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Anti-money laundering and counter-terrorist financing measures

Portugal

Mutual Evaluation Report

December 2017

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Executive Summary

1. This report provides a summary of the anti-money laundering and combating the financing of terrorism (AML/CFT) measures in place in Portugal as of the date of the on-site visit (28 March to 13 April 2017). It analyses the level of compliance with the *FATF 40 Recommendations,* the level of effectiveness of its AML/CFT system, and makes recommendations on how the system could be further strengthened.

A. Key Findings

- Overall, there is a fair level of understanding of the money laundering/terrorist financing (ML/TF) risks in Portugal, especially by law enforcement authorities and financial supervisors. However, there is a mixed level of understanding amongst DNFBP supervisors.
- The National Risk Assessment (NRA) was based on public and private participation and provides an overview of the nature and level of ML/TF risks in Portugal. The methodology can still be improved and a review of specific sectors still needs to be conducted in order to have a comprehensive overview of ML/TF risks in the country, in particular, in respect to TF risks associated with Non-Profit Organisations (NPO).
- Financial intelligence, primarily based on suspicious transaction reports (STRs), is collected, used and disseminated amongst authorities for AML/CFT purposes. Operational authorities have direct or indirect access to comprehensive databases held by relevant agencies in order to facilitate the circulation and use of information for ML/TF investigations.
- Assessors have concerns regarding the resource implications of the dual system of reporting suspicious transactions to both the FIU and the Public Prosecution office (DCIAP), and about the FIU's capacities to adequately process and analyse the increasing number of STRs received. In addition, the FIU does not have relevant resources to produce strategic analysis.
- Authorities show a high degree of commitment and capacity to investigate and prosecute ML cases, including complex cases, consistent with the main ML risks in the country. Criminal sanctions applied are proportionate and dissuasive.
- Portugal has had good results in freezing assets at the early stage of ML investigations to prevent the flight and dissipation of assets. This practice, combined with the use of the "enlarged confiscation" regime, demonstrates the prosecution's priority to make crime

unprofitable for criminals.

- TF is pursued as a distinct criminal activity, and parallel financial investigations are conducted to support counter-terrorism investigations. TF assets and instrumentalities related to TF activities are seized and confiscated. TF prosecutions have been initiated, but there have been no TF convictions in Portugal to date.
- Designations at the UN level apply directly in Portugal without the need for EU transposition. Processes and procedures are in place to fully implement TFS in relation to TF and PF, and authorities demonstrated a high degree of competency in coordinating CFT and CPF activities.
- Portuguese authorities have been active in investigating and disrupting potential PF cases and cooperate well with authorities of other jurisdictions.
- In the financial sector, the application of proportionate mitigation measures by financial institutions (FIs) is satisfactory. Progress still needs to be made regarding the understanding of the beneficial ownership (BO) requirements. The application of risk-based supervisory models is ongoing, with Banco de Portugal being the most advanced in this regard.
- Regarding DNFBPs, the understanding of ML/TF risks in the sector as a whole is moderate, including by sectors at higher risk of ML/TF. Supervisors conduct limited AML/CFT supervisory activities, which primarily follow a rule-based approach. Measures to prevent and detect unauthorised activities are applied in sectors where informal activities are a major issue.
- There is generally a good level of transparency of basic information on legal persons and arrangements, including foreign trusts established in the Madeira Free Trade Zone (FTZ). Sanctions applicable to non-compliance with transparency obligations are not dissuasive. Information on beneficial ownership is mainly available from FIs, but the lack of understanding of the requirements by some FIs creates some concerns about the reliability of this information.
- International cooperation between Portuguese authorities and foreign counterparts is proactive and collaborative, and provided upon request and spontaneously, with priority given to terrorism and TF-related requests. Mutual Legal Assistance (MLA) and extradition are mainly used as complementary tools, in addition to more informal cooperation channels.

B. Risks and General Situation

2. Over the last years, the overall economic, financial and social context of Portugal has been heavily affected by the 2008 global financial crisis. The financial sector has been particularly hard hit, with banks in Portugal facing deteriorating balance sheets and liquidity pressure. The country is now going through a gradual recovery, but this situation has created vulnerabilities that could be potentially exploited by criminals. Portugal has a relatively low rate of violent crime. It has increasingly developed a diversified and service-based economy where tourism plays an important role and the real estate market shows stable growth. Due to its geographical position, Portugal is a

transit country between Latin America and West Africa to the rest of Europe, which facilitates the flows of funds, including illicit funds.

3. Portugal published a summary of its national ML/TF risk assessment in 2015, which highlighted that the main ML predicate offences in the country are tax crimes, drug trafficking, fraud and corruption. The NRA also establishes that vulnerabilities include, *inter alia:* anonymous operations and transactions; informal transfer systems; the lack of knowledge of beneficial owners and existence of bearer securities; the lack of transparency in the real estate sector; and lack of resources for the supervision of compliance with AML/CFT requirements. Portugal also identified specific business sectors at risk, in particular the banking sector, real estate and high-value goods dealers, as well as countries which pose the most significant ML/TF risks for the country.[1]

4. On the TF side, the NRA indicates that the major risks to the country relate to Islamist groups and separatist movements, but overall the TF risk level is deemed to be low.

C. Overall Level of Effectiveness and Technical Compliance

5. Portugal has brought a number of significant technical changes to its AML/CFT system since the 2006 mutual evaluation and the adoption of the AML/CFT Law in June 2008. For instance, it introduced measures on Politically Exposed Persons (PEPs), extended the concept of beneficial ownership and set up agencies for asset recovery and asset management. However, significant shortcomings are still noted for the transparency regime applicable to NPOs at risk of TF abuse and of legal persons and arrangements; the preventive measures for correspondent banking relationships and wire transfers; and the preventive and supervisory measures applicable to DNFBPs, in general. Portugal is in the process of transposing the 4th EU AML Directive, and a number of these issues should be solved once the updated framework is in place.[2] Portugal also set up a permanent national platform to assess ML/TF risks and coordinate policies and actions in this field.

6. Portugal achieves a substantial level of effectiveness in several areas such as the assessment of ML/TF risks and domestic coordination; international cooperation; the investigation and prosecution of both ML and TF; and the application of targeted financial sanctions (TFS) to counter TF and the financing of proliferation (PF). Portugal achieves a moderate level of effectiveness in other areas, and significant improvements are still needed, particularly in regards to the use of financial intelligence and other information, with a focus on the mechanism to report STRs and the analysis conducted by the FIU; the implementation of preventive measures by non-financial businesses and professions and their supervision in accordance with a risk-based approach; and measures to prevent the misuse of legal persons and arrangements. Generally speaking, and in particular in the field of asset confiscation, Portugal needs to enhance its collection and maintenance of comprehensive statistics in order to demonstrate the actions it has taken and the results achieved, as well as to better document its analysis of risks.

C.1 Assessment of risk, coordination and policy setting (Chapter 2; IO.1, R.1, 2 & 33)

7. Overall, there is an adequate level of understanding of the ML/TF risks in Portugal, especially by law enforcement authorities and financial supervisors. However, there is a mixed level

[1] The list of those countries is part of the confidential information of the NRA.
[2] These measures have been adopted by the Parliament in May 2017 and promulgated by the President of the Republic in August 2017.

of understanding amongst DNFBP supervisors. The 2015 NRA was a key step to enhance the shared understanding of risks between all public authorities and private sector entities involved. The NRA was based on both public and private sector participation and provides an overview of the nature and level of both ML and TF risks in Portugal. However, a full analysis of risks associated with legal persons and arrangements and Non-Profit Organisations (NPOs) still needs to be developed. The methodology could also be improved to enhance the quality and reliability of the data and information used (both qualitative and quantitative).

8. Legislative measures have recently been undertaken to address some of the risks identified in the NRA. AML/CFT activities and policies of relevant authorities are aligned with the main ML/TF risks identified at a sectoral level. The AML/CFT Coordination Commission (CC), established in 2015, is responsible for the overall policy coordination and implementation of AML, CFT and counter-proliferation financing (CPF) measures in Portugal. It provides a relevant forum for efficient coordination between all parties involved. Its priority activities include improving the collection and maintenance of an adequate range of statistics and setting-up a beneficial ownership register.[3]

C.2 Financial intelligence, ML investigations, prosecutions and confiscation (Chapter 3; IO.6, 7, 8; R.3, 4, 29–32)

9. Financial intelligence and other information is collected, produced, used and disseminated amongst operational authorities for AML/CFT purposes. Operational authorities have direct or indirect access to comprehensive databases held by relevant agencies in order to facilitate the circulation and use of information for ML/TF investigations. International exchanges of financial information between Portuguese authorities and foreign counterparts are also a strong asset for conducting investigations.

10. The dual system of suspicious transactions reporting (STRs), whereby both the Public Prosecution services (DCIAP) and the FIU receive STRs, ensures that STRs are thoroughly investigated. Nevertheless, assessors have concerns regarding the duplication of work and the resource implications of this system. STRs disseminated to relevant authorities play a central role in combating financial crime in Portugal, but increasing STR reporting is placing a growing burden on current IT infrastructure, and is also creating resource concerns. Furthermore, the lack of strategic analysis by the FIU, mainly due to resource and capacity shortages, hampers the effectiveness of the AML/CFT system.

11. Portugal has a good legal foundation and sound institutional structure to fight ML, which is properly applied to mitigate ML risks. Portuguese authorities show high commitment to pursuing ML offences and closely cooperate in order to initiate investigations, trace assets and prosecute ML cases. STRs play a key role in initiating and supporting investigations, as well as aid Portuguese authorities in prioritising and coordinating AML/CFT actions. Portuguese law enforcement authorities (LEAs) have appropriate powers and capabilities to identify and investigate complex ML cases. ML investigations, and the underlying predicate crimes, are consistent with Portugal's risk profile. Statistics available are not comprehensive and fully reliable, but Portuguese authorities provided assessors with a significant number of cases demonstrating that they prosecute and obtain ML convictions for a range of different types of ML, including stand-alone, third party ML and the laundering of proceeds of foreign predicate offences. Criminal sanctions applied to ML are

[3] The Law setting up the register was promulgated in August 2017.

proportionate and dissuasive. However, legal persons are prosecuted and convicted to a lesser extent than natural persons.

12. In general, Portugal has a good legal framework and broad confiscation powers.[4] Portugal takes actions to recover the proceeds of crime. A number of measures have been implemented in recent years to confirm this approach, including the set-up of the Asset Recovery Office (ARO). Prosecutors and LEAs show a high degree of commitment to pursue ML cases in order to trace and freeze the proceeds of crime. Portugal has had good results in freezing assets at the early stage of investigations to prevent the flight and dissipation of assets. This practice, combined with the use of the "enlarged confiscation" regime, demonstrates the prosecution's priority to make crime unprofitable for criminals. However, Portuguese authorities are not able to provide concrete information and/or comprehensive statistics on the numbers and values of assets effectively confiscated or lost in favour of the State. Portuguese authorities' detection and confiscation of illicit cross-border movements of currency have decreased over recent years, as have the amounts of fines applied.

C.3 Terrorist and proliferation financing (Chapter 4; IO.9, 10, 11; R.5–8)

13. TF activities are identified and investigated by LEAs and intelligence services, with cooperation and coordination from international law enforcement and intelligence services when dealing with international terrorism. TF prosecutions have been initiated, but there have been no convictions for TF todate. Disruption tactics and prosecutions for related offences are undertaken to address TF activity. TF is pursued as a distinct criminal activity, and parallel financial investigations are conducted to support counter-terrorism (CT) investigations. Furthermore, TF assets and instrumentalities related to TF activities are seized and confiscated. TF risks are mitigated with a high degree of commitment and coherent action by the authorities.

14. TF preventive measures, including TFS, are considered valuable tools by the CT authorities when managing TF risks, including in relation to foreign terrorist fighters (FTFs) and FTF returnees. Designations at the UN level apply directly in Portugal without the need for EU transposition. Processes and procedures are in place to fully implement TFS in relation to TF, and authorities demonstrated a high degree of competency in coordinating CFT activities. The limited assessment of vulnerability of the NPO sector to TF abuse impacts on the supervision and targeted outreach required from relevant supervisory bodies. The impact of the Tax and Customs Authority (AT) oversight of registered NPOs to protect those entities from abuse by terrorist financiers is limited to tax compliance, and does not cover TF investigations, which are the sole responsibility of the Public Prosecutor.

15. Processes and procedures are in place to fully implement TFS in relation to PF, and designations at the UN level apply directly in Portugal without the need for EU transposition. Authorities demonstrated a high degree of competency in coordinating CPF activities. The export control authorities have a good understanding of proliferation and PF risks, including risks related to diversion and sanctions evasion. Portuguese authorities have been active in investigating and disrupting potential cases, and have good cooperation with other jurisdictions. FIs have a good

[4] The term "lost in favour of the State" is used in the Portuguese language, instead of the term "confiscation," because the term "confiscation" in Portuguese is equated to expropriation without indemnity under the Portuguese Constitution. This report uses the two terms interchangeably, and "confiscation" in this report refers to the concept defined in the FATF Glossary.

understanding of their obligations to implement TFS. To a lesser extent, the DNFBP sectors also demonstrate awareness of these obligations. BdP's supervisory approach includes a full compliance review of supervised entities in regards to their TFS obligations, while other financial supervisors monitor the application of TFS controls.

C.4 Preventive measures (Chapter 5; IO.4; R.9–23)

16. The understanding of ML/TF risks is good amongst financial institutions (FIs). This understanding is more developed in larger banks and MVTS providers, especially those belonging to international financial groups. FIs have implemented procedures to identify, assess and document their risks. The implementation of a risk-based model is relatively new for some FIs, but models are being further developed. FIs implement adequate mitigation measures in accordance with their CDD, record-keeping and monitoring requirements, based on risks when relevant. They also apply additional measures in higher risk situations, in particular when PEPs, TFS and/or higher risk jurisdictions are involved. Assessors have noted that some FIs do not seem to have a solid understanding of the concept of BO and tend to equate it to legal ownership; although, supervisors have not identified compliance with BO requirements as a major deficiency. STR filing requirements are understood by FIs, and their reporting is in line with the risk level of FIs. However, FIs do indicate that there is difficulty in detecting suspicious transactions related to TF. FIs would welcome additional guidance in this area. The internal control policies and procedures in place are adequate, and no obstacles with respect to information sharing within international financial groups have emerged.

17. There is a mixed understanding of risks by DNFBPs. While few sectors have a comprehensive understanding, some DNFBPs focus only on some risks (e.g. high-value goods dealers) and others underestimate their overall exposure (e.g. lawyers). Most DNFBPs apply rule-based measures to mitigate risks. They conduct adequate formal identification of their customers, with the exception of BO-related obligations (similar issue as for FIs, see paragraph above), and apply proportionate record-keeping measures. DNFBPs have a general knowledge of EDD requirements, but relevant measures do not seem to be rigorously implemented. DNFBPs know about the reporting obligations of suspicious transactions, but only a few of them are duly filing STRs (e.g. registrars).

