefore, any measure or alert is mostly based on those suspicions rather than on concerns about the identity of the client. Awareness regarding natural persons appears therefore stronger among FI. DNFBPs show insufficient proactivity in the identification of beneficial ownership of their customers. The focus of concern of DNFBPs seems to be more on transactions or suspicious behaviour or business practices than the identity of owners per se. Moreover, contrary to FI, there is no evidence that DNFBPs refuse to proceed with business transactions in case of suspicion over the identity of the client. The reason for this difference between FI and DNFBPs may lay on the tighter supervision and heavier penalties imposed on the former in case of breach of duties, while the latter will usually barely face any consequence. There are not, on the one hand, incentives or significant repressive measures for DNFBPs, to comply. On the other hand, lack of timely and accurate information regarding beneficial ownership, paired with the pressure of having to conclude financial or commercial transactions in the midst of an economic crisis, may lead DNFBPs to disregard CDD requirements.

Financial institutions are required to re-examine their risk assessment and risk management bodies on an annual basis. In addition, client examination is conducted periodically to a maximum of 5 years, depending on the level of customer risk. Both the supervisor and the FI consulted confirmed the compliance with these obligations. Most FI rely mainly on FAFT and supervisor's recommendations, having more recently also resorted to the NRA. Despite the high amount of alerts emanating from banks and the procedures applied, different interviewees admitted having knowledge of cases in

which banking institutions warned their clients about judicial investigations or have modified data in favour of their clients. In one of those cases, BPA bank (Banco Privado Atlântico) is suspected of having omitted information about movements of funds of a client – a former prosecutor suspect of corruption and money laundering.[14]

The real estate sector appears highly problematic due to the high number of foreign investors, the recent severe crisis in the sector, the number and variety of market agents and their level of know-how about AML/CFT. There is no publicly available statistical data about STRs emanating from the sector's entities nor about enforced penalties for breach of compliance. Therefore, analysis of this sector can only be made through other means, namely ML investigations that involve real estate purchases and information obtained by from indirect sources such as investment consultants. On what concerns investigations, most newsworthy cases related to national and foreign PEPs and VIP involve the purchase of one or several properties in Portugal.[15] In some cases, property was purchased by offshore companies based in grey-list jurisdictions (FATF) and through bank accounts based in a third country. In others, the registered owner was not the beneficial one. In addition, both domestic and foreign investment consultant websites offer guidance on how to purchase real estate in Portugal through an offshore company, ensuring the confidentiality of the ownership and suggesting a number of safe haven jurisdictions. As an example, a Portugal-based real estate agency informs that *"[t]he two most widely used jurisdictions which have suitable holding company regimes for asset owning structures are USA (Delaware) and Malta, but there are various others such as New Zealand and even the UK. None of these are considered fiscally privileged by the Portuguese government".*[16] Interestingly, the agency in question has been involved in a real estate transaction currently linked to a high profile corruption and ML investigation.[17]

Regarding lawyers, despite some vague information on media reports, no record can be found of a law professional having reported any suspicious activity from a client or potential client to the Bar Association or criminal investigation authorities. To be sure, in case of suspicion, lawyers must refer the case to the Bar Association, which has the powers to lift the confidentiality duty to which the lawyer is subject to. When it was decided to extend CDD obligations to law professionals, the Bar Association claimed it would collide with confidentiality and loyalty duties in relation to clients. Although today CDD have been incorporated in the profession's duties, lawyers continue to value the confidentiality principle. Furthermore, in several money laundering investigations, lawyers have been investigated and even accused of facilitating or assisting their clients on money laundering schemes.

The monitoring of compliance varies considerably among the various AML/CFT supervisors. Moreover, the information about AML/CFT monitoring made public by competent authorities, especially sectorial supervisors, is not consistent or extensive. One single supervisor may in a given year state in its report data about ML activities or alerts and be silent about it in the following year's report. Nevertheless, as in other areas, financial supervisors show more proactivity due to a number of reasons, namely longer exposure to AML/CFT policies, more human resources and expertise but also a more limited scope of entities subject to their supervision. Although not in high numbers, sanctions have been applied for failure on the identification of beneficial ownership or on communication duties. The Bank of Portugal has open 21 and 68 proceedings over breaches related to AML/FCT, in 2012 and 2013 respectively. Other cases emanating from CMVM supervision have been referred to judicial authorities.

On what concerns the real estate sector, all entities involved in mediation, purchase, resale or exchange of real estate and property development must report every six months all transactions to IMPIC. Reports must include, among others, clear and complete identification of stakeholders, overall amount of the transaction, references of the securities, means of payment used and property ID. However, since reports are not automatic, it is not possible for the supervisor to track in a timely manner suspicious transactions.

The self-evaluation made by supervisors on their control and on the sanctions imposed is in general rather positive. The exception to this optimism has been IMPIC, the real estate and construction institute, which has admitted that the law makes its action and control difficult. When further analysing supervisors' annual reports, the picture appears less positive though. In general, regulators or public institutes with supervisory responsibilities fail to supervise, enforce and sanction. There is no information on inspections, cases being reported to competent authorities or sanctions imposed on DNFBPs for failure of CDD, as explained in the first paragraph.

14 http://www.dn.pt/portugal/interior/banco-atlantico-constituido-arguido-no-caso-do-ex-procurador-5046159.html

15 This aspect wil be further developed in two cases studies in this report: the real estate and the politics of money laundering, on pages XXXX and YYYY, respectively.

16 Quinta Vale do Lobo Properties website. Available at http://www.quintaproperty.com/buy-sell/on-offshore/

17 Sábado (10 Junho 2015), Ministério Público confronta Sócrates com negócio da quinta de Duarte Lima, Available at http://www.sabado.pt/portugal/seguranca/detalhe/ministerio_publico_confronta_socrates_com_negocio_da_quinta_de_duarte_lima.html

OUTCOME 5 BASED ON G20 PRINCIPLE 8 (INTERNATIONAL AND DOMESTIC COOPERATION)

Outcome: *National authorities cooperate and share information on beneficial ownership of legal persons and arrangements domestically and with their counterparts internationally. Information shared is the fullest available and is passed in a timely fashion.*

SUBSTANTIAL LEVEL OF EFFECTIVENESS

Most of the interviewees admitted that cooperation at the domestic level has been a longstanding problem in Portugal. Competition between authorities, lack of communication and interlocutors and difficulties in sharing databases or mechanisms for information crossing creates difficulties in cooperation in particular cases and relationship in general. Frequent leaks to the press over ongoing investigations composed by different authorities have contributed to lack of trust and consequent problems in cooperation. Despite the obstacles, stakeholders also admitted that the stalemate is being overcome and there are positive signs in the relationship between authorities, supervisors and financial and non-financial entities. The periodical work meetings of the Commission for the Coordination of AML/CFT Policies have been considered as a positive step towards cooperation and identification of contact persons in each body. In its 2015/2016 activities plan, DCIAP underlines the need for creating conditions to use and make available to relevant authorities the information gathered on ML communications for all inquiries running, clarifying that this would allow for faster and better cooperation between DCIAP and DIAPs.

There are no severe legal restrictions in sharing information internationally. The Public Prosecutor (PGR) is the central body for reception and transmission of letters rogatory (Mutual Legal Assistance requests). However, urgent request can be made to the Criminal Police (PJ) through INTERPOL or EUROPOL. Interviews revealed that international cooperation works well both among criminal authorities and among supervisory agencies. Mechanisms vary depending on the competent authority and the bilateral or multilateral agreements governing the relationship between countries. For instance, exchanges with EU members or the USA are automatic or simpler. On what concerns tax matters, the government has been working on a bill, based on FATCA and the OECD Common Reporting Standard that extends information sharing with countries beyond the EU.[18] From September 2017, Portuguese banks will be required to report to foreign authorities, via the Portuguese tax authorities, the balances of US clients or non-resident citizens. Likewise, the Tax Authority (AT) will receive information from abroad on the bank accounts that the Portuguese citizens living in national territory have in other states, including some offshore jurisdictions.

Information exchanged between supervisory bodies is conducted through informal mechanisms. In most cases, contact points are familiar with each other and communication is simple and fast. Cooperation between criminal authorities is dependent on the nature of the information requested. Basic information easily accessible through internal databases is provided immediately and without complex proceedings. Requests take 24 to 48 hours to be responded. Access to this information requires authorization of a judge and must be requested through formal mechanisms, such as letter rogatory warrants. According to DCIAP, in 2014, 26 letters rogatory were received and 29 returned, while 37 letters rogatory were still pending. In the previous year, a prosecutor was designated with the task of centralizing letters rogatory and matters concerning international cooperation, in order to improve the effectiveness of the proceedings.