C.5 Supervision (Chapter 6; IO.3; R.26–28, 34, 35)

18. Financial sector supervisors base their understanding of risks on the NRA and sectoral risk assessments finalised in 2015. They have a good understanding of the risks faced by individual FIs and have developed models to map these risks, which are currently most advanced in the banking sector. The financial supervisory approach to ML/TF takes risks of FIs into account, especially for the banking sector. Financial supervisors conduct AML/CFT on-site and off-site supervision, including on higher risk activities and entities. This tends to focus primarily on the implementation of AML/CFT requirements by FIs, and less on the understanding of risks by FIs. Financial supervisors apply adequate fit and proper assessments to prevent criminals and their associates from entering into the market, and supervisors take good measures to prevent and detect unauthorised financial activities in the market. Financial supervisors have a range of remedial actions available, and these are used by Banco de Portugal, the banking supervisor. Other supervisors take mainly corrective measures, which seems consistent with the risks and findings in their respective sectors. Financial

supervisors provide financial sector-wide guidance to FIs through different channels as well as on-site inspections. Financial supervisors cooperate and exchange information with other competent authorities, mainly on an informal basis.

19. DNFBP supervisors have a limited understanding of the risks of individual DNFBPs. Their AML/CFT supervision is limited, and they have not clearly demonstrated how risk is incorporated into their ML/TF supervisory approach. For some DNFBPs (lawyers), AML/CFT supervision is not exercised at all. Only some DNFBP supervisors apply fit and proper assessments to prevent criminals and their associates from entering into the market (e.g. accountants, auditors). Supervisors of DNFBP sectors where informal activities are a major issue (e.g. real estate, high-value goods dealers) take measures to prevent and detect unauthorised activities in the market. AML/CFT-related sanctions imposed by DNFBP supervisors are low in terms of number and severity of the sentence. DNFBP supervisors mainly make use of training to raise ML/TF awareness of their supervised entities.

C.6 Transparency and beneficial ownership (Chapter 7; IO.5; R.24, 25)

20. Basic information on the creation and types of legal persons is publicly available through websites. According to Portuguese authorities, the number and activities of legal arrangements in Portugal are not significant. The law in Portugal does not recognise the legal concept of a trust. However, trusts that have been legally constituted under foreign laws, with terms exceeding one year and whose settlor(s) are non-Portuguese residents ("foreign trusts"), can be recognised and authorised to perform business activities exclusively in the Madeira Free Trade Zone (FTZ).

21. There is no full understanding of ML/TF risks associated with legal persons and arrangements in Portugal, and the NRA only includes certain risk indicators. Measures are generally in place for the transparency of basic information of legal entities created in Portugal, and initiatives have been taken to remove dormant companies from public registers. Regarding foreign trusts established in the FTZ, assessors have some concerns regarding the access to information of some parties involved (settlors, beneficiaries). For both legal persons and arrangements, BO information is mainly available from FIs. However, the lack of understanding of BO requirements (see C.4) creates some concerns regarding the collection of this information, even though LEAs have not reported challenges to procuring access to relevant information. The application of sanctions available for non-compliance with information and transparency obligations regarding legal persons and arrangements does not appear to be effective or dissuasive.

C.7 International cooperation (Chapter 8; IO.2; R.36–40)

22. International cooperation between Portuguese authorities and foreign counterparts is proactive and collaborative, provided upon request and spontaneously, with priority given to terrorism and TF-related requests. In general, information exchange with EU Members, as well as with other Portuguese-speaking countries, is well developed. Portugal tends to use MLA as a complementary means of obtaining and exchanging information, together with other forms of cooperation, such as informal cooperation and the use of liaison officers. Overall, Portugal provides good quality MLA and extradition across a range of international requests.

D. Priority Actions

23. The prioritised recommended actions for Portugal, based on these findings, are:

- Define a comprehensive AML/CFT programme of action to fully address ML/TF risks identified, with priorities, timelines and a specific focus on higher risk sectors and scenarios explicitly covered.
- Conduct a comprehensive assessment of the ML/TF risks associated with NPOs and legal persons and arrangements, and implement proportionate actions to address these risks.
- Provide adequate technical and human resources to the FIU so that it can effectively fulfil its core responsibility of managing and assessing STRs filed, and develop strategic analysis on an ongoing basis.
- Conduct awareness-raising and educational outreach on ML/TF risks, AML/CFT preventive requirements and STR obligations for DNFBP sectors, especially those at higher risks of ML/TF abuse.
- Allocate resources to DNFBP supervisors in charge of higher risk sectors commensurate to the ML/TF exposure and size of the supervised sector.
- Ensure early introduction of the central register of beneficial ownership currently being set up.
- Develop and maintain adequate and comprehensive ML/TF-related statistics in order to better support and document Portugal's understanding and analysis of risks, and improve how Portugal demonstrates its actions taken and results achieved.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings (High, Substantial, Moderate, Low)

IO.1 - Risk, policy and coordination	**IO.2** - International cooperation	**IO.3** - Supervision	**IO.4** - Preventive measures	**IO.5** - Legal persons and arrangements	**IO.6** - Financial intelligence
Substantial	**Substantial**	**Moderate**	**Moderate**	**Moderate**	**Moderate**
IO.7 - ML investigation & prosecution	**IO.8** - Confiscation	**IO.9** - TF investigation & prosecution	**IO.10** - TF preventive measures & financial sanctions	**IO.11** - PF financial sanctions	
Substantial	**Moderate**	**Substantial**	**Substantial**	**Substantial**	

Technical Compliance Ratings (C - compliant, LC – largely compliant, PC – partially compliant, NC – non compliant)

R.1 - assessing risk & applying risk-based approach	**R.2** - national cooperation and coordination	**R.3** - money laundering offence	**R.4** - confiscation & provisional measures	**R.5** - terrorist financing offence	**R.6** - targeted financial sanctions – terrorism & terrorist financing
LC	**LC**	**LC**	**C**	**LC**	**C**
R.7- targeted financial sanctions - proliferation	**R.8** -non-profit organisations	**R.9** – financial institution secrecy laws	**R.10** – Customer due diligence	**R.11** – Record keeping	**R.12** – Politically exposed persons
C	**PC**	**LC**	**LC**	**C**	**LC**
R.13 – Correspondent banking	**R.14** – Money or value transfer services	**R.15** –New technologies	**R.16** –Wire transfers	**R.17** – Reliance on third parties	**R.18** – Internal controls and foreign branches and subsidiaries
PC	**C**	**LC**	**PC**	**LC**	**LC**
R.19 – Higher-risk countries	**R.20** – Reporting of suspicious transactions	**R.21** – Tipping-off and confidentiality	**R.22** - DNFBPs: Customer due diligence	**R.23** – DNFBPs: Other measures	**R.24** – Transparency & BO of legal persons
LC	**LC**	**C**	**PC**	**LC**	**PC**
R.25 - Transparency & BO of legal arrangements	**R.26** – Regulation and supervision of financial institutions	**R.27** – Powers of supervision	**R.28** – Regulation and supervision of DNFBPs	**R.29** – Financial intelligence units	**R.30** – Responsibilities of law enforcement and investigative authorities
PC	**LC**	**C**	**LC**	**LC**	**C**
R.31 – Powers of law enforcement and investigative authorities	**R.32** – Cash couriers	**R.33** – Statistics	**R.34** – Guidance and feedback	**R.35** – Sanctions	**R.36** – International instruments
C	**LC**	**LC**	**LC**	**LC**	**C**
R.37 – Mutual legal assistance	**R.38** – Mutual legal assistance: freezing and confiscation	**R.39** – Extradition	**R.40** – Other forms of international cooperation		
LC	**C**	**C**	**LC**		

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MUTUAL EVALUATION REPORT

Preface

This report summarises the AML/CFT measures in place as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system, and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country, and information obtained by the evaluation team during its on-site visit from 28 March to 13 April 2017.

The evaluation was conducted by an assessment team consisting of:

- Rafael Abad, SEPBLAC, Spain
- Ayreen Alibux, Dutch Central Bank, The Netherlands
- Davide Quattrocchi, Guardia di Finanza, Italy
- Swandra Ramachandran, Central Bank of Malaysia
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The team was supported by the FATF Secretariat represented by Anne-Françoise Lefèvre, Derek Leist and Janet Ho. The report was reviewed by Emery Kobor (U.S.), Helen Kwan (Hong Kong, China) and Francisca Massango de Brito (Angola).

Portugal previously underwent a FATF Mutual Evaluation in 2005/2006, conducted according to the 2004 FATF Methodology. The 2006 evaluation has been published and is available at www.fatf-gafi.org. That evaluation concluded that the country was compliant with 13 Recommendations; largely compliant with 23; partially compliant with 10; and non-compliant with 2 (one Recommendation was not applicable). Portugal was rated compliant or largely compliant with 14 of the 16 Core and Key Recommendations (SR. I and III which were among the Key Recommendations were rated partially compliant). For this reason, Portugal was not placed under the follow-up process but did submit updates every two years starting in September 2008.

CHAPTER 1. ML/TF RISKS AND CONTEXT

24. Portugal covers a land area of 92 152 km^2, located at the southwest corner of Europe. To the south and west, Portugal borders the Atlantic Ocean, and to the north and east, it shares territorial boundaries with Spain. The capital is Lisbon. Portugal also counts two archipelagos located in the Atlantic Ocean - Azores and Madeira - as autonomous regions with separate political and administrative statutes.

25. Portugal has a population of approximately 10.5 million.[5] About 3.8% of the population are foreign residents, mainly from Brazil. Another portion of foreign people living in Portugal are retired European citizens. Portugal's GDP was 30 601 USD per capital in 2016.[6] Since 2013, the country has been gradually recovering from a major financial and economic crisis. The level of unemployment was 10.5% of the labour force in December 2016.[7]

26. Portugal has been a Republic since 1910 and governed by a Constitution establishing a democratic state of law since 1976. The constitutional system establishes four sovereign bodies: the President of the Republic, who represents the Portuguese Republic; the Parliament, who represents the citizens of Portugal; the Government; and the courts of law, which administer justice in the name of the people.

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

ML/TF Risks and Scoping of Higher Risk Issues

Overview of ML/TF Risks

28. Portugal has a relatively low rate of violent crime, and the number of reported crimes has been on the decline for more than ten years. [8] Cybercrimes, including fraud, are amongst the few categories of crimes increasing.

29. Given its geographical location, Portugal is a port of entry for the international trafficking of drugs from Latin America and West Africa to the rest of Europe. Although it is mainly a transit country for drugs, this represents a high risk given the connection of drug traffickers to international organised crime, and the involvement of such groups in corruption and human trafficking. The strong ties maintained by Portugal with Portuguese speaking countries around the world support the development of commercial routes, including trade routes in illicit flows of goods and funds. Given its economic and budgetary difficulties, Portugal has been the target of investment flows from various countries and is therefore more vulnerable to potential abuse. This includes potential abuse linked to the proceeds of corruption from high-level figures in foreign countries.

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[5] OECD Data, Portugal, http://data.oecd.org/portugal.htm
[6] OECD Data, Portugal, http://data.oecd.org/portugal.htm
[7] OECD (2017), OECD Economic Survey – Portugal, February 2017, www.oecd.org/eco/surveys/Portugal-2017-OECD-economic-survey-overview.pdf,
[8] Systema Seguranca de Assurança (2016), *Relatorio Anual de Seguranca Interna – 2016,* www.ansr.pt/InstrumentosDeGestao/Documents/Relat%C3%B3rio%20Anual%20de%20Seguran%C3%A7a%20Interna%20(RASI)/RASI%202016.pdf,

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30. The use of cash and the limited thresholds for cash payments[9], as well as the size of the informal economy in Portugal, creates risks for illicit proceeds to be channelled into the regulated formal economy.[10] The real estate sector is particularly exposed to such risks. Overall, the Portuguese tax structure and corresponding revenues are close to the OECD average[11] ; although preferential tax regimes have been introduced to attract people with specific skills in the country.[12] Nevertheless, tax-related criminality remains a challenge for Portugal, with a direct impact for ML risk in the country.

31. In general, the current economic and financial context in Portugal creates vulnerabilities to be potentially exploited by transnational criminal organisations (see para. 41).[13]

Country's risk assessment

32. Portugal undertook a national risk assessment (NRA), a summary of which was publicly made available in June 2015.[14] The assessment was led by a Working Group, set up in 2013,[15] which brought together relevant authorities from various Ministries (Finance, Justice, Foreign Affairs, Economy and Employment), the FIU, the Prosecutor General's Office, financial and non-financial supervisory authorities, the Tax and Customs authority, as well as the Security Intelligence Service. Private sector obliged entities were also involved.

33. The NRA covers both ML and terrorist financing (TF), and also extends to some aspects of proliferation financing (PF). It reviews the main threats for Portugal, based on the main predicate offences (tax crimes, drug trafficking, fraud and corruption). It then identifies vulnerabilities which include inter alia: anonymous operations and transactions; informal transfer systems; the lack of knowledge of beneficial owners and the existence of bearer securities; the lack of transparency in the real estate sector; and the lack of resources for supervision of compliance with AML/CFT requirements. The NRA also identifies specific business sectors at risk, in particular the banking sector, real estate and high-value goods dealers. Furthermore, countries which pose the most significant ML/TF risks for Portugal are identified.[16] The NRA also identifies measures to be taken to improve AML/CFT prevention and mitigation, mainly through the adoption of new legislative measures.

34. Regarding TF, the NRA indicates that major risks in Portugal relate to Islamist groups and separatist movements, but overall, the TF risk level is deemed to be low.

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[9] Article No. 63.º-C of the General Tax Law establishes an obligation by which payments must be made through a bank account used exclusively for business if the value of the transaction exceeds 1 000 EUR, in order to allow the identification of the recipient (namely bank transfer, check or direct debit)

[10] Estimated at 17.6% of the GDP in 2015. (Schneider, F (2015), Size and Development of the Shadow Economy of 31 European and 5 other OECD Countries from 2003 to 2015:Different Developments, January 20, 2015, www.econ.jku.at/members/Schneider/files/publications/2015/ShadEcEurope31.pdf)

[11] OECD (2017), OECD Revenue Statistics, www.oecd.org/tax/revenue-statistics-portugal.pdf

[12] Personal Income Tax Non-Regular Tax Regime For Non-Regular Residents. http://info.portaldasfinancas.gov.pt/NR/rdonlyres/D0C80C76-3DA8-4B90-A1E4-FF53BD34EF95/0/IRS_RNH_EN.pdf

[13] National Risk Assessment (NRA) - The full version of the NRA is not a public document, therefore only generic references to this document are included in the present MER.

[14] Banco de Portugal (2015), AVALIAÇÃO NACIONAL DE RISCOS DE BRANQUEAMENTO DE CAPITAIS E DE FINANCIAMENTO DO TERRORISMO, www.bportugal.pt/sites/default/files/anexos/gafi_doc_avaliacao_pt_0.pdf

[15] Decision No. 9125/2013 of the Minister of State and Finance.

[16] The list of those countries is part of the confidential information of the NRA

Scoping of higher risk issues

35. In deciding what issues to prioritise during the on-site visit, the assessment team reviewed material provided by Portugal on national and cross-border ML/TF risks, and information from reliable third party sources (e.g., reports by international organisations). The items below were listed in the scoping note, which was submitted to Portuguese authorities prior to the assessment team's on-site visit in March/April 2017. They include potential areas of lower and higher ML/TF risks (with a specific focus on threats and vulnerabilities), as well as issues that were of concern to the assessment team or where further clarification was sought.

Area(s) of lower risk:

- Insurance and pension funds sectors – Both sectors are relatively small compared to GDP[17] and they were identified in the 2015 NRA as sectors which did not present any major ML/TF risk for Portugal. This is supported by the fact that there are no insurance products in Portugal presenting features similar to those of banking products or securities accounts without comparable safeguards.

Areas of high risk and/or increased focus:

- Tax-related offences – The NRA concluded that tax offences (including fraud, tax evasion and smuggling) present a clear, prevalent threat, and highlighted that the majority of confirmed suspicions reported to the FIU related to tax offences.

- Corruption and the misappropriation of money or property by public officials (and Politically Exposed Persons, PEPs) – Corruption and abuse of public office is a concern in Portugal.[18] There may also be a significant foreign component at play, given Portugal's strong ties to its former colonies. The existence of the Portuguese Golden Visa Program, which seeks to attract foreign capital in exchange for residency permits in Portugal, is also a specific regime that requires scrutiny.[19]

- The Madeira Free Trade Zone (FTZ) and the misuse of corporate vehicles and legal arrangements – The FTZ provides support to foreign investors to set up and manage corporate entities, in the context of offering a preferential tax regime. Trusts registered in other countries can also operate exclusively in Portugal in the FTZ.[20]

- Drug (and cash) smuggling – Drug trafficking and smuggling are among the most significant predicate offences for ML in Portugal[21], and this is one of the main illegal activities conducted by transnational crime groups.[22]

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[17] According to the Insurance supervisory authority(ASF), the amounts managed by pension funds in the first nine months of 2016 were estimated at a value of 18.1 billion EUR, comparable to the assets managed in 2015 (www.asf.com.pt/NR/exeres/6EBF3CB7-F204-41E0-90DC-BE0DC56BBDE2.htm). The GDP of Portugal was 297.093 billion EUR in 2016 (IMF), *ASF Autoridade de Supervisao de Seguros e Fundos de Pensoes*

[18] NRA Portugal

[19] SEF Immigration and Borders Service (nd), Golden residence permit programme, www.sef.pt/portal/v10/en/aspx/apoiocliente/detalheApoio.aspx?fromIndex=0&id_Linha=6269

[20] Decree-Law 352-A/88

[21] NRA Portugal

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- The use of cash and the shadow market – Cash transactions, still widely used in Portugal[23], combined with the physical, cross-border transportation of cash, pose ML/TF risks.[24]

Specific sectors with significant ML/TF vulnerabilities:

- Gatekeepers (i.e. lawyers and *solicitadores*) – Given their role in high risk ML/TF transactions linked to corporate structures, these professionals may be exploited for ML/TF purposes.
- The banking sector – Given its central role in facilitating financial flows in Portugal, as in many other countries,[25] vulnerabilities may be exploited by criminals for ML/TF purposes.
- The money and value transfer service sector (MVTS) – Based on its potential criminal exploitation and the development of informal remittances channels, the MVTS sector remains vulnerable to abuse.
- The real estate sector – Given the involvement of many different actors (e.g. real estate brokers, construction companies, etc.) and the substantial level of the estimated unregulated market[26], vulnerabilities may exist that can be exploited for criminal purposes, including ML and TF.

Materiality

36. Portugal is a diversified and increasingly service-based economy. In 2016, the services sector represented 75.3% of Gross Value Added (GVA)27 and approximately 68% of total employment.[28] Financial and insurance activities contribute to around 5% of the country's GVA.[29] Tourism has developed significantly and generates, today, approximately 5% of the wealth produced within the country. In 2015, roughly 10 million foreign tourists visited Portugal.[30]

37. The financial sector in Portugal is dominated by financial groups active in several areas, primarily banking but also investment services, as well as insurance for some financial groups (see Table 1). The banking sector, itself, is highly concentrated and has gone through significant restructuring over recent years as a consequence of the 2008 financial crisis (see para. 48). A number of European financial institutions also offer products and services in Portugal. The number

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22 NRA Portugal
23 NRA Portugal
24 NRA Portugal
25 NRA Portugal
26 NRA Portugal
27 Gross value added is a productivity metric that measures the contribution to an economy, producer, sector or region. Gross value added provides a dollar value for the amount of goods and services that have been produced, less the cost of all inputs and raw materials that are directly attributable to that production. (Herefordshire Council (nd), *Facts and Figures about Herefordshire*, http://factsandfigures.herefordshire.gov.uk/about-a-topic/economy/productivity-and-gross-value-added.aspx)
28 Aicep Portugal Global (2017), Portugal Basic Data, www.portugalglobal.pt/EN/Biblioteca/Documents/PortugalFichaPaisIngles.pdf
29 www.portugalglobal.pt/EN/Biblioteca/Pages/Detalhe.aspx?documentId=9dc1882e-f9a9-4f1e-9e03-37c5ce86a2aa, Invest in Portugal
30 Statistics Portugal (nd), Press releases, www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=244391154&DESTAQUESmodo=2, Instituto Nacional de Estatistica

of payment institutions registered in Portugal, or operating through agent networks, as well as the range and volume of their activities, has grown substantially in the past few years, following the set-up of an EU framework.[31]

38. All DNFBPs listed by FATF are active in Portugal. Real estate entities and high-value goods dealers are amongst the largest groups in terms of numbers (see Table 2). Both sectors are highly diversified in terms of size and activities. Concerning the real estate sector, this ranges from construction companies to real estate agencies. For high-value goods dealers, this ranges from motor vehicle retailers to jewellery shops. Lawyers and accountants are the largest groups among independent legal and accounting professionals.

Structural Elements

39. The key structural elements needed for an effective AML/CFT regime are present in Portugal. It is a politically and institutionally stable country, based on accountability, transparency and the rule of law. Responsibility for developing and implementing AML/CFT policy in Portugal is shared between relevant authorities, whose statutes and roles are well-defined.

Background and other Contextual Factors

40. The 2008 global financial crisis hit Portugal hard, and had a major impact on the financial, economic and social context of the country. From 2010 onwards, there were further budgetary implications that led to downsizing and resource strains across the economy. In order to restructure the Portuguese economy and overcome these shortfalls, the European Commission, the European Central Bank and the International Monetary Fund's stability and adjustment programmes were put in place between 2011 and 2014, further limiting discretionary spending.

41. In recent years, Portugal's economy has gone through a gradual recovery.[32] Projected GDP growth rates of 1.2% in 2017 and 1.3% in 2018 are positive signals, and unemployment is declining (10.5%). Despite these improvements, the socio-economic environment for both the Portuguese people and businesses remain challenging. Challenges directly linked to the financial crisis, and the subsequent uncertainty this has engendered, may have created vulnerabilities for the country, potentially exploited by criminal organisations. Trust in public and private sector institutions, in general, and the banking sector, in particular is low. This context potentially favours the development of the informal economy and the use of alternative financing channels.

42. Recent programmes set up by Portugal to attract foreign investment and increase employment in the country, such as the Golden Visa Programme[33], have proved useful by many standards. In particular, they have attracted needed investment into the country. Applicable safeguards regarding the sources of these inflows need to be rigorously implemented in order to not further weaken the Portuguese economy.

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[31] Directive 2007/64/EC of 13 November 2007 on payment services in the internal market

[32] OECD (2017), Economic Survey of Portugal - Overview, www.oecd.org/eco/surveys/Portugal-2017-OECD-economic-survey-overview.pdf

[33] SEF Immigration and Borders Service (nd), Golden residence permit programme, www.sef.pt/portal/v10/en/aspx/apoiocliente/detalheApoio.aspx?fromIndex=0&id_Linha=6269, see also Chapter 2

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AML/CFT strategy

43. Portugal's national strategy for AML and CFT will be completed at the end of 2017, after the end of the FATF mutual evaluation.

44. For now, Portugal includes ML as one of the priorities of its broader 2015-2017 national criminal policy objectives[34]. In addition, the National Counter Terrorism Strategy, approved in February 2015, defines the policy objectives, priorities and guidelines for the period 2015-2017 to detect, prevent, protect, pursue and respond to terrorist threats. The Strategy includes a CFT element.

Legal and institutional framework

45. Portugal's legal framework for AML/CFT was set out in the AML/CFT Law of 5 June 2008[35], transposing the 3rd EU Money Laundering Directive (2005/60/EC) and its implementing measures (2006/70/EC). The crime of ML is defined in the Criminal Code (art. 368-A) and the crime of TF in Law 52/2003 (art. 5-A), in accordance with the provisions of the 1999 International Convention for the Suppression of the Financing of Terrorism of the United Nations and EU Framework Decision 2002/475/JAI.

46. Draft law proposals for the transposition of the 4th EU AML Directive in Portugal[36] , the setting up of a beneficial owner register[37] and the enhanced implementation of targeted financial sanctions and restrictive measures[38] were adopted by the Council of Ministers in April 2017. Legislative measures to extinguish bearer securities and determine the book-entry format of securities, ensuring the identification of respective holders, were also being finalised at the time of the on-site.[39]

47. Portugal's institutional framework for AML/CFT encompasses the following institutions:

Relevant Ministries

- **Ministry of Finance (MoF):** The coordination of AML/CFT policies and activities is within the scope of the MoF, and the Deputy Minister for Tax Affairs chairs the AML/CFT **Coordination Commission (see IO.1). Furthermore, the MoF is responsible, in** coordination with the Ministry of Foreign Affairs (MoFA), for overseeing and implementing targeted financial sanctions within Portugal related to TF and PF. This includes **sharing** relevant information with foreign counterparts, disseminating new designations and

[34] Laws 17/2006 and 72/2015 – www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=2379&tabela=leis&ficha=1&pagina=1

[35] Law 25/2008 – www.bportugal.pt/sites/default/files/anexos/legislacoes/252814341_1.doc.pdf

[36] Law 83/2017 of 18 of August 2017, the new AML/CFT Law which replaces Law 25/2008 of 5 June. This Law could not be taken into account for the assessment as the on-site ended on 13 April 2017

[37] Law 89/2017 of 21 of August 2017. This Law could not be taken into account for the assessment as the on-site ended on 13 April 2017

[38] Law 89/2017 of 21 of August 2017. This Law could not be taken into account for the assessment as the on-site ended on 13 April 2017

[39] Law 15/2017 of 10 March 2017 entered into force on 4 May 2017. This Law could not be taken into account for the assessment as the on-site ended on 13 April 2017

- Ministry of Justice (MoJ): The MoJ is charged with collecting relevant information, such as information on convictions and overseeing extradition requests. Furthermore, there is a cabinet for the administration of seized and confiscated assets within the MoJ. The MoJ sits on the AML/CFT Coordination Commission.

- **Ministry of Interior (MoI):** The MoI sits on the Inter-Ministerial Commission (IMC), which oversees and **provides** binding opinions on the licensing of dual-use goods and technologies. The MoI sits on the AML/CFT Coordination Commission.

Criminal Justice and Operational Agencies

- **The Financial Intelligence Unit (***Unidade de Informação Financeira*, UIF/**FIU):** The FIU of Portugal is a **law**-enforcement style FIU, established within the Criminal Police. The FIU is a member of the Egmont Group of FIUs.

- **The Criminal Police** (*Polícia Judiciária*, **PJ):** The PJ is a senior police body, which has the mission of assisting prosecuting authorities with investigations, as well as developing and promoting preventive and investigative actions falling within its remit (namely all serious crimes, including ML and TF).

- **The Prosecutor General's Office (***Procurador-Geral da República,* **PGR):** The PGR is a constitutional **body** entrusted with powers to prosecute; participate in the implementation of criminal policy; represent the State; and defend the rule of law and democratic legitimacy. The PGR is also the national central authority for international judicial cooperation in criminal matters.

- **The Central Department for Criminal Investigation and Prosecution** (*Departamento Central de Investigação e Ação Penal*, **DCIAP**): DCIAP is PGR's specialised department of criminal prosecution that has competency over all Portuguese territory for violent, highly organised and particularly complex crimes, including ML and TF.

Financial Sector Supervisors

- **Banco de Portugal (BdP):** BdP is the central bank and supervises credit institutions, financial companies, payment institutions and electronic money institutions, including those entities' AML/CFT and reporting obligations. BdP is also the *competent* AML/CFT supervisor for entities providing postal services, which also undertake financial services.

- **Securities Market Commission** (*Comissão do Mercado de Valores Mobiliários*, **CMVM**)**:** CMVM provides supervision, including AML/CFT supervision, for investment services providers (credit institutions and investment firms); entities managing or *marketing* venture capital funds; collective investment undertakings marketing their units; credit securitisation companies; venture capital companies; and companies pursuing activities dealing with contracts related to investment in tangible assets.

- **Insurance and Pension Funds Supervisory Authority** (*Autoridade de Supervisão de Seguros e Fundos de Pensões*, **ASF):** The ASF provides supervision, including AML/*CFT*

supervision, for insurance companies, insurance intermediaries and pension fund managing companies.

Designated Non-Financial Businesses and Professions (DNFBP) Supervisors and Self-Regulatory Bodies

- **Economic and Food Safety Authority** (*Autoridade de Segurança Alimentar e Económica*, **ASAE**): ASAE supervises *traders* who receive cash payments beyond EUR 15 000 (including, in particular, traders who engage in the sale of gold and precious metals, antiques, works of art, aircraft, boats or motor vehicles). ASAE is also responsible from an AML/CFT perspective, for external auditors, legal advisors, company and legal arrangements service providers, and other independent professionals, where they are not subject to monitoring by other competent authorities.

- **Institute for Public Procurement, Real Estate and Construction** (*Instituto dos Mercados Públicos, do Imobiliário e da Construção,* **IMPIC):** IMPIC supervises real estate agents, (i.e. brokerage firms and construction companies that purchase and sell real estate, including resale). These supervisory activities cover AML/CFT.

- **Order of Statutory Auditors** (*Ordem dos Revisores Oficiais de Contas*, **OROC**): OROC is responsible for registering statutory auditors and auditing firms, as well as conducting professional exams for registered *auditors*. It is also in charge of their AML/CFT supervision and is under the purview of the CMVM for these specific activities.

- **Securities Market Commission** (**CMVM):** Since 1 January 2016, CMVM is the responsible body for the supervision of statutory auditors. It oversees the work of OROC in this field and directly supervises auditors of public interest entities (PIEs).

- **Chamber of Certified/Chartered Accountants** (*Ordem dos Contabilistas Certificados*, **OCC**): OCC is responsible for overseeing compliance of AML/CFT duties in relation to certified/chartered accountants, and for initiating disciplinary proceedings and applying corresponding sanctions for ML/TF non-compliance.