On what concerns international cooperation requested by Portugal, DCIAP underlines the delays, which may take over a year, or even total absence of responses in certain cases. Other interviewees also mention the UK and China as less cooperative jurisdictions, regardless of the type of entity. Cooperation with Luxembourg has also proven difficult in cases of fiscal fraud, which correspond to the overwhelming majority of investigations related to ML in Portugal.

There are concerning signs regarding coordination of international cooperation. In the context of the fight against terrorism, in order to improve the information sharing between the security services and to ensure compliance with Schengen rules, the government and the Homeland Security Superior Council decided on the creation of a new structure, the Single Point of Contact that, under the tutelage of the Secretary General of Internal Security, will gather SIRENE, INTERPOL and EUROPOL National Offices, Liaison Officers and the Police and Customs Cooperation Centres, among other judicial international cooperation agencies. Currently, EUROJUST, INTERPOL and SIRENE National Offices are based in the PJ. The major concern derives from the fact that the Secretary General of Internal Security is under direct tutelage of the Prime-Minister. The concentration of international cooperation in such an office may put in jeopardy separation of powers and create an opportunity for undue political influence. PJ and the Public Prosecutors Union have publicly condemned these plans.

18 FINANÇAS, Decree-Law no. 64/2016, of 11th October.

ANNEX

TECHNICAL QUESTIONNAIRE ON BENEFICIAL OWNERSHIP TRANSPARENCY

PRINCIPLE 1: BENEFICIAL OWNERSHIP DEFINITION

Guidance: The beneficial owner should always be a natural (physical) person and never another legal entity. The beneficial owner(s) is the person who ultimately exercises control through legal ownership or through other means.

Q1. To what extent does the law in your country clearly define beneficial ownership?

Scoring criteria:

4: Beneficial owner is defined as a natural person who directly or indirectly exercises ultimate control over a legal entity or arrangement, and the definition of ownership covers control through other means, in addition to legal ownership.

1: Beneficial owner is defined as a natural person [who owns a certain percentage of shares] but there is no mention of whether control is exercised directly or indirectly, or if control is limited to a percentage of share ownership.

0: There is no definition of beneficial ownership or the control element is not included.

Reference/Comments: Law no 25/2008, Art. 2, no 5)

"Beneficial owner is the natural person or persons, who ultimately hold the property or the customer's control and / or the natural person on whose behalf is performed an operation or activity, including at least:

a) In the case of corporate entities:

i) the natural person or persons who ultimately own or control, directly or indirectly, a sufficient percentage of shares or voting rights or holdings in the capital of a legal person, including through holding bearer shares, or which exercise control by other means over that legal person, other than a company listed on a regulated market which is subject to disclosure requirements consistent with Union law or subject to equivalent international standards ensuring sufficient transparency of the information relating to property, with the understanding that:

i.1) The holding, by a natural person, of a percentage of 25% of shares plus one or a stake in the client's capital above 25% is a sign of direct ownership;

i.2) The holding of a percentage of 25% of shares plus one or a stake in the client's capital of more than 25% by a corporate entity that is under the control of one or more natural persons or by several corporate entities that are under the control of the same person or natural persons is an indication of indirect ownership;

i.3) Control by other means shall be determined, namely, in accordance with the criteria laid down in Article 22, no. 1) to (5) of Directive 2013/34 / EU of the European Parliament and of the Council of 26 June of 2013.

ii) the natural person (s) holding the top management, if, after all possible means have been exhausted and provided there is no cause for suspicion, no person has been identified under the preceding sub-paragraphs or if there is any doubt that the identified person or persons are the beneficial owners;

b) In the case of trusts:

i) The founder (settlor);

ii) Trustees or trustees of trust funds;

iii) The curator, if applicable;

iv) The beneficiaries or, if the persons benefiting from the center of collective interests without legal personality or of the legal person have not yet been determined, the category of persons in whose main interest the center of collective interests without legal personality or legal person was constituted or carries out its activity;

v) Any other natural person who has ultimate control of the trust through direct or indirect participation or through other means;

c) In the case of legal persons such as foundations and centers of collective interests without legal personality similar to trusts, the natural person (s) with similar or similar positions to those mentioned in (b);

d) The obligated entities keep records of all actions taken to identify the beneficial owners."

Q2. If thresholds are used to define beneficial ownership, what are they?

Scoring criteria:

4: Any shareholding is regarded as a beneficial ownership

3: 10% for all companies is regarded as beneficial ownership

2: 10% is regarded as beneficial ownership for profit-making companies only

1: 25% is the threshold for beneficial ownership

Reference/Comments: Law no 25/2008 , art. 2, no 5, a)

i) the natural person or persons who ultimately own or control, directly or indirectly, a sufficient percentage of shares or voting rights or holdings in the capital of a legal person, including through holding bearer shares, or which exercise control by other means over that legal person, other than a company listed on a regulated market which is subject to disclosure requirements consistent with Union law or subject to equivalent international standards ensuring sufficient transparency of the information relating to property, with the understanding that:

i.1) the holding by a natural person of 25% of shares plus one share or participation in customer capital exceeding 25%. is an indication of direct property;

i.2) The holding of 25% of shares plus one or a stake in the client's capital of more than 25% by a corporate entity that is under the control of one or more individuals, or by various corporate entities that are under the control of the same natural person is an indication of indirect ownership;

Nevertheless, for listed companies subject to the supervision of CMVM, shareholders with more than 10% must report any ownership changes to the regulator, according to art. 16 of the Portuguese Securities Code.
There are no plans to change this threshold.

PRINCIPLE 2: IDENTIFYING AND MITIGATING RISK

Guidance: Countries should conduct assessments of cases in which domestic and foreign corporate vehicles are being used for criminal purposes within their jurisdictions to determine typologies that indicate higher risks. Relevant authorities and external stakeholders, including financial institutions, DNFBPs, and non-governmental organisations, should be consulted during the risk assessments and the results published. The results of the assessment should also be used to inform and monitor the country's anti-corruption and anti-money laundering policies, laws, regulations and enforcement strategies. Countries should require financial institutions and designated non-financial businesses and professions (DNFBPs) to identify, assess and take effective action to mitigate their money laundering and terrorist financing risks.

Q3: Has the government during the last three years conducted an assessment of the money laundering risks related to legal persons and arrangements?

4: Yes
0: No

Reference/Comments: In 2013, the Ministry of Finance set up a working group for the assessment of national money laundering risks, in line with the FATF standards.[19] The working group was composed of 15 members, representing public bodies and sector regulators. A summary of their final report was published in June 2015.[20]

Q4: Were external stakeholders (e.g. financial institutions, designated non-financial businesses or professions (DNFPBs), non-governmental organisations) consulted during the assessment?

4: Yes, external stakeholders were consulted.
0: No, external stakeholders were not consulted or the risk assessment has not been conducted.

Reference/Comments: According to the NRA summary, associations of financial and non-financial institutions were consulted in two different stages: at the beginning of the process, in order to obtain information about risks across sectors; and at the final stage, about vulnerabilities and measures to overcome them.[21] Some financial institutions were also consulted individually (although they have not been identified), but DNFPBs were not.

Q5. Were the results of the risk assessment communicated to financial institutions and relevant DNFBPs?

4: Yes, financial institutions and DNFBPs received information regarding high-risks areas and other findings of the assessment.
0: No, the results have not been communicated.

Q6: Has the final risk assessment been published?

4: Yes, the final risk assessment is available to the public.
2: Only an executive summary of the risk assessment has been published.
0: No, the risk assessment has not been published or conducted.

Reference/Comments: The document made publicly available is presented as a summary and not the longer version of the assessment. The executive summary has been made available by different official public bodies and sectorial supervisors, namely: i) the government[22], the Ministry of Justice[23] or the Gambling Department of the Tourism of Portugal[24]. In the case of independent professionals, such as lawyers or accounts, their own self-regulatory bodies did not make the report available.

Q7: Did the risk assessment identify specific sectors / areas as high-risk, requiring enhanced due diligence?

4: Yes, the risk assessment identifies areas considered as high-risk where additional measures should be taken to prevent money laundering.
0: No, the risk assessment does not identify high-risk sectors / areas.