- **Institute of Registries and Notary** (*Instituto dos Registos e do Notariado*, **IRN**): IRN is a public institute that executes and monitors policies relating to registration. It is also involved in providing attestations and certificates to citizens *and* companies regarding their identification and registration in various registers such as; nationality; land; commercial; movable; and legal persons registers. It regulates, controls and supervises notarial activities, and acts as the AML/CFT supervisor for both registrars and notaries.

- **Bar Association** *(Ordem dos Advogados,* **OA**): OA administers written and oral registration examinations for those who want to practise law in Portugal. It is responsible for the AML/CFT supervision of lawyers, and is also responsible for starting disciplinary proceedings and applying sanctions against lawyers who fail to comply with AML/CFT requirements.

- **Order of Solicitadores** (*Ordem dos Solicitadores e dos Agentes de Execução*, **OSAE**): OSAE has the responsibility for supervising, undertaking disciplinary *proceedings* and applying sanctions on *solicitadores* who do not comply with AML/CFT requirements.

- **Gambling Regulation and Inspection Service of Tourism of Portugal (***Serviço de Regulação e Inspeção de Jogos* **SRIJ)**: SRIJ is in charge of *monitoring* and regulating casinos and online gambling and betting, including for AML/CFT compliance.

Financial sector and Designated Non-Financial Businesses and Professions (DNFBPs)

Table 1. **Financial Institutions subject to the AML/CFT Law**

Type of financial institutions	Licensing/registration	Supervisor(s)	Number	
Credit institutions				**(also registerd with CMVM)**
Banks	Decree-Law No. 298/92 (Legal framework for credit institutions and financial companies, RGICSF)	BdP + CMVM	37	(25)
Central Mutual Agricultural Credit Bank and Mutual Agricultural Credit Banks	Decree-Law No. 24/91 + RGICSF + Securities Code, CVM	BdP + CMVM	88	(1)
Savings Banks	Decree-Law No. 190/2015 + RGICSF + CVM	BdP + CMVM	4	(1)
Financial Credit Institutions	RGICSF + CVM	BdP + CMVM	13	(1)
Branches of Credit Institutions with Head Office in third countries	RGICSF + CVM	BdP + CMVM	1	(1)
Branches of Credit Institutions with Head Office in the EU	RGICSF (passporting)	BdP + CMVM	29	(10)
Electronic money institutions				
Electronic Money Institutions	Decree-law No. 317/2009 (Legal framework for payment institutions and electronic money institutions, RJSPME)	BdP	1	
Branches of Electronic Money Institutions with Head Office in the EU – Operating through agent networks	RJSPME (passporting)	BdP	2	
Branches of Electronic Money Institutions with Head Office in the EU – Operating through distributors network	RJSPME (passporting)	BdP	5	
Other payment service providers				
Payment Institutions	RJSPME	BdP	17	
Postal Financial Institution	RJSPME (to the extent that legally classifies the postal financial institution as a payment service provider)	BdP	1	
Branches of Payment Institutions with Head Office in	RJSPME (passporting)	BdP	8	

Type of financial institutions	Licensing/registration	Supervisor(s)	Number	
the EU				
Branches of Payment Institutions with Head Office in the EU - Operating through agent networks	RJSPME (passporting)	BdP	11	
Financial companies and investment firms				**(also registerd with CMVM)**
Brokerage Firms	RGICSF + CVM	BdP + CMVM	4	(4)
Brokerage dealers	RGICSF + CVM	BdP + CMVM	2	(2)
Asset Management Companies	RGICSF + CVM	BdP + CMVM	9	(9)
Real Estate Investment Funds Management Companies	RGICSF + CVM	BdP + CMVM	26	(26)
Securities Investment Funds Management Companies	RGICSF + CVM	BdP + CMVM	18	(18)
Credit Securitisation Funds Management Companies	RGICSF + CVM	BdP + CMVM	3	(3)
Credit Financial Companies	RGICSF	BdP	3	-
Factoring Companies	RGICSF	BdP	3	-
Financial Leasing Companies	RGICSF	BdP	1	-
Exchange Bureaux	RGICSF	BdP	7	-
Mutual Guarantee Companies	RGICSF	BdP	4	-
Investment Companies	RGICSF	BdP	2	-
Other financial companies defined as such [Article 6, paragraph 1.l) of RGICSF	Decree-Law no. 155/2014 + RGICSF	BdP	1	-
Investment Advice Firms	CVM	CMVM	15	-
Branches of Investment Firms with Head Office in the EU	RGICSF (passporting)	CMVM	4	-
Insurance companies and pension funds				
Insurance companies with life insurance business	Decree-Law No. 147/2015	ASF	32	
Pension funds management companies	Decree-Law No. 12/2006 (constitution of pension funds and pension funds management entities)	ASF	11	
Life insurance intermediaries	Decree-Law No. 144/2006 (insurance and re-insurance mediation)	ASF	13 342	
Other				
Treasury and Debt Agency	Decree-Law No. 200/2012	MoF	1	

Source: Portuguese authorities

47. Since the 2008 financial crisis, the banking sector in Portugal, as the main source of funding for the domestic economy, has received extensive state support and recapitalisation injections, both from the government and the EU/IMF/ECB Economic Adjustment Programme. The objectives were to avoid a potentially more serious disruption of the Portuguese banking sector and a further deterioration of Portuguese banks' balance sheets. Restructuring and bailout measures were taken, mainly on four banking institutions (*Banco Português de Negócios* (BPN), *Banco Privado Português* (BPP), Banco Espírito Santo (BES) and *Banco Internacional do Funchal* (BANIF))[40]. In parallel, banks have continued deleveraging their balance sheets and taken steps to improve their capital ratios by attracting fresh equity. Major challenges remain for the banking system, including: weak asset quality, thin capital buffers, low profitability and relatively high exposure to Portuguese sovereign debt.[41]

48. As of 2016, the total consolidated assets of the banking sector stand at around EUR 386 billion[42], with banks performing a wide range of financial activities. These activities include: the acceptance of deposits or other repayable funds; lending; money transmission services; the issuance and administration of means of payment; trading on their own account or for customers in money market instruments, foreign exchange, financial futures and options, etc.; participation in securities issues and the placement and provision of related services; money broking; portfolio management and advice; the acquisition of holdings in companies; and trading in insurance policies.

49. Most financial institutions are consolidated within wider banking groups and stand-alone institutions account for a small part of the banking sector. The banking sector also has a high level of concentration, with the five largest banking groups (namely, Banco Commercial Português (BCP) Group, Caixa Geral de Depositos (CGD) Group, Banco Espirito Santo/Novo Banco (ES/NB) Group, Banco Portugues de Investimento (BPI) Group & ST Group) representing nearly 75.8% of the financial system in terms of consolidated assets. The weight of credit institutions corresponds to half of the total number of financial institutions registered.[43]

50. In 2015, payment institutions represented 6.5% of the total number (28) of financial institutions registered in Portugal, and grew by 57% since 2011[44], following the transposition of the 2007 EC Directive which allowed the operation of payment institutions through agents' networks.[45] Those institutions play an important role in money transfer activities, especially for immigrants originating from Portuguese-speaking countries and non-residents.

51. Investment services and the management of collective investment schemes and other assets in Portugal is also a key component of the financial sector. As of 2015, the total consolidated assets of this sector reached roughly EUR 22.5 billion. Of the 120 financial institutions registered

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40 OECD (2017), Economic Survey of Portugal - Overview, www.oecd.org/eco/surveys/Portugal-2017-OECD-economic-survey-overview.pdf, box 2

41 European Commission (2017), Country Report Portugal 2017 Including an In-Depth Review on the prevention and correction of macroeconomic imbalances, http://ec.europa.eu/info/sites/info/files/2017-european-semester-country-report-portugal-en.pdf

42 Banco de Portugal (nd), Portuguese Banking System, www.bportugal.pt/en/publications/banco-de-portugal/all/121 and Banco de Portugal (2017), Portuguese Banking System: latest developments, www.bportugal.pt/sites/default/files/anexos/pdf-boletim/overviewportuguesebankingsystem_2017q1_en.pdf

43 Portuguese authorities (Risks and context)

44 Banco de Portugal sectoral risk assessment

45 Directive 2007/64/EC of 13 November on payment services in the internal market and Decree-law No. 317/2009 of October 2009.

with CMVM, 72 are associated with providing investment services, while the remaining 47 are primarily related to the management of collective investment schemes and other assets.

Table 2. **DNFBPs subject to the AML/CFT Law**

DNFBP	Licencing/Registration	AML/CFT Supervisor	Number
Real estate companies	Law No 15/2013	IMPIC	3 984
Construction companies	Law No 41/2015	IMPIC	46 979
Sell and buy real estate companies	N/A*	IMPIC	17 817
Gambling activities	Decree-Law 422/89 (casino); Decree-Law No. 66/2015 (online gambling); Decree-law No. 67/2015 (land-based fixed-odds sports betting)	SRIJ	11 (casinos)
Entities which pay prize money from gambling and lotteries	Decree-Law No. 235/2008 (SCML Statute)	Member of Government responsible for social security	1
High-value goods dealers	Regulation 380/2013; Decree-Law No. 304/2001 & Decree-Law No. 184/2005 (Motor vehicles); Decree-Law No. 391/79 (Jewellery stores) revoked by Law 98/2015; Decree-law No. 365/99 (pawnshops); Decree-Law 168/2005 (Pleasures vessels]	ASAE	36 027
Auditing firms	Law No. 140/2015 (Statute of Order of Statutory Auditor)	Order of Statutory Auditors (OROC)	228
Statutory auditors	Law No. 140/2015 (Statute of Order of Statutory Auditor)	OROC and CMVM	621
Chartered accountants	Law No. 139/2015 (Statute of Order of Chartered Accountants)	OCC	71 565
Private notaries	Decree-Law 519-F2/79; Regulatory Decree 55/80	IRN	377
Registrars and public notaries	Decree-Law 519-F2/79; Regulatory Decree 55/80	IRN	610
Solicitadores	Law No. 154/2015 (Statute of OSAE)	OSAE	3 970
Lawyers	Decree-Law 11/715	The Bar Association	30 475

* Although subject to AML/CFT Law and IMPIC supervision, these entities do not have a licencing or registration obligation.
Source: Portuguese authorities

52. There are a number of DNFBPs operating in Portugal:

- **Real estate:** This sector has a large number of players, including real estate agency firms, companies that purchase and sell properties, and construction companies that directly sell *property* development. Within the sector, 75% of transactions are related to real estate agencies (22 429), which also has seen an increase in recent years (13.45% increase in 2013, as compared to 2012).[46]

- **High-value goods dealers**: Within this highly diversified sector, around 87% of entities are concentrated in the economic activities of maintenance, repair services and the trade of motor vehicles, the retail trade of clothing in specialised stores, and the retail sale of watches and jewellery in specialised stores.[47] A significant amount of transactions in these entities is settled by cash payment.

- **Registrars:** Registrars are public officials responsible for registering and publicising legal acts and facts relating to civil status, nationality, real estate properties and commercial deals, etc. One of their *fundamental* duties is to carry out legal checks of assembled documents, and to ensure that the rights contained in those documents be registered correctly, and publish such information on the appropriate register. There are four types of registrars in Portugal, administering the civil, land, vehicle and commercial registries. They are under the supervision of the Ministry of Justice, through the Institute of Registries and Notary (IRN).

- **Notaries**: There are two types of notaries in Portugal, namely public and private notaries, who have the same role and are both governed by the Code of Notaries.[48] They give legal force/standing to private acts and contracts. They can draw up private contracts and advise parties concerned, draw up official documents, take responsibility for the legality of the document and for any advice given, and execute legal transactions agreed in their presence, etc. Notaries must also inform the Public Prosecution when setting up an association, as well as send in the statutes for the legality of the association to be established. Notaries are public officials under the supervision of the Ministry of Justice, through the IRN.

- **Lawyers**: Lawyers have exclusive powers of attorney to provide legal advice. Services provided exclusively by lawyers include: preparing contracts and performing tasks needed for the setting up, amending or finalising of legal acts. They may also perform financial activities on behalf of a client, or on their own behalf, such as the sale and purchase of real estate, commercial premises and holdings; the management of funds, *securities* or other assets belonging to clients; the opening and administration of bank, savings and securities accounts; the setting up, administering or managing of companies, fiduciary funds or similar structures; and the conducting of financial or real estate operations on behalf of clients; etc.

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46 NRA Portugal

47 Portuguese authorities

48 The co-existence of the two types of notaries is the result of the 2004 notary privatisation which was a structural reform introduced with the publication of Decree-Law No. 26/2004. At the time of the privatisation of the public notary, procedures were opened for the attribution of licenses to private offices. However, due to lack of competitors in the referred procedures, there was a need to keep public registries operating since their private licenses have not yet been attributed. Currently there are mainly private notaries and a remnant of public notaries (about 90 still exist on a transitional basis until all the private licenses are awarded).

- **Solicitadores**: Solicitadores have a legal *mandate* to exercise specific responsibilities to carry out contracts and procedures covering all legal areas that are not restricted to lawyers, such as representing clients in dealings with central or local authorities and other public services, notaries and registry offices.

- **Auditors**: Either practising individually or integrated in companies, auditors in Portugal have legal authority to monitor, inter alia, the *accounts* of all public limited companies by shares, private limited companies (with and without a supervisory board) and investment management companies.

- **Accountants**: Accountants are responsible for providing accounting services to companies covered by the Companies Act; individual businesses regulated by the Commercial Code; individual establishments with limited liability; public sector enterprises; cooperatives; complementary groupings of companies and European Economic Interest Groupings; and individual entrepreneurs with turnover of more than an average of EUR 150 000 in the previous three years, as well as certain non-profit sector entities. As of 2013, there were 453 595 entities with organised accounting that require a chartered accountant from the OCC, the largest professional institution with compulsory registration in Portugal.[49]

- **Gambling industry:** There are 11 casinos currently operating under SRIJ's oversight. Between the years 2012 and 2015, the volume of funds *spent* on gaming activities in casinos increased by roughly 8% (to EUR 1 394 251 427 in 2015). Previously, between the years 2004 to 2014, the volume of funds spent on gaming activities in casinos increased by nearly 12%.[50] An increase in online gaming activities has also been observed by authorities.

Preventive measures

53. The AML/CFT Law of 5 June 2008 (see above) is the source text setting out the preventive measures which financial institutions and DNFBPs are required to apply in Portugal. The implementation measures of the AML/CFT Law are primarily set out in the banking supervisor's (Banco de Portugal, BdP) notices, primarily Notices 5/2013 and 5/2008. Some regulations adopted by the securities supervisor (CMVM) and by the insurance and pension funds supervisor (ASF) are also relevant for the application of the AML/CFT legal preventive measures for securities and insurance institutions, in particular CMVM Regulation 2/2007 and ASF Regulation 10/2005.

54. Regarding the non-financial sectors, IMPIC and ASAE, the AML/CFT supervisors for the real estate and high-value goods dealers, respectively, have also issued implementing measures in the form of IMPIC Regulation 282/2011 and ASAE Regulation 380/2013.

[49] NRA Portugal
[50] Portuguese authorities.