Reference/comments: The risk assessment identifies threats, vulnerabilities, risks and priorities in specific sectors, namely banking, real estate and high unitary value sectors.[25]

19 Minister of State and Finance, Order 9125/2013, of 12th July

20 Portugal: Avaliação Nacional de Riscos de Branqueamento de Capital e de Financiamento de Terrorismo - Síntese

21 Idem, page 7

22 Available at http://www.portugal.gov.pt/pt/o-governo/arquivo-historico/governos-constitucionais/gc20/os-ministerios/mf/documentos-oficiais/20151125-mf-avaliacao-risco-branqueamento-capitais.aspx [consulted on 27 July 2016]

23 Available at http://www.dgpj.mj.pt/sections/noticias/avaliacao-nacional-de [consulted on 27 July 2016]

24 Available at http://www.srij.turismodeportugal.pt/fotos/editor2/estudos/20151125-MF-avaliacao-risco-branqueamento-capitais.pdf [consulted on 27 July 2016]

25 Portugal: Avaliação Nacional de Riscos de Branqueamento de Capital e de Financiamento de Terrorismo – Síntese, pp. 19-21 and 26-30

Q8: Are financial institutions required to identify, assess and take effective action to mitigate their money laundering and terrorist financing risks, relating to legal persons and arrangements.

4: Yes, financial institutions are required to carry out an enterprise wide AML/CFT risk assessment and risk-rate their customer.
2: Financial institutions are only required risk-rate their customers.
0: There are no obligations on financial institutions to carry out their own risk assessment.

Reference/Comment: Articles 6 to 30 of Law no 25/2008 of 5th June detail all the action financial institutions are required to take relating to their customers. In addition, in 2013 Banco de Portugal issued instructions, providing guidance on the conditions, mechanisms and procedures for compliance with the preventive duties of AML/CFT in the provision of financial services subject to its supervision.[26] CMVM has also issued Regulation No. 1/2008 on Venture Capital and Regulation No. 2/2007 on the Pursuit of Financial Intermediation Activities, which include provisions on AML.[27]

Future plans: Banco de Portugal has issued instruction nº 8/2006 that, from December 2016, all payment entities based in Portuguese territory must register and report all payment services above 15 000 EUR with natural or legal persons based in an offshore jurisdiction.

Q9: Are DNFBPs required to identify, assess and take effective action to mitigate their money laundering and terrorist financing risks, relating to legal persons and arrangements.

4: Yes, DNFBPs are required to carry out an enterprise wide AML/CFT risk assessment and risk-rate their customer.
2: DNFBPs are only required risk-rate their customers.
0: There are no obligations on DNFBPs to carry out their own risk assessment.

Reference/Comment: Articles 6 to 22 and 31 to 37 of Law no 25/2008 of 5th June detail all the action DNFBPs are required to take relating to their customers, to fulfil their duties of identification, due diligence, refusal and reporting, for example. In addition, the above mentioned Banco de Portugal and CMVM regulations also instruct their respective regulatees on identification and risks regarding their clients, including legal persons and arrangements.

PRINCIPLE 3: ACQUIRING ACCURATE BENEFICIAL OWNERSHIP INFORMATION

Guidance: Legal entities should be required to maintain accurate, current, and adequate information on beneficial ownership within the jurisdiction in which they were incorporated. Companies should be able to request information from shareholders to ensure that the information held is accurate and up-to-date, and shareholders should be required to inform changes to beneficial ownership.

Q10: Are legal entities required to maintain beneficial ownership information?

4: Yes, legal entities are required to maintain information on all natural persons who exercise ownership or control of the legal entity.
3: Yes, legal entities are required to maintain information on all natural persons who own a certain percentage of shares or exercise control in any other form.
0: There is no requirement to hold beneficial ownership information, or the law does not make any distinction between legal ownership and control.

Reference/Comment: In the majority of companies registered in Portugal it is possible to know the identity of partners, since they fall in the category of private limited companies. It is only in public limited companies that is possible to maintain the anonymity of partners. The Portuguese Securities Code establishes a communication duty that imposes the obligation of informing both the company and the securities regulator, CMVM, about the chain of entities that own at least 10% of shares (Art. 16, no 4). This duty is only applicable to public limited companies whose shares can be publicly acquired (sociedades abertas).

Q11: Does the law require that information on beneficial ownership has to be maintained within the country of incorporation of the legal entity?

4: Yes, the law establishes that the information needs to be maintained within the country of incorporation regardless whether the legal entity has or not physical presence in the country.
0: There is no requirement to hold beneficial ownership information in the country of incorporation or there is no requirement to hold beneficial ownership information at all.

Reference/Comment: Please refer to Q10.

Q12: Does the law require shareholders to declare to the company if they own shares on behalf of a third person?

4: Yes, shareholders need to declare if control is exercised by a third person.
2: Only in certain cases do shareholders need to declare if control is exercised by a third person.
0: No, there is no such requirement.

Reference/Comment: It is possible to maintain the anonymity of shareholders of public limited companies. There is no reference to shares held on behalf of others. However, the Portuguese Securities Code establishes a communication duty that imposes the obligation of informing both the company and the securities regulator, CMVM, about the chain of entities that own at least 10% of shares (Art. 16, no 4). This duty is only applicable to public limited companies whose shares can be publicly acquired (sociedades abertas).

26 Bank of Portugal Notice no. 5/2013, in D.R. n.º 245, Série II de 2013-12-18

27 Available at http://www.cmvm.pt/en/Legislacao/BranqueamentoDeCapitais/Pages/Money%20Launderingh.aspx

Q13: Does the law require beneficial owners / shareholders to inform the company regarding changes in share ownership?

4: Yes, there is a requirement for beneficial owners / shareholders to inform the company regarding changes in share ownership.

0: No, there is no requirement for beneficial owners or shareholder to inform the company regarding changes in share ownership.

Reference/Comment: In Portuguese law, the companies (or financial intermediaries) must have registries of changes in the shareholding structure, with the following specifications:

- The Portuguese Securities Code establishes a communication duty, to public limited companies whose shares can be publicly acquired (sociedades abertas), that imposes the obligation of informing both the company and the securities regulator, CMVM, about any changes regarding shareholders that hold at least 10% of shares (Art. 16º).
- Changes in public limited companies that have book-entry shares must be registered in the financial intermediary or in the company (art, 61 to 64 of the Securities Code)
- Changes in public limited companies that have titled nominative shares must be registered in the company or financial intermediary (art. 102 of Securities Code); if the shares are titled bearer shares, there is no registry of the change (art. 101, no. 1 of Securities Code)
- Changes regarding private limited companies must be registered in the company (art. 228 of the Portuguese Commercial Companies Code).

However, in the law there is no mention of beneficial ownership changes whatsoever.

Q14: Does the law require that information on beneficial ownership be maintained by foreign legal entities that are carrying out economic activity or otherwise subject to tax requirements?

4: Yes, in all circumstances

2: Yes, but only in some circumstances (e.g. owning property, participating in public procurement)

0: No, there are no requirements on foreign legal persons or arrangements

PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Guidance: All relevant competent authorities, including all bodies responsible for anti-money laundering, control of corruption and tax evasion / avoidance, should have timely (that is within 24 hours) access to adequate (sufficient), accurate (legitimate and verified), and current (up-to-date) information on beneficial ownership. Ideally, this should be through a central register (and this will be required under 4MLD), but may be through other mechanisms – see Question 14.

Countries should establish a central (unified) beneficial ownership registry that is freely accessible to the public. As a minimum, beneficial ownership registries should be open to competent authorities, financial institutions and DNFBPs. Beneficial ownership registries should have the mandate and resources to collect, verify and maintain information on beneficial ownership. Information in the registry should be up-to-date and the registry should contain the name of the beneficial owner(s), date of birth, address, nationality and a description of how control is exercised.

ACCESS BY COMPETENT AUTHORITIES

Q15: Does the law specify which competent authorities (e.g. financial intelligence unit, tax authorities, public prosecutors, anti-corruption agencies, asset recovery offices etc.) are allowed to have access to beneficial ownership information?

4: Yes, the law specifies that all law enforcement bodies, asset recovery offices, tax agencies and the financial intelligence unit should have access to beneficial ownership information

2: Only some competent authorities are explicitly mentioned in the law.

1: The law does not specify which authorities should have access to beneficial ownership information.

Reference/Comment: Whenever there is a suspicion of action related to money laundering or terrorism financing, the entities should report to the Attorney General or the Financial Intelligence Unit (art. 16 of Law 25/2008, of 5 of June). They should also grant access to the files to the Attorney General, the Financial Intelligence Unit, the judicial authority leading an inquiry or by the competent authorities for the supervision of the above mentioned duties (Law 25/2008, art. 18º).

Q16: Which information sources are competent authorities allowed to access for beneficial ownership information?

4: Information is available through a central beneficial ownership registry/company registry.

3: information is available through decentralised beneficial ownership registries/ company registries.

1: Authorities have access to information maintained by legal entities / or information recorded by tax agencies/ or information obtained by financial institutions and DNFBPs.

0: Information on beneficial ownership is not available.

Reference/comment: Please refer to Q15.

Q17: Does the law specify a timeframe (e.g. 24 hours) within which competent authorities can gain access to beneficial ownership?

4: Yes, immediately /24 hours. .

3: 15 days

2: 30 days or in a timely manner.

1: Longer period.

0: No specification.

Reference/Comment: Law no 25/2008 of 5 June, does not establish a time frame, only stating that BE information access should be granted to authorities in a "Timely manner" (art. 41)

Q18: What information on beneficial ownership is recorded in the central company registry?

In countries where there are sub-national registries, please respond to the question using the state/province registry that contains the largest number of incorporated companies.

4: All relevant information is recorded: name of the beneficial owner(s), month and year of birth, identification or tax number, personal or business address, nationality, country of residence and description of how control is exercised.
3: Some relevant information is recorded: name, the month and year of birth, the nationality and the country of residence of the beneficial owner as well as the nature and extent of the beneficial interest held
2: Information is more partially recorded.
1: Only the name of the beneficial owner is recorded.
0: No information is recorded.

Reference/Comments: There isn't a central register of beneficial ownership. There is i) a central registry for companies, which includes information regarding administrators; ii) a database managed by and accessed by competent authorities about suspicious transactions and people. All companies operating in Portugal, including international and foreign entities, as well as arrangements, must be recorded in the National Register of Legal Persons (RNPC).[28] 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: constitution, modification of firm or denomination, change of object or capital, alteration of the location of the registered office or postal address, including the transfer of the registered office to and from Portugal, the change of the economic activity code (EAC), mergers, spin-offs or transformations, cessation of activity, dissolution, closure of liquidation or return to business. The Commercial Register contains only information on commercial companies. The data recorded in the Commercial Register do not include information about the identity of the beneficial owners, but only of the administrators. In the framework of AML/CFT there are the conservation and the cooperation duties, under which FI and DNFBs must keep the record of all the transactions and related documents and must provide authorities access to that information. In addition, from 1st December 2016, all institutions under the supervision of the Banco de Portugal must keep record and report all transactions above EUR 15 000 made to natural or legal persons based in offshore jurisdictions.[29]

Future plans: The govern is working on the creation of a BO register that will managed by the RNPC. At the moment, it is not clear what format will the database have or who will be granted access.

Q19: What information on beneficial ownership is made available to the public?

4: All recorded information is published online: name of the beneficial owner(s), identification or tax number, personal or business address, nationality, country of residence and description of how control is exercised.
3: Information is partially published online, but some data is omitted (e.g. tax number).
2: Only the name of the beneficial owner is published/ or information is only made available on paper / physically.
1: Only parties with a 'legitimate interest' are allowed access to the information.
0: No information is made available.

Reference/Comment: Please refer to Q18 for both state of the art and future plans.

Q20: Does the law mandate the registry authority to verify the beneficial ownership information or other relevant information such as shareholders / directors submitted by legal entities against independent and reliable sources (e.g. other government databases, use of software, on-site inspections, among others)?

4: Yes, the registry authority is obliged to conduct independent verification of the information provided by legal entities regarding ownership of control.
2: Only in suspicious cases.
0: No, the information is registered as declared by the legal entity.

Q21: Does the law require legal entities to update information on beneficial ownership, shareholders and directors provided in the company registry?

4: Yes, legal entities are required by law to update information on beneficial ownership or information relevant to identifying the beneficial owner (directors/ shareholders) immediately or within 24 hours after the change.
3: Yes, legal entities are required to update the information on beneficial ownership or directors, shareholders within 30 days after the change.
2: Yes, legal entities are required to update the information on the beneficial owner or directors/ shareholders on an annual basis.
1: Yes, but the law does not specify a specific timeframe.
0: No, the law does not require legal entities to update the information on control and ownership.

Reference/Comment: Legal entities are not required to inform about beneficial ownership, but only about directors and shareholders. In addition, the time frame for reporting changes is two months. See Article 9e) of Law no 25/2008; 16 e ss. of Securities Market Code; article 3/1m and 15/1,2 of Commercial Registry Code

28 Legal regime of the RNPC, Decree-Law no. 129/98, of 13th May, art. 2 and 4

29 Bank of Portugal Notice no. 6/2016

Q22: Do the requirements on access to beneficial ownership information also apply to foreign legal entities carrying out economic activity for profit or otherwise subject to tax requirements?

4: Yes, in all circumstances
2: Yes, but only in some circumstances (e.g. owning property, participating in public procurement)
0: No, there are no requirements on foreign legal persons or arrangements

Reference/Comment: Foreign companies operating in Portugal must register as any other Portugal-based company. Therefore they are subject to the same requirements as all other legal persons.

PRINCIPLE 5: TRUSTS

Guidance: Trustees should be required to collect information on the beneficiaries and settlors of the trusts they administer. In countries where domestic trusts are not allowed but the administration of trusts is possible, trustees should be required to proactively disclose beneficial ownership information when forming business relationship with financial institutions and DNFBPs. Countries should create registries to capture information about trusts, such as trust registries or asset registries, to be consulted by competent authorities exclusively or open to financial institutions and DNFBPs and / or the public.

Q23: Does the law require trustees to hold beneficial information about the parties to the trust, including information on settlors, the protector, trustees and beneficiaries?

4: Yes, the law requires trustees to maintain all relevant information about the parties to the trust, including on settlors, the protector, trustees and beneficiaries.
2: Yes, but the law does not require that the information maintained should cover all parties to the trust (e.g. settlors are not covered).
1: Yes, but only professional trusts are covered by the law.
0: Trustees are not required by law to maintain information on the parties to the trust.

Reference/Comments: The legal concept of trust does not exist under Portuguese law, therefore its creation is not possible. However, trusts constituted under foreign legal regimes, whose settlor and beneficiaries are non-residents in Portugal and trustee operates in Madeira can be recognised and authorised to perform business activities in the Madeira Free Trade Zone.[30] The trust must hold information about the complete identification of the settlor and trust beneficiaries, 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.[31] The registry is only compulsory if the trust has a duration period of over one year.[32]

Q24: In the case of foreign trusts, are trustees required to proactively disclose to financial institutions / DNFBPs or others information about the parties to the trust?

4: Yes, the law requires trustees to disclose information about the parties to the trust, including about settlors, the protector, trustees and beneficiaries in all circumstances.
2: Yes, the law requires trustees to disclose information about the parties to the trust, including about settlors, the protector, trustees and beneficiaries, but only in some circumstances.
0: Trustees are not required by disclose information on the parties to the trust.

Reference/Comments: According to the legal regime of trust operating in the Madeira Free Trade Zone, information about the identity of settlors and beneficiaries is confidential and may only be obtain through a judicial order.[33] However, the general AML/CFT framework extends the duty of identification to trusts and other arrangements. Financial institutions and DNFBPs are required to demand information about the beneficial owner of a trust.[34]

PRINCIPLE 6: COMPETENT AUTHORITIES' ACCESS TO TRUST INFORMATION

Guidance: Trustees should be required to share with legal authorities all information deemed relevant to identify the beneficial owner in a timely manner, preferably within 24 hours of the request. Competent authorities should have the necessary powers and prerogatives to access information about trusts held by trustees, financial institutions and DNFBPs.

Q25: Is there a registry which collects information on trusts?

4: Yes, information on trusts is maintained in a registry.
2: Yes, there is a registry which collects information on trusts but registration is not mandatory or information registered is not sufficiently complete to make it possible to identify the real beneficial owner.
0: No, there is no registry.