Legal persons and arrangements

Table 3. **Overview of Legal persons in Portugal**

Type of legal persons	Numbers			
	2013	2014	2015	2016
Companies				
• Limited Liability Company (LLC)	376 486	369 098	371 194	365 590
• Joint Stock Company (SA)	32 944	32 991	33 602	32 654
• Limited Partnership (LP) and Partnership Limited by Shares (PLS) (Only one legal form for statistics)	62	64	70	69
• European Company (SE)	1	1	1	2
Foundations (public and private)	870	870	866	865
Associations	61 161	61 161	63 582	65 797
Partnerships				
• General Partnership (GP)	1 167	1 147	1 139	1 126
• Civil Partnership (CP)	1 599	1 788	1 841	1 887

Source: Institute of Registries and Notary (IRN) Companies

55. Companies are incorporated pursuant to the Portuguese Commercial Companies Code, and are considered legal persons in Portugal. A Limited Liability Company (LLC) is a commercial company that may be incorporated by one or several members. The share capital of an LLC is represented by and divided into quotas, which can only be transferred with the LLC's permission, or when the transfer is between shareholders, between spouses, or between ascendants and descendants. The vast majority of companies in Portugal are LLCs. A Joint Stock Company (SA) needs to have at least 5 shareholders to incorporate, and its capital is divided into shares that can be represented by paper certificates issued to shareholders, or as book entries. Furthermore, a Partnership Limited by Shares (PLS) is a hybrid of a limited partnership and an SA. Finally, a European Company (SE) can operate in all EU Member States in a single legal form common to all Member States. Ownership and identity information relating to LLCs is filed with the Commercial Registry, as well as the Tax and Customs Authority, and records are maintained by LLCs, themselves. Those relating to SAs, PLSs and SEs are filed with the Tax and Customs Authority or kept and maintained by the entities, themselves, or by a financial intermediary. Bearer shares may be issued by SAs, PLSs and SEs.[51]

56. Legal entities incorporated in Madeira (see below) are subject to the same legal and supervisory framework, including registration requirements, as well as AML/CFT and tax filing obligations established at the national level, which are applicable to other Portuguese legal entities.

[51] See below about the May 2017 suppression of bearer shares.

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Legal arrangements

57. Apart from that the specific case of the Madeira FTZ (see below), the law in Portugal does not recognise the legal concept of trusts. However, there are legal arrangements, defined as unspecific, autonomous properties without legal identity.[52] There is no information available on the number of such legal arrangements. According to Portuguese authorities, it is not significant in number.

Trusts in the Madeira Free Trade Zone (FTZ)

58. Trusts that have been legally constituted under foreign laws with terms exceeding one year, and whose settlor(s) are non-residents in Portugal, can be recognised and authorised to perform business activities exclusively in the Madeira FTZ ("foreign trusts").[53] The Madeira FTZ was set up in 1980 and consists of a set of incentives, mainly of a tax nature, to attract inward investment into Madeira.[54] The creation of the Madeira FTZ has followed the procedures set up in the European Union Customs Code (art. 243) and notified to the European Commission. A preferential tax regime was applicable to financial institutions established in Madeira, but was terminated in 2011 (see IO.5). Foreign trusts in Madeira are required to be registered with the Commercial Registry of the FTZ.[55] 132 foreign trusts have registered in the FTZ since September 2004, of which 47 are active.

Foundations

59. There are two types of foundations: public foundations, created by public entities, and private foundations, created by natural or legal persons of a private nature. Private foundations may be set up by an act of public deed or by will, according to the Portuguese Civil Code, and need to be formally "recognised" by competent administrative authorities before acquiring legal personality. Recognition of a private foundation is denied if full information on the identity of its founders and members of the administrative board, management board and supervisory board of the foundation is not provided to the authorities. They are also subject to the registration requirements of the National Registry of Legal Persons and the Commercial Register when they apply for a certificate of admissibility of trade name or corporate name. Public foundations and private foundations of public utility are subject to specific rules with enhanced accounting transparency and publication. There have been a total of 13 private foundations registered since the enactment of the Foundation Framework Law in July 2012. There are 865 foundations currently recognised in Portugal.

Partnerships

60. Three types of partnerships can be formed under Portuguese law, namely General Partnerships (GP), Limited Partnerships (LP) and Civil Partnerships (CP). A GP is an entity formed by two or more partners. An LP is an entity formed by one or more general partners with unlimited liability and one or more limited partners with limited liability. A CP is formed under agreement, by which two or more persons undertake to contribute goods or services to conduct an economic

[52] Art.2 (4) AML/CFT Law.
[53] Decree-Law 352-A/88 - The Portuguese law also does not prohibit a resident of Portugal from acting as trustee or a trust protector of a foreign trust.
[54] International Business Centre of Madeira, www.ibc-madeira.com/en/why-madeira.html
[55] Decree-Law 352-A/88 – www.ibc-madeira.com/images/pdf/en-06-DL_352_A_88.pdf

Partnerships

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Associations

61. Associations are of a personal nature and function as a guild, requiring an agreement between the founding members. They can only be deemed to have legal status and personality if both the act of incorporation and its statutes are integrated in a public deed. The notary immediately publishes these documents, as well as any amendments introduced, on the website of the Ministry of Justice. Third-party effects of the act of incorporation and its statutes (as well as any amendments) are dependent on prior publication. Partners are responsible separately, as well as jointly, for upholding the association's obligations. The association is also held responsible for any unlawful acts committed by one or more of its partners.

Supervisory arrangements

62. The Portuguese financial system is supervised by three supervisors, whose tasks include AML/CFT supervision. This includes Banco de Portugal (BdP), the Securities Commission (CMVM) and the Insurance and Pension Funds Supervisory Authority (ASF). Often, financial institutions that offer a number of different financial products are subject to regulation and supervision for AML/CFT purposes by more than one supervisory body. For example, banking institutions offering securities and investment services are subject to the supervision of both BdP and CMVM – dual supervision model (see above and Table 1).

63. The DNFBP sectors are supervised for AML/CFT purposes either by supervisory bodies (see the full list in Table 2) or by self-regulatory bodies (SRBs) whose tasks include AML/CFT supervision of their members: Order of *solicitadores* (OSAE) and the Bar Association (see above and Table 2.).

International cooperation

64. Due to Portugal's unique geographic location on the Iberian Peninsula, in close proximity to Northern Africa, and its historic relations and trading ties with other Portuguese speaking countries (including Latin America, Africa and Asia), Portugal has close socio-economic ties with many countries around the world. This is reflected in its international cooperation with foreign counterparts for AML/CFT purposes. Key partners for information exchange also include: Spain, France, the UK, Germany, Switzerland and the US; although, this varies by authority.

65. Various multi-lateral and supra-national mechanisms are also available to Portuguese authorities to facilitate cross-border cooperation, coordination and information sharing. Examples

Understanding (MoU), such as IOSCO's Multi-lateral Memorandum of Understanding (MMoU) for sharing securities information.

66. The PGR is the national, central authority to provide timely assistance for mutual legal assistance (MLA) and extradition requests, or forward incoming requests to the appropriate authorities. Bilateral mechanisms and agreements are in place with numerous non-EU countries to facilitate cooperation in this regard. Other competent authorities such as the Criminal Police (PJ), the Tax and Customs Authority (AT), BdP and CMVM also engage in international cooperation with foreign counterparts.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

Key Findings

- Overall, there is a fair level of understanding of the ML/TF risks in Portugal, especially by law enforcement agencies and financial supervisors. However, there is a mixed level of understanding amongst DNFBP supervisors.
- The 2015 National Risk Assessment (NRA) was a key step to enhance the shared understanding of risks by national authorities in Portugal. Information included in the 2015 NRA was based on public and private sector participation, and covered key sectors and activities relevant for AML/CFT in the context of Portugal.
- The NRA did not include an analysis of ML/TF risks associated with legal persons and arrangements, nor did it cover Non-Profit Organisations (NPOs) exposed to TF risks. It seems that there is a lack of understanding of these risks.
- Legislative measures have been recently undertaken to address identified risks.
- AML/CFT activities and policies of relevant authorities are aligned with the main ML/TF risks identified at a sectoral level.
- The AML/CFT Coordination Commission and its bodies provide a platform for coordination and cooperation amongst relevant national authorities.

Recommended Actions

- Outreach should be developed for most of the DNFBP sectors, and especially for those identified as high risk, with a view to raising awareness, better informing and educating the DNFBP sector on ML/TF risks, and with the objective of ensuring that relevant mitigating actions are improved, and where relevant, taken and implemented.
- A full analysis of risks associated with legal persons and arrangements, as well as NPOs, should be developed.
- Improvements should be brought to the NRA methodology to enhance the quality and reliability of the data and information used (both qualitative and quantitative). Portugal's ongoing work on statistics should be prioritised.
- Comprehensive AML/CFT programmes of actions should be elaborated to fully address ML/TF risks identified, with a specific focus on higher risk sectors and scenarios that have been identified in the NRA. This should include priorities and timelines, as well as legislative and operational measures.

67. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The recommendations relevant for the assessment of effectiveness under this section are R.1-2.

Immediate Outcome 1 (Risk, Policy and Coordination)

Country's understanding of its ML/TF risks

68. In general, Portugal demonstrates a fair level of understanding of its risks. A national risk assessment (NRA) on ML and TF was conducted and finalised in June 2015, following a two-year process. The major ML risks identified relate to tax crimes, drug trafficking and fraud. Banking and real estate activities are the most exposed business activities to these risks. The use of cash is also seen as a risk for ML. Portugal is also exposed to specific country risks in relation to Portuguese-speaking countries to which it has historical ties.

69. Regarding TF, the risks mainly relate to Islamist groups and Foreign Terrorist Fighters (FTF). The threat is considered as low since there are no active Islamist groups in the country and few FTFs have been identified to date (all of whom are non-resident Portuguese nationals, who were radicalised overseas). Portuguese authorities indicated that at a national level, they define risk not only by quantitative metrics, but also by the risk to national security that is based on a multi-agency, collective determination. They also clarified that the low TF risk ranking is further based on consideration of the full spectrum of potential TF activity (including criminal activity to raise funds; websites hosted outside Portugal, but accessible within the country, which incite extremism and solicit donations; charitable organisations that raise money in Portugal for terrorist activity outside the country; the potential for TF funds transiting through Portugal via commercial and trade-based TF activities; as well as the underground supporters, sympathisers or facilitators and international funds transfers on behalf of FTFs or religious groups). New risks, such as the abuse of virtual currencies and lone wolf terrorist attacks in other countries, are continuously assessed and, if necessary, preventive measures are taken.

70. The 2015 NRA is a broad ranging assessment that covers key sectors and activities relevant for understanding the AML/CFT context of Portugal. However, some areas still need to be considered to get a full ML/TF risk picture of the country. A full analysis of ML/TF risks associated with legal persons and arrangements has not yet been conducted; although, law enforcement agencies (LEAs) reported cases involving the misuse of companies for ML purposes (see IO.5). Based on information provided by authorities during the onsite, it seems that potential ML/TF risks associated with the Madeira Free Trade Zone (FTZ) are limited (see IO.5), but it would still be useful for authorities to include trusts registered in the FTZ as part of this risk assessment of legal persons and arrangements. Regarding TF risks, Portugal has not undertaken a comprehensive review to identify NPOs at risk of being abused by terrorists and terrorist financiers (see IO.10).

71. The conclusions of the NRA are based on multiple sources of information, including qualitative and quantitative information. The range of qualitative information used could be expanded, especially to better take into consideration and understand the risks of sectors or of activities whose reporting of suspicious transactions is questionably poor (e.g. lawyers, see IO.4). Furthermore, strategic analysis of financial intelligence should be developed to enrich the examination of risks. For example, this could be used as a means of identifying and highlighting emerging risks, in the same manner in which cyber-crime has been identified in the 2015 NRA. For certain sectors, it would be useful to better document the analysis, in particular with regards to the sectoral vulnerabilities identified (e.g. information sharing in financial groups, available data for lawyers). Regarding quantitative information, the timeliness of data used should be improved since the 2015 NRA was based primarily on 2012/2013 figures. Finally, the work already initiated on

statistics should be continued and prioritised, as an additional indicator to enhance the knowledge and understanding of risks.

72. The NRA involved all relevant public agencies and representatives from the private sector; although, Portuguese authorities expressed regret that some Designated Non-Financial Businesses and Professions (DNFBP) sectors had limited participation (see IO.3). The NRA was a major step to enhance the shared and consistent understanding of risks by Portuguese authorities. Law enforcement agencies and financial supervisors, in particular, have a sound understanding of the risks. However, there is a mixed level of understanding of risks relating to DNFBPs, by both supervisors and obliged entities (see IO.4).

73. The 2015 NRA was the first risk assessment conducted at a national level. The methodology applied relied heavily on sectoral analysis, led by the relevant authorities. As a result, public and private stakeholders active in each specific sector, especially those active in financial sectors, have a good understanding of the risk environment of "their" sector, including obliged entities and activities. For DNFBPs, although efforts have been developed by some authorities, the overall understanding of sectoral risks remains limited (see IO.4). Overall, the ownership of ML/TF risk mapping at a national level by individual authorities and private sector entities, as well as its impact on their own risk analysis and the definition of appropriate measures and policies, still needs to be improved.

74. Portugal plans to update the NRA on a regular basis, every three to five years. Authorities note that the first update will be conducted after the mutual evaluation process is finalised.[57]

National policies to address identified ML/TF risks

75. The 2015 NRA lists a number of measures to be taken in response to some of the risks identified. This mainly includes legislative initiatives, some predicated on the risks identified (e.g. use of cash) and some due to the evolving international framework (e.g. 4th EU AML Directive). These measures have not yet all been adopted or were only adopted too recently to produce measureable effects.

76. The NRA also mentions the need to reinforce AML/CFT supervision and oversight of obliged sectors, which should involve supervisory reviews and controls that are better targeted to the individual risks of obliged entities. Some supervisory authorities have increased their focus on risks (e.g. Banking supervisor/Banco de Portugal, BdP) and others have developed new tools to fully implement their supervisory activities on a risk basis (e.g. Securities Supervisory Authority/CMVM) (see IO.3). Significant changes in supervisory approaches have not been noted for other sectors. Policy decisions taken at country level, including the allocation of adequate resources, would be needed to substantially improve and strengthen the supervision of obliged entities, especially for high risk, non-financial sectors, such as real estate.

77. More generally, the development of comprehensive AML and CFT programmes of action, with priorities and short, medium and long-term objectives, should be considered. This should specifically cover the ML/TF risks identified (especially, in regards to tax offences, drug trafficking and fraud). The work already initiated on statistics should also be prioritised. The mandate of the

[57] The EU supra-national risk assessment published in June 2017 will be an additional tool for the update of Portugal ML/TF risks: European Commission (2017), New EU rules and risk analysis about money laundering and terrorism financing, http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=81272 .

AML/CFT Coordination Commission, set up in 2015 (see below), includes the definition of an AML/CFT strategy for the country. This work is intended to be conducted after the mutual evaluation process is finalised.