Reference/Comments: Please refer to Q23: Trusts authorised to operate in Madeira must be registered in the Commercial Registry in the Free Trade Zone. Information is public: it is published in the regional official gazette and can be consulted in site in the notary. It is not available online. The names of the settlor and trust beneficiaries must also be registered, but are not publicly available.

30 Decree-Law no. 352-A/88, of 3rd October
31 Idem, art. 7
32 Decree-Law no. 149/94, of 25th May
33 Idem, art. 11
34 Law 25/2008 of 5th June, art. 7; Bank of Portugal Notice nº 5/2013, art. 19

Q26: Does the law allow competent authorities to request / access information on trusts held by trustees, financial institutions, or DNFBPs?

4: Yes, competent authorities are able to access beneficial ownership information held by trustees and financial institutions, or access information collected in the registry.

2: Competent authorities have to request information or only have access to information collected by financial institutions.

0: No.

Reference/Comments: Please refer to Q24: Access to this information may only be obtained through judicial order.

Q27: Does the law specify which competent authorities (e.g. financial intelligence unit, tax authorities, public prosecutors, anti-corruption agencies, asset recovery offices etc.) should have timely access to beneficial ownership information held by trustees?

4: Yes, the law specifies that all law enforcement bodies, asset recovery offices, tax agencies and the financial intelligence unit should have access to beneficial ownership information

2: Only some competent authorities are explicitly mentioned in the law.

1: The law does not specify which authorities should have access to beneficial ownership information.

Q28: Do these requirements also extend to foreign trusts being administered in the jurisdiction?

4: All trusts established anywhere with any connection to the country concerned

3: Trusts from other Member States with a connection to the country concerned

1: Only trusts established in the country concerned

0: No requirement

Reference/Comments: Please refer to Q23:

Q29: What information on beneficial ownership of trusts is made available to the public?

4: All relevant information is published online: name of the beneficial owner(s), identification or tax number, personal or business address, nationality, country of residence and description of how control is exercised.

3: Information is partially published online, but some data is omitted (e.g. tax number).

2: Only the name of the beneficial owner is published/ or information is only made available on paper / physically./Only information on "business-type" trusts is made available

1: Only parties with a 'legitimate interest' are allowed access to the information.

0: No information is made available.

Reference/Comments: Please refer to Q24 and Q27.

PRINCIPLE 7: DUTIES OF FINANCIAL INSTITUIONS & OTHER BUSINESSES AND PROFESSIONS

Guidance: Financial institutions and DNFBPs should be required by law to identify the beneficial owner of their customers. DNFBPs that should be regulated include, at a minimum, casinos, real estate agents, dealers in precious metals and stones, lawyers, notaries and other independent legal professions when acting on behalf of the legal entity, as well as trust or company service providers (TCSPs) when they provide services to legal entities. The list should be expanded to include other business and professions according to identified money laundering risks. In high-risk cases, financial institutions and DNFBPs should be required to verify – that is, to conduct an independent evaluation of – the beneficial ownership information provided by the customer. Enhanced due diligence, including ongoing monitoring of the business relationship and provenance of funds, should be conducted when the customer is a politically exposed person (PEP) or a close associate of a PEP. The failure to identify the beneficial owner should inhibit the continuation of the business transaction and / or require the submission of a suspicious transaction report to the oversight body. Moreover, administrative, civil and criminal sanctions for non-compliance should be applicable for financial institutions and DNFBPs, as well as for their senior management. Finally, they should have access to beneficial ownership information collected by the government. According to 4MLD, financial institutions and DNFBPs should have access to the central registry of beneficial ownership when carrying out customer due diligence as required by the Directive.

FINANCIAL INSTITUTIONS

Q30: Does the law require that financial institutions have procedures for identifying the beneficial owner(s) when establishing a business relationship with a client?

4: Yes, financial institutions are always required to identify the beneficial owners of their clients when establishing a business relationship.

2: Financial institutions are required to identify the beneficial owners only in cases considered as high-risk or the requirement does not cover the identification of the beneficial owners of both natural and legal customers.

0: No, there is no requirement to identify the beneficial owners.

Reference/Comment: Article 7 of Law no 25/2008 of 15th June.

Q31: Does the law require financial institutions to also verify the identity of beneficial owners identified?

4: Yes, the identity of the beneficial owner should always be verified through, for instance, a valid document containing a photo, an in-person meeting, or other mechanism.

0: No, there is no requirement to verify the identity of the beneficial owner.

Reference/ Comment: Banco de Portugal Notice no 5/2013

Q32: In what cases does the law require financial institutions to conduct independent verification of the information on the identity of the beneficial owner(s) provided by clients?

4: Yes, independent verification is always required or required in cases considered as high-risk (higher-risk business relationships, cash transactions above a certain threshold, foreign business relationships).

0: No, there is no legal requirement to conduct independent verification of the information provided by clients.

Reference/Comments: Article 7 of Law 25/2008 of 5 June

Q33: Does the law require financial institutions to conduct enhanced due diligence in cases where the customer or the beneficial owner is a PEP or a family member or close associate of a PEP?

4: Yes, financial institutions are required to conduct enhanced due diligence in cases where their client is a foreign or a domestic PEP, or a family member or close associate of a PEP.

2: Yes, but the law does not cover both foreign and domestic PEPs, and their close family and associates.

0: No, there is no requirement for enhanced due diligence in the case of PEPs and associates.

Reference/Comments: Law 25/2008 of 5th June that regulates AML/CFT is not particularly clear regarding enhanced due diligence in this particular case. While the law defines clearly defines PEPs and their family members or close associates and does not establish a difference foreign or domestic individuals (art. 2, no 6), when stating the requirements for enhanced due diligence, it only makes reference to "PEPs residing outside national territory" (art. 12, no 2). No reference is made to PEPs in the articles relating to specific obligations of financial institutions.

However, the BdP, the banking supervisor, issued an ordinance for its regulated financial institutions that requires them to conduct enhanced due diligence when dealing with PEPs. Although paying especial attention to foreign individuals, the ordinance does state the requirements of enhance due diligence when conducting business with domestic PEPs (Aviso do Banco de Portugal n.º 5/2013, art. 37, no 5-8).

Q34: Does the law allow financial institutions to proceed with a business transaction if the beneficial owner has not been identified?

4: No, financial institutions are not allowed to proceed with transaction if the beneficial owner has not been identified.

0: Yes, financial institutions may proceed with business transactions regardless of whether or not the beneficial owner has been identified.

Reference/Comment: Art. 13 of Law 25/2008 of 5th June

Q35: Does the law require financial institutions to submit suspicious transaction reports if the beneficial owner cannot be identified?

4: Yes.

2: Only if there is enough evidence of wrongdoing.

0: No.

Reference/Comments: Only in the case of suspicion of ML or TF or high risk transactions are financial (or any other) intuitions required to submit reports (art. 16 and 27 of Law 25/2008 of 5th June).

Q36: Do financial institutions have access to beneficial ownership information collected by the government?

4: Yes, online for free through, for instance, a beneficial ownership registry.

3: Online, upon registration.

2: Online, upon registration and payment of fee.

1: Upon request or in person.

0: There is no access to beneficial ownership information collected by the government.

Reference/Comment:

Future plans: it is expected that the government will created a beneficial ownership register with access granted to FI.

Q37: Does the law specify a timeframe (e.g. 24 hours) within which financial institutions carrying out CDD can gain access to beneficial ownership collected by the government?

4: Yes, immediately /24 hours.

3: 15 days.

2: 30 days or in a timely manner.

1: Longer period.

0: No specification.

Reference/Comment:

Future plans: Please refer to Q36.

Q38: What information on beneficial ownership of companies is made available to the financial institutions?

4: All relevant information is published online: name of the beneficial owner(s), identification or tax number, personal or business address, nationality, country of residence and description of how control is exercised.
2: Information is partially published online, but some data is omitted (e.g. tax number).
1: Only the name of the beneficial owner is published/ or information is only made available on paper / physically.
0: No information is made available.

Reference/Comment:

Future plans: Please refer to Q36.

Q39: What information on beneficial ownership of trusts is made available to the financial institutions?

4: All relevant information is published online: name of the beneficial owner(s), identification or tax number, personal or business address, nationality, country of residence and description of how control is exercised.
2: Information is partially published online, but some data is omitted (e.g. tax number).
1: Only the name of the beneficial owner is published/ or information is only made available on paper / physically.
0: No information is made available.

Reference/Comments: Please refer to Q24 and Q27

Future plans: beneficial ownership information about trusts will be included in the register.

Q40: Does the law allow the application of sanctions to financial institutions' directors and senior management?

4: Yes, the law envisages sanctions for both legal entities and senior management.
0: No, senior management cannot be held responsible or there is no criminal liability for legal entities.

Reference/Comments: Law 25/2008 of 5th June, art. 46 to 57. The list of penalties:

	Legal Persons	Natural Persons
Credit Institutions	EUR 50 000 to 5 000 000	EUR 25 000 to 5 000 000
Other FI	EUR 25 000 to 2 500 000	EUR 12 500 to 1 250 000
DNFBPS	EUR 500 to 500 000	EUR 2 500 to 250 000

In addition, agents may face interdiction of practicing certain professions or positions in companies.

DNFBPS

Q41: Are TCSPs required by law to identify the beneficial owner of the customers?

4: Yes, TCSPs are required by law to identify the beneficial owner of their customer when performing transactions on behalf of their clients.
2: TCSPs are partially covered by the law.
0: No, TCSPs are not covered by the law and do not have anti-money laundering obligations.

Reference/Comments: Law 25/2008 of 5th June, art. 4, h)

Q42: Do these obligations extend to foreign trusts being administered or provided with other services, rather than being arranged?

4: Yes, in all circumstances
2: Yes, but only in some circumstances
0: There are no requirements relating to foreign trusts

Reference/Comments: Law 25/2008 of 5th June, art. 7, no 4

Q43: Are lawyers, when carrying out certain transactions on behalf of clients (e.g. management of assets), required by law to identify the beneficial owner of the customers?

4: Yes, lawyers are required by law to identify the beneficial owner of their customer when performing transactions on behalf of their clients.
0: No, lawyers are not covered by the law and do not have anti-money laundering obligations.

Reference/Comments: Law 25/2008 of 5th June, art. 4, g)

Q44: Are accountants required by law to identify the beneficial owner of the customers?

4: Yes, accountants are required by law to identify the beneficial owner of their customer when performing transactions on behalf of their clients.
0: No, accountants are not covered by the law and do not have anti-money laundering obligations.

Reference/Comments: Law 25/2008 of 5th June, art. 4, f)

Q45: Are real estate agents required by law to identify the beneficial owner of the customers?

4: Yes, real estate agents are required to identify the beneficial owner of their clients buying or selling property.
2: Real estate agents are partially covered by the law.
0: No, real estate agents are not covered by the law and do not have anti-money laundering obligations.

Reference/Comments: Law 25/2008 of 5th June, art. 4, d) and g)

Q46: Are casinos required by law to identify the beneficial owners of the customers?

4: Yes, casinos are required by law to identify the beneficial owners of their customers or casinos are prohibited by law.

0: No, casinos are not covered by the law and do not have anti-money laundering obligations.

Reference/Comments: Law 25/2008 of 5th June, art. 32 and 33

Q47: Are providers of gambling services required by law to identify the beneficial owners of the customers when collection of winnings or wagering of a stake exceeds EUR 2 000?

4: Yes, providers of gambling services are required by law to identify the beneficial owners of their customers or providers of gambling services are prohibited by law.

0: No, providers of gambling services are not covered by the law and do not have anti-money laundering obligations.

Reference/Comments: Law 25/2008 of 5th June, article 33. Although covered by the law, the stake's threshold is EUR 5 000.

Q48: Are dealers in precious metals and stones required by law to identify the beneficial owner of the customers?

4: Yes, dealers in precious metals and stones are required to identify the beneficial owner of clients in all transactions or in transactions above a certain threshold.

0: No, dealers in precious metals and stones are not covered by the law and do not have anti-money laundering obligations.

Reference/Comment: Law 25/2008 of 5th June does not cover specifically this professional category. However, its art. 4, e) places obligations on traders involved in trading of goods for which payment is made in cash in an amount equal to or greater than EUR 15 000, regardless of whether the transaction is carried out through a single operation or in several apparently interrelated transactions.

Q49: Are dealers in luxury goods required by law to identify the beneficial owner of the customers?

4: Yes, dealers in luxury goods are required to identify the beneficial owner of their customer.

0: No, dealers in luxury goods are not covered by the law and do not have anti-money laundering obligations.

Reference/Comment: Law 25/2008 of 5th June does not cover specifically this professional category. However, its art. 4, e) places obligations on traders involved in trading of goods for which payment is made in cash in an amount equal to or greater than EUR 15 000, regardless of whether the transaction is carried out through a single operation or in several apparently interrelated transactions.

Q50: Are persons trading in goods required by law to identify the beneficial owner of the customers when carrying out cash transactions over EUR 10 000?

4: Yes, persons trading in goods are required to identify the beneficial owner of their customer.

0: No, persons trading in goods are not covered by the law and do not have anti-money laundering obligations.

Reference/Comments: Law 25/2008 of 5th June, art. 4, e) and 33. Although covered by the law, the stake's threshold is EUR 15 000.

Q51: Does the law require relevant DNFBPs to also verify the identity of beneficial owners identified?

4: Yes, the identity of the beneficial owner should always be verified through, for instance, a valid document containing a photo, an in-person meeting, or other mechanism.

0: No, there is no requirement to verify the identity of the beneficial owner.

Reference/Comment: Law 25/2008 of 5th June, articles 7 and 8

Q52: Does the law require DNFBPs to conduct independent verification of the information on the identity of the beneficial owner(s) provided by clients?

4: Yes, independent verification is always required or required in cases considered as high-risk (higher-risk business relationships, cash transactions above a certain threshold, foreign business relationships).

0: No, there is no legal requirement to conduct independent verification of the information provided by clients.

Reference/Comment: Law 25/2008 of 5th June, articles 7 and 8

Q53: Does the law require enhanced due diligence by DNFBPs in cases where the customer or the beneficial owner is a PEP or a family member or close associate of the PEP?

4: Yes, DNFBPs are required to conduct enhanced due diligence in cases where their client is a foreign or a domestic PEP, or a family member or close associate of a PEP.

2: Yes, but the law does not cover both foreign and domestic PEPs and their close family and associates.

0: No, there is no requirement for enhanced due diligence in the case of PEPs and their associates.

Reference/Comment: Law 25/2008 of 5th June, art. 12, no 2 specifically states that enhanced due diligence is applicable to transactions conducted with PEPs residing outside Portuguese territory.

Q54: Does the law allow DNFBPs to proceed with a business transaction if the beneficial owner has not been identified?

4: No, a business transaction may only proceed if the beneficial owner of the client has been identified.

0: Yes, relevant DNFBPs are allowed to proceed with a business transaction regardless of whether or not the beneficial ownership has been identified.

Q55: Does the law require DNFBPs to submit a suspicious transaction report if the beneficial owner cannot be identified?

4: Yes, the law establishes that relevant DNFBPs have to submit a suspicious transaction report if they cannot identify the beneficial owner of their clients.
2: The law establishes that suspicious transaction reports should be submitted only if there is enough evidence of wrongdoing.
0: No, a business transaction may only proceed if the beneficial owner of the client has been identified.

Q56: Does the law allow the application of sanctions to DNFBPs' directors and senior management?

4: Yes, the law envisages sanctions for both legal entities and senior management.
0: No, senior management cannot be held responsible or there is no criminal liability for legal entities.

Reference/Comments: Law 25/2008 of 5th June, art. 46-57. For the extent of sanctions, please refer to Q40.

Q57: Do DNFBPs have access to beneficial ownership information collected by the government?

4: Yes, online for free through, for instance, a beneficial ownership registry.
3: Online, upon registration.
2: Online, upon registration and payment of fee.
1: Upon request or in person.
0: There is no access to beneficial ownership information collected by the government.

Reference/Comments: *Future plans*: it is expected that the government will created a BO register with access granted to DNFBPs.

Q58: Does the law specify a timeframe (e.g. 24 hours) within which DNFBPs carrying out CDD can gain access to beneficial ownership collected by the government?

4: Yes, immediately /24 hours.
3: 15 days.
2: 30 days or in a timely manner.
1: Longer period.
0: No specification.

Reference/Comments:

Future plans: Please refer to Q57

Q59: What information on beneficial ownership is made available to DNFPBs?

4: All relevant information is published online: name of the beneficial owner(s), identification or tax number, personal or business address, nationality, country of residence and description of how control is exercised.
2: Information is partially published online, but some data is omitted (e.g. tax number).
1: Only the name of the beneficial owner is published/ or information is only made available on paper / physically.
0: No information is published.