78. Some risk areas identified in the NRA may have deserved specific recommendations for action. For example, based on the on-site discussions with public sector authorities and private sector entities, assessors agreed with the conclusion that the risks associated with the Golden Visa Programme (ARI) are high. This programme, launched in 2012, enables third country nationals to obtain a temporary residence permit in Portugal in order to conduct business activities, on the condition that investments are made in the country. This could include, for example, the purchase of real estate with a value equal to or exceeding EUR 500 000, or the transfer of funds above EUR 1 million into a Portuguese bank account.[58] This programme has proven popular, mostly with Chinese investors (70% of applicants).[59] Controls on applicants and the checking of the background of potential investors are conducted by the Police, namely the Immigration and Borders Service (SEF) and the Security Intelligence Service (SIS). However, despite the high-level ML/TF risk associated with this programme, no specific measures or recommendations have been developed or circulated to relevant private sector stakeholders (e.g. real estate or banking sectors) to help them define appropriate preventive actions to check the background of the investor and how best to ascertain the origin of the invested funds. Regular controls are carried out by the banking supervisor, but this is done *ex-post*, after the investment has already been made. According to supervisors, reviews of banks have demonstrated a satisfactory level of compliance with CDD and reporting obligations.

79. The findings of the NRA, and its process, led a number of Portuguese agencies to review their internal organisation and structures and give more prominence to AML/CFT. Some authorities, mainly supervisors, created dedicated units (such as within BdP) or designated a coordinator for AML/CFT supervision (such as within CMVM); other authorities re-allocated resources or provided additional resources to support AML/CFT activities (e.g. Prosecution services/DCIAP, Criminal Police/PJ).

Exemptions, enhanced and simplified measures

80. The 2015 risk assessment conducted at a national level did not lead to the definition of new exemptions to the AML/CFT framework, nor to the application of simplified or enhanced customer due diligence measures in new circumstances.

81. There is no risk analysis showing that all of the cases for the application of simplified customer due diligence measures in the AML/CFT Law present lower risks, as these cases are based on the 3rd EU AML Directive (see R. 1 and R. 10 in the TC Annex). Existing exemptions are subject to certain low risks conditions and quantitative thresholds (see c. 1.6).

[58] SEF Immigration and Borders Service (nd), Golden residence permit programme, www.sef.pt/portal/v10/en/aspx/apoiocliente/detalheApoio.aspx?fromIndex=0&id_Linha=6269; 4 423 golden visas had been granted at the end of January 2017, and almost 95% for property acquisition.
[59] SEF Immigration and Borders Service, www.sef.pt/portal/V10/EN/aspx/page.aspx

Objectives and activities of competent authorities

82. On an individual basis, Portuguese authorities adapt their objectives and activities to the evolving risks which they face in their specific field (see example from the banking supervisor below). However, they appear to be guided primarily by their own, individual priorities and identification of risks, rather than by the national overview of ML/TF risks that was captured in the NRA. Assessors have not noticed any disconnect between AML/CFT activities developed by individual agencies and the national risks identified, but assessors are of the view that the development of a complete national AML/CFT strategy would help strengthen the development of more convergent and mutually supportive AML/CFT actions. A lack of a formal update to the 2015 NRA plays a role in the limited, direct influence that the findings of the national risk assessment have had on the evolving risk mapping and focus of individual agencies.

83. In general, activities of relevant authorities are aligned with the main ML/TF risks identified. This is the case, for example, with the Prosecution Office in charge of major ML and TF cases (DCIAP, see IOs 7 and 9) that has a strong focus on tax fraud and corruption, as evidenced by the recent reorganisation of its "white collar crime" department. The PJ also has special (national) units working on corruption, drug trafficking and terrorism, for whom ML and TF are a full part of investigations. The PJ also set up a cybercrime unit in early 2017, but at this stage, the ML focus of its work still needs to be clarified.

84. Positive examples of Portuguese authorities adjusting their activities to evolving sectoral risks were highlighted during the on-site discussions. For example, in 2015, there were growing concerns regarding investments made in Portugal by investors from a specific jurisdiction, which included questions on the origins of invested funds and raised ML suspicions. The banking supervisor, BdP, developed a cross-cutting analysis of the banking sector, with a focus on banks with shareholding from this specific jurisdiction (see IO.3). This example highlights the ability of BdP to focus its activities on emerging risks and take relevant, preventive actions. This also led to a strengthening of the fit and proper test applied to bank managers or shareholders.

National coordination and cooperation

85. The AML/CFT Coordination Commission (CC), established in 2015 by the Council of Ministers, is responsible for the overall policy coordination and implementation of AML, CFT and counter-proliferation financing (CPF) measures in Portugal. The CC involves all relevant public sector authorities with responsibilities for AML, CFT or CPF. Together with its Executive Committee and the Permanent Technical Secretariat, the CC provides a relevant forum for efficient coordination.

86. Thus far, the CC has mainly been involved in the follow-up measures to the NRA and the preparation of new legislative measures (in particular, for the transposition of the 4th AML EU Directive), adopted by the Council of Ministers in April 2017.[60] Work to enlarge the range of statistics collected is ongoing. Further work to set up a beneficial ownership register is also underway.[61] The main achievement of the CC regarding operational measures is the development of a comprehensive AML/CFT website for information purposes.[62]

[60] See Chapter 1, these measures have been adopted by the Parliament in May 2017 and promulgated by the President of the Republic in August 2017.
[61] Idem.
[62] Branqueamento de Capital et Financiamento de Terrorismo, www.portalbcft.pt/pt-pt .

87. From the discussions held with authorities during the on-site visit, assessors concluded that there is a good level of cooperation between national authorities at an operational level, through both formal and informal mechanisms. For the financial sector, for example, BdP and CMVM coordinate AML/CFT supervision of financial institutions that conduct banking and securities activities (see table 1), as well as the application of fit and proper tests (see IO.3). This cooperation extends to the insurance supervisor (ASF) for financial institutions also involved in the insurance business. Financial supervisors exchange information based on off-site analysis as well as information gathered during on-site inspections. This has led to CMVM reporting breaches of banking AML/CFT regulations, identified as part of their AML/CFT examinations, to BdP (see IO.3). When relevant, BdP also receives information from the SIS and the PJ (e.g. on individuals presenting specific risks).

88. The FIU and the Prosecution Office/DCIAP cooperate closely on the basis of Suspicious Transaction Reports (STRs) received; although, there are concerns regarding the best use of existing resources (see IO.6). The fact that access to various authorities' databases (e.g. Tax and Customs database, BdP bank accounts database, etc.) is open, directly or indirectly, to other authorities, supports active cooperation and exchange of information. These databases are often used by other authorities to cross-check information and deepen their knowledge about a particular case or investigation (see IOs 6 and 7).

89. Operational cooperation on terrorism/CFT is also actively facilitated by the national Anti-Terrorism Coordination Unit (UCAT), established in 2003. UCAT effectively coordinates TF analysis and action both at a strategical and tactical level (see IO.9).

90. Concerning CPF, the CC is the national mechanism responsible for coordinating and implementing policies and strategies to counter PF (see IO.11). The Tax and Customs Authority (AT) is responsible for coordinating the control of dual-use exports with other national agencies and the Inter-Ministerial Commission for the trade of dual-use goods and technology, established in 2015 (see IO.11), strengthens the export control regime in Portugal.

Private sector's awareness of risks

91. The private sector representatives met during the on-site visit were aware of the results of the NRA. A summary was made publicly available in November 2015, which they could access.[63] The results were also communicated to self-regulatory bodies (SRBs) and obliged entities on a sectoral basis, due to the sensitivity of information regarding the vulnerabilities of each sector.

92. Further information clearly highlighting the nature of risks sector by sector (e.g. risk catalogues, risk mapping) could be useful guidance for obliged entities. Dedicated sessions on ML/TF risks could also be added to the regular outreach organised by the FIU or supervisors for the benefit of obliged entities (see IOs 3 and 6).

Overall conclusions on IO.1

93. Overall, Portugal has done well in identifying and assessing its ML/TF risks. However, the level of understanding is uneven between authorities and important areas such as legal persons/arrangements and NPOs have not yet been fully examined. The methodology for the

[63] www.portugal.gov.pt/media/18252201/20151125-mf-avaliacao-risco-branqueamento-capitais.pdf

assessment also needs to be improved, including on important points for the reliability of the conclusions, such as the timeliness of data used.

94. Portugal has achieved a substantial level of effectiveness for IO.1.

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 6

- The FIU plays a key role in the collection and circulation of financial intelligence in Portugal, mainly based on STRs. Other relevant authorities also collect and disseminate useful information, in particular the Tax and Customs Authority (AT), whose database is comprehensive and accessible directly by a number of agencies. The Prosecution service (DCIAP) also has access to many databases, in particular the Criminal Police (PJ) databases, and uses information from the whistle blowers online platform, as well.
- The quality of financial intelligence is potentially hampered by the significant lack of feedback between authorities as to how financial intelligence is used, and the outcomes of its use.
- The dual reporting system, whereby both DCIAP and the FIU receive STRs, ensures that STRs are thoroughly investigated. Assessors are concerned about duplication and the resource implications of this system.
- STRs disseminated by the FIU to relevant authorities play a valuable role in combating financial crime; however, the lack of any FIU strategic analysis hampers the effectiveness of the AML/CFT system.
- Increased STR reporting is placing a growing burden on current IT infrastructure, and is also creating growing budgetary and resourcing concerns for all authorities, especially the FIU.
- International exchange of financial information between Portuguese authorities and foreign counterparts is a strong asset for conducting investigations.

Immediate Outcome 7

- Portugal has a good legal foundation and sound institutional structure to fight ML, which is properly applied to mitigate ML risks.
- Portuguese authorities show high commitment to pursuing ML offences and closely cooperate in order to initiate investigations, trace assets and pursue prosecutions.
- STRs play a key role in initiating and supporting investigations, as well as aid Portuguese authorities in prioritising and coordinating AML/CFT actions. Portuguese LEAs have appropriate powers and capabilities to identify and investigate complex ML cases.
- ML investigations, and the underlying predicate crimes, are consistent with Portugal's profile risk.
- Statistics available are not comprehensive and fully reliable, but Portuguese authorities provided assessors with a number of cases demonstrating that they prosecute and obtain ML convictions, for a range of different types of ML, including stand-alone, third party ML and the laundering of proceeds of foreign predicate offences.
- Criminal sanctions applied to ML are proportionate and dissuasive. However legal persons are

prosecuted and convicted to a lesser extent than natural persons.

Immediate Outcome 8

- In general, Portugal has a good legal framework and broad confiscation powers.
- Portugal is taking actions to recover the proceeds of crime. A number of measures have been implemented in recent years to confirm this approach, including the set-up of the Asset Recovery Office (ARO).
- Prosecutors and LEAs show a high degree of commitment to pursue ML cases to trace and freeze the proceeds of crime.
- Portugal has had good results in freezing assets at the earlier stage of the investigation to prevent the flight and dissipation of assets. This practice, combined with the use of enlarged confiscation regime. demonstrates the prosecution's emphasis on making crime unprofitable as a priority.
- Sufficient cases were provided to enable assessors to draw reliable conclusions, but comprehensive statistics on the numbers and values of assets effectively confiscated or lost in favour of the State are lacking.
- Portuguese authorities' detection and confiscation of illicit cross border movements of currency have decreased over the past years, as have the amounts of fines applied.

Recommended Actions

Immediate Outcome 6

Portugal should:

- enhance the provision of feedback on the quality and use of financial intelligence and other information by relevant authorities.
- ensure that the FIU has adequate resources and staffing in order to effectively fulfil its core responsibilities, and primarily the analysis of STRs. It should also develop reliable and comprehensive statistics to support its analysis and help document the evolution of ML/TF risks.
- develop the FIU's strategic analysis capabilities in order to better inform AML/CFT risks and policies, and identify trends and typologies.
- raise awareness on the importance of STR reporting amongst reporting entities, especially DNFBPs at higher risk, such as lawyers and real estate agents.
- provide feedback and targeted education tools to reporting entities to further refine the contents of STRs, with particular focus on MVTS providers.
- complete the development of the FIU/DCIAP joint IT platform for receiving, processing and managing STRs.

Immediate Outcome 7

Portugal should:

- continue prioritising investigation of the financial component of predicate offences.

- further prioritise investigations and prosecutions of legal persons , in accordance with identified risks, and systematically consider sanctioning the natural persons controlling the legal person, in case the legal persons cannot be convicted.
- improve the collection of detailed statistics on the number and type of ML investigations, prosecutions and convictions.

Immediate Outcome 8

- Portugal should further enhance its efforts to achieve results regarding the permanent deprivation of assets from criminals, in particular by:
- ensuring that the assets obtained thought seizing measures in the early stages of ML investigations are subsequently confiscated, and criminals are permanently being deprived of their proceeds upon conviction.
- collecting and maintaining comprehensive and reliable statistics on confiscations.
- continuing to place a specific focus on investigating suspicious discrepancies between the value of declared property and income against publicly displayed wealth through the use of enlarged confiscation.
- continuing to develop ARO's resources and ability to assist in tracing and identifying assets that may become subject to seizure and confiscation.
- ensuring that effective and dissuasive administrative sanctions are applied by customs officers in cases of falsely/undeclared cross-border cash movements.

95. The relevant Immediate Outcomes considered and assessed in this chapter are IOs 6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R.4 & R.29-32.

Immediate Outcome 6 (Financial intelligence ML/TF)

Use of financial intelligence and other information

96. The FIU plays a key role in the collection and circulation of financial intelligence as it receives all STRs and some threshold and cash transactions reports (CTRs, see c. 29.2 in the TC Annex). It holds all received STRs in its own internal database, which allows for data mining to link newly received STRs, based on previously identified suspicions (confirmed or not confirmed). The FIU also has direct access to the Tax and Customs Authority (AT) database (information on income, taxes paid, value of property, etc.) and to the Criminal Police (PJ) database (information on car ownership, driving licenses, guns permits, people under arrest warrants, etc.) and indirect access to the Banco de Portugal (BdP) central database on bank accounts. For its analysis, the FIU also requests further information on suspected individuals, activities and accounts from reporting entities.

97. Threshold reports are mainly issued by the casinos' supervisory body, the Gambling Regulation and Inspection Service of Tourism in Portugal (SRIJ), and relate to the purchase or exchange of gaming tokens over EUR 2 000. There is no legal obligation to report these purchases

and exchanges, but SRIJ does so in practice. Assessors have reservations about this approach since this automatic reporting process generates a substantial (and increasing) number of reports, without any filter which could flag potentially suspicious operations.

98. In terms of other reporting, the AT maintains records of cash declarations for amounts exceeding EUR 10 000 in cash carried into and out of the EU, as well as cross-border cash movements inside the EU (IO.7 and TC Annex, R.32).

Table 4. **Threshold and CTR Reporting**

Reporting entities	2012	2013	2014	2015	2016
SRIJ	4 144	3 608	4 036	3 839	4 901
Tax and Customs Authority (AT)	1 270	1 170	1 161	1 253	447
Total	5 414	4 778	5 197	5 092	5 348

Source FIU

99. The information contained in the declarations from AT as well as the threshold reports from SRIJ are used, in combination with information from STRs, as indicators to reinforce suspicions previously identified in STRs. This information is also used independently apart from STRs to produce actionable intelligence and support ML investigations. For example, information in threshold reports from SRIJ is matched with information contained in the declarations from AT in order to identify shared names and, thus, carry out a deeper analysis. In other occasions, threshold reports from SRIJ are searched for frequently occurring names, and authorities have begun criminal enquiries for ML pursuant to this process. This has been the case in multiple instances involving public servants, who were identified in casino-based threshold reports, and who were eventually linked to corruption cases.