Reference/Comments:

Future plans: Please refer to Q57

Q60: Does access to beneficial ownership for DNFBPs include any information provided by foreign trusts or companies?

4: Yes, all information is provided
2: More limited information is provided on foreign than domestic arrangements
0: No information is provided on foreign trusts or companies

Reference/Comments:

Future plans: Please refer to Q57

PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION

Guidance: Domestic and foreign authorities should be able to access beneficial ownership information held by other authorities in the country in a timely manner, though, for instance, access to central beneficial ownership registries. Domestic authorities should also have the power to obtain beneficial ownership information from third parties on behalf of foreign authorities or to share information without the consent of affected parties in a timely manner.
Governments should publish guidelines explaining what type of information is available and how it can be accessed.

DOMESTIC SHARING OF INFORMATION

Q61: Does the law impose any restriction on information sharing (e.g. confidential information) across in-country authorities?

4: No, there are no restrictions in place.
2: There are some restrictions on sharing information across in-country authorities.
0: Yes, there are significant restrictions on sharing information across in-country authorities.

Q62: How is information on beneficial ownership held by domestic authorities shared with other authorities in the country?

4: Information on beneficial ownership is shared through a centralised database, such as a beneficial ownership registry.

3: There are several online databases managed by different authorities that contain relevant beneficial ownership information (e.g. company registry, tax registry, etc.) that can be accessed.

2: Domestic authorities can access beneficial ownership information through written requests or memoranda of understanding.

1: Domestic authorities may only access beneficial ownership maintained by another authority if there is a court order.

0: Information on beneficial ownership is not shared.

INTERNATIONAL SHARING OF INFORMATION

Q63: Are there clear procedural requirements for a foreign jurisdiction to request beneficial ownership information?

4: Yes, information on how to proceed with a request for accessing beneficial ownership information is made available through, for instance, the domestic authority's website or guidelines.

0: No, information on how to proceed with a request is not easily available.

Q64: Does the law allow competent authorities in your country to use their powers and investigative techniques to respond to a request from foreign judicial or law enforcement authorities?

4: Yes, domestic authorities may use their investigative powers to respond to foreign requests.

0: No, the law does not allow domestic competent authorities to act on behalf of foreign authorities.

Q65: Does the law in your country restrict the provision or exchange of information or assistance with foreign authorities (e.g. it is impossible to share information related to fiscal matters; restrictions related to bank secrecy; restrictions related to the nature or status of the requesting counterpart, among others)?

4: No, the law does not impose any restriction.

2: There are some restrictions that hamper the timely exchange of information.

0: Yes, there are significant restrictions in the law.

Reference/Comments: There are restrictions, for example, depending on the existence of cooperation agreements (no. 3 of art. 81 of Decree-Law no. 298/92, of 31st December, for instance).

Q66: Do foreign competent authorities have access to beneficial ownership information maintained by domestic authorities?

4: Yes, online for free through, for instance, a beneficial ownership registry.

3: Yes, online upon registration.

2: Yes, online upon the payment of a fee and registration.

1: Beneficial ownership information can be accessed only upon motivated request.

0: No.

Reference/Comments: Foreign competent authorities may ask domestic authorities for information regarding beneficial ownership and, according to the latter, this is customary, even though it is not a strictly regulated procedure (except for judicial cooperation), Additionally, art. 40-A of Law no. 25/2008 that domestic authorities must cooperate with the European Supervisory Authorities.

Q67: Do the information sharing requirements extend to any beneficial ownership information provided by foreign companies and trusts?

4: Yes, in all circumstances

2: Yes, but in limited circumstances

0: Information on foreign trusts or companies cannot be shared or is not collected

PRINCIPLE 9: TAX AUTHORITIES

Guidance: Tax authorities should have access to beneficial ownership registries or, at a minimum, have access to company registries and be empowered to request information from other government bodies, legal entities, financial institutions and DNFBPs. There should be mechanisms in place, such as memoranda of understanding or treaties, to ensure that information held by domestic tax authorities is exchanged with foreign counterparts.

Q68: Do tax authorities have access to beneficial ownership information maintained by domestic authorities?

4: Yes, online for free through, for instance, a beneficial ownership registry.

3: Yes, online upon registration.

2: Yes, online upon the payment of a fee and registration.

1: Beneficial ownership information can be accessed only upon motivated request.

0: No.

*Reference/Comment: T*ax authorities have access to the existing public registers and by request to databases kept by criminal authorities. These are not, however, beneficial ownership registries.

Q69: Does the law impose any restriction on sharing beneficial ownership information with domestic tax authorities (e.g. confidential information)?

4: No, the law does not impose restrictions.

2: The law does not impose significant restrictions, but exchange of information is still limited or cumbersome (e.g. a court order is necessary)

0: Yes, there are significant restrictions in place.

Q70: Is there a mechanism to facilitate the exchange of information between tax authorities and foreign counterparts?

4: Yes. The country is a member of the OECD tax information exchange and has signed tax information exchange agreements with several countries.

2: There is a mechanism available, but improvements are needed.

0: No.

Reference/Comment: According to the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, as of 26 July 2016, Portugal was one of the jurisdictions undertaking first exchanges by 2017. Information available at http://www.oecd.org/tax/transparency/AEOI-commitments.pdf [consulted on 21 August 2016].

Future plans: In October 2016, the Council of Ministers approved the transposition of EU Directive DAC2, which provides an automatic mechanism for access and exchange of financial information regarding bank accounts held in Portugal by non-residents and accounts held by residents abroad, including Portuguese citizens and the regulation associated with the implementation of FATCA agreement with the US. This agreement provides access by the Tax Authority, and communication to the US, of bank balances and investments information, based in Portugal, secured by American citizens residing in Portugal, resident in the United States and Portuguese citizens who have had a residence permit in the US. There is, however, a minimum threshold of USD 50 000 for the duty to report to be triggered.[35]

PRINCIPLE 10: BEARER SHARES AND NOMINEES

Guidance: Bearer shares should be prohibited and until they are phased out they should be converted into registered shares or required to be held with a regulated financial institution or professional intermediary. Nominee shareholders and directors should be required to disclose to company or beneficial ownership registries that they are nominees. Nominees must not be permitted to be registered as the beneficial owner in such registries. Professional nominees should be obliged to be licensed in order to operate and to keep records of the person(s) who nominated them.

Q71: Does the law allow the use of bearer shares in your country?

4: No, bearer shares are prohibited by law.

0: Yes, bearer shares are allowed by law.

Reference/Comments:

Now: Securities Code, art. 52-54 and97.

Future plans: Parliament is debating the end of bearer shares and two bills are on the table. The differentiating element between the Socialist bill and the BE's bill is the length of the transition period for the conversion of shares. The latter proposes a 120-day period, after which sanctions could be applied, while the former leaves it to the executive to create an enlarged transition phase.[36]

Q72: If the use of bearer shares is allowed, is there any other measure in place to prevent them being misused?

2: Yes, bearer shares must be converted into registered shares or share warrants (dematerialisation) or bearer shares have to be held with a regulated financial institution or professional intermediary (immobilisation).

1: Bearer share holders have to notify the company and the company is obliged to record their identity or there are other preventive measures in place.

0: No, there are no measures in place.

Reference/Comments: Book-entry bearer shares must be held with a financial institution (art. 63 of Securities Code), but titled bearer shares may not be converted, registered or held with a financial institution.

Q73: Does the law allow the incorporation of companies using nominee shareholders and directors?

4: No, nominee shareholders and directors are not allowed.

0: Yes, nominee shareholders and directors are allowed.

35 Government (6th October 2016), Council of Ministers Press Release. Available at http://www.portugal.gov.pt/pt/o-governo/cm/comunicados/20161006-com-cm.aspx

36 Socialist Party (Parlamentary Group) – Law Project no. 262 /XIII – 1st Forbids the issue of bearer shares; Left Block (Parlamentary Group) - Law Project no. 205/ XIII/1st Extinguishes bearer shares and determines the scriptural character of shares, ensuring the identification of their respective holders.

Q74: Does the law require nominee shareholders and directors to disclose, upon registering the company, the identity of the beneficial owner?

2: Yes, nominees need to disclose the identity of the beneficial owner.

0: No, nominees do not need to disclose the identity of the beneficial owner or nominees are not allowed.

Q75: Does the law require professional nominees to be licensed?

0.5: Yes, professional nominees need to be licensed.

0: No, professional nominees do not need to be licensed.

Q76: Does the law require professional nominees to keep records of the person who nominated them?

0.5: Yes, professional nominees need to keep records of their clients for a certain period of time.

0: No, professional nominees do not need to keep records.

METHODOLOGY AND INTERVIEWS

The methodology for the national risk assessments uses techniques to assess both i) **technical compliance** and ii) **effectiveness of implementation** against the Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) standards in this field, as set out by the Financial Action Task Force (FATF) in their 2012 40 Recommendations[37], and the specific EU requirements contained in the adopted text of the 4th Anti-Money Laundering Directive (4MLD)[38], which was agreed in May 2015 and which Member States are required to implement by June 2017. The methodology also takes into account the recent proposal by the European Commission to amend the text of 4MLD, including in relation to transparency and beneficial ownership[39]. Moreover, it builds on the G20 High Level Principles on Beneficial Ownership, agreed in November 2014.

The national risk assessments are assorted with case studies identified on the basis on their significance in relation to the weaknesses and vulnerabilities identified in certain sectors through the technical and effectiveness evaluations.

i) TECHNICAL EVALUATION

CURRENT SITUATION

The first stage of the methodology consists of carrying out a technical assessment of the arrangements currently in place. In doing so, the methodology uses existing standards as a basis, in particular the overlapping and complementary standards in the G20 Principles, the FATF standards and the EU 4MLD. Where there are differences in detail, data collection differentiates between the standards. The technical assessment section examines the legal and institutional frameworks on beneficial ownership and transparency, with a particular focus on existing legal provisions and their actual enforcement, the role of key stakeholders, high-risk sectors and cross-border cooperation. Given the changing environment (e.g. the requirement to implement 4MLD, global political initiatives on transparency, particularly in light of the reaction to the 'Panama Papers') the study also examines proposals and plans to enhance transparency in national frameworks, by assessing future plans (both in terms of commitment and anticipated outcome).

The technical assessment section draws upon a questionnaire designed for TI previous work[40] on reviewing G20 countries´ compliance with G20 commitments with a view to allowing for inserting the 6 covered countries into the existing ranking. In line with the previous methodology, points are awarded on a 4-point scale for each answer (0 corresponding to 'The country's legal/institutional framework is not at all in line with the principle/standard´ and 4 to 'The country's legal/institutional framework is fully in line with the principle/standard´).

The scores is averaged across each Principle and converted to percentage scores to illustrate the strength of the system using a 5-band system:

Scores between 81% and 100%	**Very strong**
Scores between 61% and 80%	**Strong**
Scores between 41% and 60%	**Average**
Scores between 21% and 40%	**Weak**
Scores between 0% and 20%	**Very weak**

FUTURE PLANS

The second stage of the technical evaluation consists of identifying a 'direction of travel'; that is to take account of forth-coming changes, such as implementation of recently adopted laws, plans to adopt new laws and so forth. The analysis consist of two parts – how advanced plans are to address gaps and how adequate the proposals appear to be. These data is captured by a parallel set of questions to the technical assessments above; where gaps or shortcomings against the highest standard are identified additional questions are posed:

37 http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html

38 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L0849

39 http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-450-EN-F1-1.PDF

40 Martini M. and M. Murphy, Just for Show – Reviewing G20 Promises on Beneficial Ownership, Transparency International, 2016

Qxx Commitments: If the score on Qxx is less than 4, are there any commitments to address the shortcomings?

4	Legislation is drafted and under consideration for this issue
3	There is a consultation exercise underway on this issue
2	There are firm proposals, e.g. in an AML/CFT Action Plan, to address this issue in the next year
1	There has been a commitment, e.g. in a AML/CFT Strategy, to address this issue at some point
0	There are no current plans to address this issue

Qxx Adequacy: If the plans identified above are implemented what would the score on Qxx be post-implementation?

4	The country's legal framework will be fully in line with the principle/standard.
3	The country's legal framework will be generally in line with the principle/standard but with shortcomings.
2	There are some areas in which the country will be in line with the principle/standard, but significant shortcomings will remain.
1	The country's legal framework will not be in line with the principle/standard, apart from some minor areas.
0	The country's legal framework will not be at all in line with the principle/standard.

As with the previous TI G20 Principles methodology, the answers are scored and averaged using the same bands (Very Strong to Very Weak), to give direction of travel risk scores alongside the scores of the adequacy of the current framework – so a country may be scored weak currently with an average score on adopting plans which would result in a strong score ultimately. The two scores are combined to provide an overall risk rating, as follows:

ADEQUACY \ COMMITMENT	VERY STRONG	STRONG	AVERAGE	WEAK	VERY WEAK
Very Strong					
Strong					
Average					
Weak					
Very Weak					

Key	
	Low risk
	Medium-low risk
	Medium risk
	Medium-high risk
	High risk

ii) EFFECTIVENESS EVALUATION

The second phase of the methodology consists of an effectiveness evaluation which looks at the outcomes expected to be achieved by the legislative and institutional framework relating to transparency of beneficial ownership. In the context of an overall AML/CFT framework, the outcomes are expressed in the FATF 2013 methodology[41], which uses a cascade of a high level objective for the AML/CFT regime, 3 intermediate outcomes and 11 immediate outcomes. It is the immediate outcomes (IOs) that form the basis for FATF evaluation work, as they most closely describe what evaluators will be able to measure. How well those outcomes are being achieved is a measure of the effectiveness of the system.

Effectiveness evaluation seeks to come to an overall understanding of the degree to which the country is achieving the outcome. Inevitably this does depend to some extent on technical implementation, but goes beyond the existence of legal and institutional structures, looking at how well they are working, producing the outputs required and achieving the desired outcome. In the context of this study, the relevant FATF immediate outcomes include parts of IO1 (Risk,

41 http://www.fatf-afi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf

Policy and Coordination), IO2 (International Cooperation), IO3 (Supervision), IO4 (Preventive measures), and all of IO5 (Legal persons and arrangements). For each of these IOs, the methodology draws upon the FATF Methodology and identifies Characteristics of an Effective System and then Core Issues to be considered in determining if the Outcome is being achieved; Examples of Information that could support the conclusions on Core Issues; and Examples of Specific Factors that could support the conclusions on Core Issues.

iii) HIGH RISK SECTORS AND CASE STUDIES

The selection of the case studies for this report is based on the analysis of effectiveness, and particularly the identification of particular sectoral weaknesses and vulnerabilities to money laundering and abuse of legal persons and arrangements (either on the basis of published material or data gathered through interview or both).

High risk sectors may include a subset of DFNBPs defined under the FATF Recommendations – including wealth management/ private banking, real estate, high value goods (luxury items such as art, jewellery or cars, for example) and gambling.

The analysis of identified high risk sectors looks more particularly at:
- the specific risks in these sectors
- the nature (and strengths/weakness) of supervision of the sector
- application of customer due diligence and reporting of money laundering suspicions by the sector
- good quality case studies illustrating the crystallised risks

In this report, 20 interviews were conducted, 15 people from different institutions were present at the first expert meeting, and 89 entities were contacted to fill the technical questionnaire, of which 83 were financial and non-financial institutions, 2 were regulator and supervisory institutions and 2 were located in Madeira.

INTERVIEWED ENTITIES:

Associação Portuguesa de Ética Empresarial
Associação Sindical dos Juízes Portugueses
Banco de Portugal
Comissão Mercado e Valores Imobiliários
Conselho de Prevenção da Corrupção
Departamento de Jogos da Santa Casa da Misericórdia de Lisboa
Departamento Central de Investigação e Acção Penal
Departamento Investigação e Acção Penal de Lisboa
Gabinete de Recuperação de Ativos (PJ)
Instituto dos Mercados Públicos, do Imobiliário e da Construção
Instituto Nacional da Propriedade Industrial
Jornal Observador
Ministério das Finanças
Observatório de Economia e Gestão de Fraude
Observatório de Segurança, Criminalidade Organizada e Terrorismo
Ordem dos Revisores Oficiais de Contas
Ordem dos Contabilistas Certificados
Partido Político - Bloco de Esquerda
Partido Político - CDS/PP
Partido Político – Os Verdes
Sindicato dos Trabalhadores dos Impostos
Tribunal Administrativo e Fiscal de Lisboa, Funchal e Ponta Delgada
Tribunal de Contas

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