100. In addition to cross-border cash declarations, the AT is also a source of financial intelligence since it holds a broad range of fiscal information, including personal identification information. This information is made available to duly authorised authorities. More specifically, the AT seconds officials to the FIU and works closely with the FIU to ensure that there is a timely flow of financial intelligence between authorities. The same arrangement applies with the Asset Recovery Office (ARO, see IO.8).

101. LEAs with competency for criminal investigations, mainly the PJ and the relevant prosecution service (DCIAP), also use financial intelligence to gather evidence and trace criminal proceeds in relation to ML and predicate offences, including TF (see IO.7). DCIAP has access to many databases from the Criminal Police (PJ), as well as through seconded officers ('Borders and Foreigners Service', National Republican Guard, Public Security Police, etc.). STRs are a key component of the financial intelligence that is widely used for investigative purposes, and authorities noted the importance of the FIU's STR information in triggering investigations. Overall, LEAs prioritise the collection and use of financial intelligence, and cooperate well with the FIU. In 2016, 195 urgent requests were submitted by the PJ to the FIU for financial intelligence gathering and analysis purposes.

102. DCIAP also indicated that intelligence information gained through confirmed STRs is very rarely alone enough for a prosecutor to open a complex ML/TF case. In addition prosecutors and

LEAs in general use information gained during already opened criminal cases (for instance predicate offences/tax offence information from the AT), information received through international or anonymous channels (see IO.7) and information available for or created by the DCIAP in its analyses. For less complex cases, investigations are often opened in local prosecution offices on the basis of information gained during already opened investigations on predicate or other crime.

103. DCIAP also uses non-FIU related financial intelligence. This includes information gained through complaints issued by anonymous whistle blowers. This online whistle blower platform was developed in 2010 and made available on the website of the PGR for fraud and corruption purposes, but now all sorts of information is shared, including ML information.[64] Each year DCIAP gets close to 2 000 anonymous tips, more than 40% of which relate to tax fraud.

104. Financial intelligence is also used by Portuguese authorities for international cooperation. Multiple cases were provided to the assessment team. In one case, a letter rogatory was received from Spanish authorities, which matched with information held in a filed STR in Portugal. Following close collaboration, including the exchange of financial intelligence, the source of funds was blocked in Portugal on the basis that these funds were directly linked to the proceeds of crime from Internet fraud that occurred in Spain.

105. The quality of financial intelligence is potentially hampered by the significant lack of feedback between authorities as to how financial intelligence is used, and the outcomes of its use. The FIU seeks feedback from other agencies but notes that this is rarely received, with the exception of irregular feedback from the AT (feedback in about 10% of cases). Feedback between authorities and communication about the use of financial intelligence should be improved.

STRs received and requested by competent authorities

106. While the FIU is the national centre for receiving and analysing STRs, a dual system is in place, which allows DCIAP to directly receive filed STRs at the same time as the FIU. This dual reporting system is mainly due to the fact that the Portuguese Constitution demands that the Prosecution has autonomous judicial control over the requests for action received and over the conduct of court proceedings.[65] In practice, this means that DCIAP can autonomously decide on the opening of a case based on received STRs and immediately take relevant judicial actions, such as the freezing of funds or the arrest of suspects.

107. STRs are of two different kinds: reports based on a suspicion that an operation is related to ML or TF (art. 16 AML/CFT Law) and reports based on the "*duty to refrain from carrying out transactions*," based on a suspicion of ML or TF (art. 17). In art. 16 situations, both DCIAP and the FIU cross-check received STRs against their databases in order to add value to them. These two parallel channels are viewed as complementary by authorities since the FIU looks at related financial information, and DCIAP looks at the STR from a criminal inquiry perspective. The FIU decides to confirm suspicions based on elements such as the inconsistency between the economic situation of the person and his/her property, his/her tax situation, the existence of criminal records, etc. When a suspicion is confirmed, the FIU passes on relevant information, including its operational analysis, to the relevant authority (the PJ, DCIAP or a local Prosecutor, or the AT), who will decide whether or not an investigation should be conducted. For instance, the AT receives confirmed STRs concerning

64 http://simp.pgr.pt/dciap/denuncias/index2.php
65 Judgment No 456/93 of the Constitutional Court, 1st Series A of Official Gazette n° 212/93 of 9 September 1993.

suspicions on tax fraud. Based on the analysis AT performs, a tax inspection may be opened. If suspicions on tax crime are confirmed, a criminal investigation is opened and reported to the Public Prosecution Service. Non-confirmed STRs are stored in the FIU database for data mining and possible future analysis.

108. In 2016, approximately 6% of STRs received were confirmed by the FIU (see Table 5 below). This rate has been constantly decreasing since 2012. The fact that DCIAP has become more active in starting ML investigations based on non-confirmed STRs (see below) may have had a negative impact on the need for the FIU to carry out their analysis. This could have led to the reduction of the total number of confirmed STRs by the FIU, despite the growth of the total number of STRs received. This last increase may be due to the publication of Banco de Portugal's list of examples of indicators of potentially suspicious transactions linked to ML/TF risks to be considered by supervised institutions (Notice 5/2013).

Table 5. **Number of received STRs and confirmed STRs by the FIU**

Year	2012	2013	2014	2015	2016
Received STRs	3 047	2 776	3 910	5 047	5 368
Confirmed STRs	512 (16%)	446 (16%)	439 (11%)	471 (9%)	299 (5.5%)

Source: Portuguese authorities

109. In parallel to the FIU review of received STRs, DCIAP may also run an initial analysis and decide to open an investigation if it finds sufficient evidence on the basis of its own evidence gathering. As a standard practice, DCIAP waits until input is first obtained from the FIU (after a month on average) prior to taking action on STRs. Based on its own information, DCIAP can decide to follow-up on an STR, even if the FIU has not confirmed the suspicions.

110. Assessors recognise some value in the dual system in terms of strengthened cooperation between LEAs, regarding the sharing of information and coordination of activities. However, assessors are concerned that it may not lead to the most effective use of resources despite good cooperation between the two bodies, given that both the FIU and DCIAP, at times, gather intelligence and analyse STRs prior to an investigation being opened.

111. For art. 17 STRs (approximately 100 per year), the FIU recommends to DCIAP whether to block an operation or freeze funds and collect information from all available sources. DCIAP always opens a case when an art. 17 STR is received. In 80% of cases, the blocking/freezing order is confirmed within two days of the FIU's recommendation. On that basis, DCIAP froze EUR 23 million in 2016.

112. A joint FIU/DCIAP advanced electronic platform is being developed (PROGEST) for the reporting of suspicious transactions by obliged entities and the management of reports, part of which is done manually today. It is expected to be fully operational at the end of 2017. This tool will automatise the filing of STRs in the same database for both the FIU and DCIAP, make automatic links between ongoing cases and past filed STRs and facilitate coordination between both authorities. All follow-up actions taken on STRs will be reported in the database.

113. In 2016, a total of 10 716 reports were filed: 5 368 STRs and 5 348 CTRs (see Table 5 above and breakdown of STRs in IO.4). Authorities noted that STR reporting is up 6% compared to 2015, after a 29% increase between 2014 and 2015. The increased reporting of STRs over the past years

creates a resource burden on the FIU, which it does not appear able to meet with current budgetary and resourcing limitations. 20 staff members are currently allocated to the analysis of STRs (out of a total of 32 staff).

114. Assessors are of the impression that the collection and maintenance of statistics by the FIU on the numbers of CTRs and STRs received over previous years does not seem to be fully operational and entirely reliable. It seems in particular that all reports received are classified as STRs, even though some of them seem to be threshold reports, instead, with no particular link to an ML or TF suspicion. This can have an impact on the way the total numbers of reports received is categorised.

115. Non-financial reporting entities and supervisory bodies filed 8% more STRs in 2016 compared to 2015, and the number of STRs filed by registrars increased at a rate of 19%. This highlights that there is growing awareness about STR filing obligations from these entities. However, actors like dealers in high-value goods, real estate agents and lawyers - some of which are considered at specific risk of ML/TF abuse - need to increase their AML/CFT involvement, which may require more awareness raising since their STR reporting is significantly lower than that of other entities. Only payment entities have notably increased their STR reporting recently, but there are concerns on the part of authorities as to the quality of these reports (see below).

116. During the on-site visit, some reporting entities acknowledged that, when they come across a potentially suspicious situation, they usually hold informal discussions with the FIU as to whether or not an STR should be filed. The assessment team is of the opinion that the FIU's dialogue and cooperation with the private sector, including through informal channels, is positive and welcomed; although assessors acknowledge that reporting entities need further guidance to carry out their own assessments when deciding whether or not to file an STR. When it comes to STR filing by individual institutions, this responsibility cannot be delegated to the FIU. Furthermore, more formalised communication practices, channels and procedures adapted to each reporting sector's needs should be set up by the FIU, with the objective of aiding private sector entities to fulfil their reporting obligations.

117. During the on-site discussions, it became clear that STR content may require further refinement. The FIU noted that it has done outreach, especially with the banking sector; however, other sectors could benefit from targeted outreach and guidelines to improve STR quality. Authorities noted that some private sector entities, such as MVTS providers, do not use the standard template provided by authorities for STR filing, which can create time-consuming, resource burdens on the FIU. The FIU noted that they have met with representatives of these institutions; however, there does not appear to be any results from this engagement in terms of improved STR quality. The FIU should strengthen its engagement with key MVTS providers.

118. In terms of training, authorities note that training is a key tool in order to improve reporting by the private sector. The FIU has delivered AML/CFT training to reporting entities since it was first established. It organises a seminar every two years on AML/CFT issues. The last seminar was held in April 2016. 214 representatives from the private sector participated, which the authorities consider to be a strong turnout and good sign of the private sector's commitment to its AML/CFT obligations. The conduct of strategic analysis by the FIU would further enrich its training and awareness-raising on ML/TF risks and potential abuses that reporting entities are exposed to.

119. The FIU has also recognised the need to give training to insurance companies and law firms since their STR reporting is minimal. There was a training session for one insurance company in February 2017. The insurance sector was not identified in the NRA as a high risk sector for ML/TF;

however, more outreach and training could be done. In April 2017, the FIU held an awareness raising session for one of the country's biggest law societies. Furthermore, the FIU has also provided limited training to judges. The last session was organised two years ago. More targeted training should be done in order to improve STR quality, especially for high risk reporting sectors.

Operational needs supported by FIU analysis and dissemination

120. The research team of the FIU conducts operational analysis on 6% of received STRs per annum ("confirmed STRs", see above). Databases (filed STRs, AT, PJ, BdP, see above) and other types of public information, such as information on foreign companies operating in Portugal, are also available to supplement authorities' analytical needs. If needed, the FIU can request additional elements, conduct its own interviews with reporting entities or ask the police to do surveillance on a suspect to gather further information. Open-source material is also used, as well as requests to domestic and international partners. Based on the examples of operational analysis provided, assessors were not fully convinced that the analysis conducted by the FIU added significant value to the information contained in STRs. Some authorities indicate that more detailed information in the FIU analysis of STRs would be useful.

121. Nevertheless, LEAs underline that STRs received from the FIU are useful 'signals' to develop ongoing investigations. For example, the specialised unit in charge of drug-trafficking cases in the PJ indicated that STRs received from the FIU normally reveal that illicit proceeds are sent abroad. In some cases, this has resulted in requests to the Asset Recovery Office (ARO) to freeze funds identified as illicit proceeds (see IO.8). The AT also confirmed that STRs have been a useful source of information but that further analysis is often required since suspicious financial movements are often not sufficient to build a tax-related case. STRs are a starting point for AT investigations, and the collection and use of this underlying information and supporting documentation by the AT for tax-related cases is, under the General Tax Law, subject to a specific derogation of the professional secrecy regime, as per the decision of the AT General Director.[66]

122. Authorities note that, although TF is considered to be a low/medium risk in Portugal[67] , whenever a potential case of TF arises from an STR, it is treated as an immediate priority by all authorities. In these cases, all domestic and international databases (including UN TFS lists) are cross-checked. If needed, foreign counterparts are informed or consulted. Authorities note that, in the past, some hits have occurred, but no domestic cases have been opened, based on confirmed hits. This is in line with the low/medium TF risk identified in Portugal by authorities.

123. The FIU is effectively disseminating the operational analysis that it produces to other agencies, which are well aware of the possibility to request more information from the FIU. Between 2012 and 2015, 45% of confirmed STRs were sent to the AT, 29% to the PJ (National Unit against Corruption, National Unit against Drug Trafficking, Lisbon Directorate and the National Counter-terrorism Unit) and 25% to DCIAP (mainly for freezing of transactions).[68] This led to further analysis by these authorities as well as the opening of ML and predicate offence investigations by prosecutors. In 2016, for example, out of 10 716 reports received (5 348 CTRs and 5 368 STRs), 1 879 reports were further analysed by the FIU based on serious grounds which confirmed the initial

[66] Art. 63-B.
[67] NRA.
[68] FIU Analysis of confirmed information 2012-2015

suspicion. A further 299 suspicions were confirmed and disseminated by the FIU to the relevant prosecution body.[69]

124. The FIU does not conduct strategic analysis due to a lack of human resources (only two analysts are currently assigned to this task), IT tools and statistics. The use of legacy IT tools from the PJ means that the FIU is unable to effectively prioritise STRs, communicate in an effective manner with its counterparts and streamline statistical information on STR reporting. This has a significant impact on the effectiveness of the Portuguese AML/CFT framework as a whole, given the deep, cross-sectoral understanding of ML/TF trends and typologies needed to identify risks, inform policy, strategic initiatives and trainings. The FIU mentioned that, given the current risk context of Portugal, strategic analysis would be useful regarding investments emanating from a specific foreign jurisdiction in Portugal, as well as the misuse of legal persons for ML and ML/TF exposure of casinos.

Co-operation and exchange of information/financial intelligence

125. At a domestic level, financial information to and from the various Portuguese authorities involved in combating ML/TF is circulated to relevant bodies (see above), both for prevention and investigation purposes as well as through formal and informal channels. For example, DCIAP cooperates on specific cases with financial and non-financial supervisors. Some concerns were nevertheless expressed regarding the timeliness of some feedback provided, mainly during the investigation phase (not when criminal proceedings were opened). The FIU disseminates operational analysis that it produces on the basis of STRs to DCIAP as well as other relevant agencies. In 2015, over 90% of requests for further information came from the PJ. This seems to indicate a limited use of the FIU by other LEAs. Authorities noted that significant informal requests occur, more generally; however, this is difficult to verify, given the lack of formal processes, procedures and cooperation between authorities.

126. At an international level, the FIU is actively cooperating and exchanging information with foreign counterparts, both spontaneously and upon request. In 2016, the Portuguese FIU exchanged information with foreign FIUs on 342 different occasions. The FIU's primary international partners are: Luxembourg, the U.S., Spain, the UK, Gibraltar, Switzerland and Cape Verde. In addition to the formal international exchange of information, the FIU also receives information that is spontaneously provided by its international partners. Portugal could not provide concrete information on the type of formal information exchanged with counterparts and how this information was used for analysis or investigations.

[69] FIU annual report 2016

Table 6. **Requests for international cooperation sent and received by the FIU**

Year	2012	2013	2014	2015	2016
International Requests Received	223	233	214	352	442
International Requests Sent	95	167	93	144	64

Source: Portuguese authorities

127. Authorities note that cooperation with certain countries, especially African countries with historic ties to Portuguese, is challenging due to the absence of feedback, or the often long delays involved in procuring responses. Foreign PEPs are a key concern for Portuguese authorities. STRs have been filed and cases have been opened on foreign PEPs, signalling that Portugal is aware of, and taking action to counter illicit financial flows from foreign PEPs.

128. Due to the increasing workload in international cooperation, the FIU´s international cooperation staff was the only department that received a staffing increase in 2016. The FIU has been a member of the Egmont Group since its creation in 2002.[70] At the international level, it is responsible for cooperation with other FIUs or similar bodies.

129. The FIU also provides training to key international partners, especially to other Portuguese-speaking countries in Africa, and has provided assistance through the provision of seconded officials to help set-up the AML/CFT regimes in several of these countries. Authorities note that this training and face-to-face contact helps foster trust and ensures fruitful future collaboration. Nonetheless, it raises questions about the efficient use of human resources in the FIU, especially given its already constrained resources for operational and strategic analysis.

Overall conclusions on IO.6

130. Overall, Portugal collects, produces, uses and disseminates financial information for AML/CFT purposes. A lack of resources (including human resources), detailed statistics, and updated IT infrastructure hampers the ability of authorities to make the most effective use of available data and information collected. This is especially a concern, given the exponential increase in STR reporting. The FIU produces no strategic analysis, and questions remain about the added-value of the FIU's operational analysis. Furthermore, assessors have concerns about the dual STR system to the FIU and to DCIAP, which may lead to an inefficient use of resources.

131. Portugal has achieved a moderate level of effectiveness for IO.6.

Immediate Outcome 7 (ML investigation and prosecution)

ML identification and investigation

132. Portugal has a comprehensive legal and institutional framework to investigate and prosecute ML offences. Suspicious ML activities are primarily identified as the outcome of STR

[70] The FIU was created by Decree- Law 304/2002. Prior to the establishment of the FIU the ML Investigation Squad (Brigada de Investigação do Branqueamento - BIB) located within the Central Department for Drugs Trafficking Investigation (Direcção Central de Investigação do Tráfico de Estupefacientes - DCITE) of the Criminal Police functioned as the national authority for gathering and processing financial intelligence in relation to ML. The BIB was recognised as an FIU and a member of the Egmont Group in 1999

analysis or as the result of predicate crime investigations. Portuguese authorities prioritise a "follow the money" approach to developing leads, as well as initiating and supporting ongoing investigations, and tracing assets.

133. The Public Prosecution Office (PGR) is the main authority responsible for investigating and prosecuting ML offences according to the Code of Criminal Procedure. Within the PGR, the Central Department for Criminal Investigation and Prosecution (DCIAP) is the main competent authority to investigate violent crimes and white collar crimes at a domestic level (see Chapter 1). It has national competence, and the most high-profile and complex ML cases are usually assigned to this body. However, ML investigations are not exclusively handled by DCIAP. They can also be delegated to other competent local prosecution offices. This normally occurs when the predicate offence at the origin of the ML case, or the ML case developed locally. The investigation can also be delegated to relevant, specialised units within the PJ. When DCIAP decides to directly handle a case, it requests the assistance of other competent agencies, i.e. the National Unit for Fighting Drug Trafficking (UNCTE), the National Unit Against Corruption (UNCC), and the Tax and Customs Authority (AT), as a matter of course. The coordination within the different units/bodies involved may include the creation of joint investigations.

Box 1. **Bank A Case**

Bank A was the second largest private bank in Portugal. Offshore companies were created by Bank A in order to obfuscate beneficial ownership information. Through this mechanism, EUR 1.8 billion were allegedly laundered. The investigation has a cross-border element, and a joint investigation team (JIT) with a European country was created in May 2015. Authorities note that the JIT has had good results. 18 natural and legal persons are currently under investigation. The crimes investigated include: aggravated fraud, aggravated embezzlement, corruption in the private sector and foreign bribery, forgery and ML. More than 500 pieces of property have been seized to-date. DCIAP is directly handling the case with the assistance of relevant authorities within the PJ.

134. DCIAP initiated 2 988 ML investigations from 2012 to 2015, resulting in an average of 22 convictions per year. The discrepancy between the number of ML investigations and of ML charges (see table 8, below) is explained by the principle of legality in Portugal, which requires that an investigation is opened for every suspicion or notice of a crime or potentially criminal act. The opening of an ML case when an STR based on the "duty to refrain from carrying out transactions is received ("art. 17" STRs, see IO.6), is a mere example of the application of this principle. The average proportion of investigations initiated from STRs is approximately 60% - 70%. In 2016, approximately 60 ML investigations based on STRs were launched. Assessors were told that a very positive development has been the recent increase of material and human resources provided. In 2003 there were only two prosecutors working on ML preventive measures (e.g. freezing and seizing of funds and assets, see IO.8). In 2016, there were seven, and there are currently 17. DCIAP indicates that the financial analysis provided by the FIU is relevant to support the freezing of transaction or assets.

135. ML investigations can also originate from complaints filed by whistle blowers directly with DCIAP or any other local prosecutor's office (see IO.6). Portuguese authorities provided examples of

cases of anonymous tips received on this platform that led to ML investigations, including ML investigations of high profile individuals (e.g. former politicians laundering money).

136. Investigations can also be initiated directly by the Criminal Police (PJ), based on STRs disseminated by the FIU, investigations of predicate offences, human sources, or other forms of intelligence or referral from other agencies or authorities, such as local prosecutors. The table below shows the numbers of ML investigations initiated by the PJ from 2012 to 2015:

Table 7. **ML investigations initiated by the PJ**

Year	2012	2013	2014	2015	2016
ML Investigations	60	92	77	115	123

Source: Portuguese authorities

137. Investigations launched by the PJ must be communicated to DCIAP within 10 days. The fact that, at times, DCIAP and certain PJ units receive confirmed STRs from the FIU at the same time does not hinder the effective use of STRs for investigative purposes. DCIAP usually delegates the investigation to the PJ unit who initiated the case. A strategy for the case is defined by both DCIAP and the PJ unit in charge before any action is taken. A timeline is agreed and regular meetings occur in order to coordinate investigations and priority setting. This coordination is regular and productive.

138. Informal cooperation with other authorities at a domestic level is also a source for ML cases. DCIAP provided examples of exchanges of information with financial and non-financial supervisors (e.g. with BdP and IMPIC, in charge of real estate) that led to investigations. International cooperation is also an important channel for the identification of ML cases (see below and IO.2).

139. LEAs, under the direction of the PGR, use appropriate measures and techniques to obtain access to relevant information (see R. 31 in TC Annex), including through cooperation with domestic and foreign counterparts. Portuguese LEAs have appropriate powers to obtain access to information and they make use of these powers and capabilities to identify and investigate complex ML cases

Box 2. **Case ABC**

The investigation started in October 2014 based on an STR that contained information about the creation of bank accounts within a Portuguese banking entity that were held by various companies with complex structures. The case is still ongoing. Suspicious domestic and international transfers were identified. It was suspected that the accounts were used for the payment of commissions involving financing agreements in exchange for crude oil. The total financial flows identified were EUR 37 067 000. Three Portuguese suspects were detained and held in custody. Property, bank account balances and luxury vehicles, amounting to approximately EUR 13 million, were seized. Likewise, total cash seized amounted to EUR 6 million (EUR 3 million in EUR banknotes and EUR 3 million worth of USD banknotes). The crimes investigated include corruption in international trade, tax fraud, corruption, a 'criminal organisation' offence and ML.

140. Key ML investigations (i.e. the most frequent and largest investigations) primarily originate from underlying tax crime predicate offences. These are detected through tax inspections, domestic

coordination and the extensive use of databases within the AT, which centralises fiscal information (including reported income and personal identifying information) alongside other national databases, such as the real estate register, central bank account database within Banco de Portugal, etc. The AT performs tax crime investigations, but did not provide key figures about those investigations. As part of these investigations, financial flows associated with suspicious transactions are analysed and, when suspicious operations linked to ML are detected, the suspicion is referred to the PGR for the initiation of a formal criminal investigation.

141. Another important part of ML cases in Portugal starts with drug-trafficking offences (see below). According to the National Unit for Fighting Drug Trafficking (located within the PJ), most of the cases originate from international cooperation, and STRs to a lesser extent. Only 50% of the cases lead to ML since Portugal is primarily a transit country and the money is often not physically held in the country.

142. Portugal provided the following statistics on ML prosecutions and convictions:

Table 8. **ML prosecutions and convictions**

Year	2012	2013	2014	2015
Number of ML cases (all ML criminal cases that have reached the trial stage)	13	20	24	26
Number of ML charges (number of ML indictments for all persons charged)	57	101	108	90
Number of ML convictions (number of proved ML crimes for all persons convicted)	29	43	31	34
Persons charged of ML (number of persons charged in ML cases)	35	70	68	47
Persons convicted of ML (number of persons convicted in ML cases)	19	36	19	14

Source: Portuguese authorities

Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

143. The types of ML investigated and prosecuted are consistent with the risk profile of Portugal and its national AML/CFT policies (see Chapter 2). Despite the fact that updated, reliable and comprehensive statistics on ML investigations and prosecutions are somewhat limited, a review of the cases provided to the assessment team demonstrates that Portuguese authorities' investigative and prosecution priorities are in line with the risk profile of the country. Assessors underline that relevant cases were provided, and the cases presented in boxes in the text are only a sampling of cases made available to the assessment team.

144. A significant number of ML cases start with investigations into tax-related offences, including proceeds of crime. Tax-related investigations are conducted by the AT. AT confirmed that financial investigations have always been a part of tax investigations. When the case involves

offences other than tax crimes (e.g. when corruption is also involved), AT participates in joint teams with the PJ, which are formally established by the PGR. Once an ML suspicion is confirmed, the case is referred to the PGR for the initiation of a formal criminal investigation.

Box 3. **Examples of ML Investigations and Prosecutions - Tax-Related Offences**

Case 1 - A suspicion of extortion that involved private security companies not declaring all income to the AT led to the opening of an investigation in November 2012. A mixed investigation team from the AT and PJ was formed. The ARO was assigned to conduct a financial and patrimonial investigation on the companies and managers. Bank accounts were frozen. Evidence obtained through wiretapping indicated that the suspects were laundering illicit proceeds through the purchase of boats and cars in the name of third persons, granting loans to third persons and falsely simulating the rendering of cash-intensive services. 14 natural persons and 8 companies were indicted for tax fraud, criminal conspiracy, corruption and embezzlement. This includes 1 legal person and 4 natural persons who were also indicted for ML. The legal person was acquitted of ML. 4 defendants were convicted and sentenced to 3 years of imprisonment for ML. Each one received a final aggregated sentence of 6 years. The Court also declared in favour of enlarged confiscation of EUR 692 694.95, as well as "standard" confiscation of assets worth of EUR 975 115.82.

Case 2 - This case originated from an intercepted communication of a suspicious bank transaction. The investigation was conducted by AT. Two persons were charged for tax evasion and ML. One defendant was convicted to 3 years and 6 months of imprisonment and the other to 4 years of imprisonment. Both defendants were ordered by the Court to pay the State a compensation of EUR 654 025 plus interest. The criminal facts initiated in 2007 and ended in 2011. The defendants were a businessman and an accountant. Forgery of documents related to several taxes occurred (Personal Income Tax; Corporate Income Tax and VAT). The usage of fake invoices determined the reimbursement of tax amount

145. Another important component of ML cases is related to drug-trafficking offences, and the Prosecution Service works in close cooperation on these cases with the National Unit for Fighting Drug Trafficking (PJ) (see above). International cooperation is key for these investigations since Portugal is mainly used as a transit country, both for the movement of drugs and illicit funds, and often involves transnational organised criminal organisations. The PJ maintains solid bilateral cooperation relationships with counterparts in priority countries, and has teams in charge of air/sea traffic. Investigations of drug-related offences are most often supported by financial investigations. This proves a useful approach when investigating and prosecuting the provision of support services or logistical help provided in Portugal (e.g. the provision of a boat), once the drugs and money have left the country.

Box 4. **Examples of ML investigations and prosecutions – Drug-related**

Case 1 - A criminal organisation was distributing and selling large amounts of hashish, heroin and cocaine. The proceeds of crime were deposited in bank accounts or used for the purchase of vehicles in the name of the suspects or third persons. Investigation started in 2013 and several defendants were charged for drug trafficking and ML. Numerous convictions were obtained, a sampling of which includes: 2 defendants who received 6 years for drug trafficking and 3 years for ML (aggregated sentence to 7 years), and two other defendants who received 5 years and 6 months for drug trafficking and 2 years and 6 months for ML. EUR 485 227.27 and one car were confiscated.

Case 2 - A criminal organisation was transporting hashish by sea from North Africa to Europe. The defendant purchased boats through shell companies and deposited illicit proceeds in bank accounts using shell companies. Due to the transnational nature of this case, significant international cooperation occurred, with the collaboration of EUROJUST. The crimes investigated included drug trafficking and ML. Drugs worth EUR 31 million have been confiscated to date. Both cases are currently being trialled together. Drugs worth EUR 31 million were seized in November 2014.

146. Corruption and abuse of public office is a concern in Portugal. The number of corruption cases involving ML is low in quantity, according to available statistics relating to STRs, in comparison with other types of ML predicate offence cases. However, these are cases with high profile defendant and assessors note that the risk is still significant. Prosecutors and judges met, as well as the National Unit Against Corruption (UNCC) of the PJ, agreed that, although less frequent, cases of corruption always involve high-level officials and high value criminal proceeds. Authorities also underlined the necessity of actively pursuing such cases in order to strengthen people's trust in Portuguese institutions, especially given the current difficult context for the country. Most cases arise from other sources than STRs, such as international cooperation, whistle-blowers or media information. Successful investigations and prosecutions of senior public officials and PEPs, including PEPs from foreign countries identified as high risk in the NRA, have taken place and show that priorities are in line with the risk identified.

Box 5. **Examples of ML investigations and prosecutions - Corruption**

Golden Visa Case - Irregularities in the procurement and issuing of Golden Visas (see IO.1) were detected by authorities. 17 high profile defendants, including a former minister and former high ranking officials from other public administration bodies as well as several Chinese businessmen, are currently facing trial for a broad range of crimes, including ML. Assets seized in the case amount to EUR 1 113 398.43. A request for enlarged confiscation brings the value to EUR 2 773 991.19. The trial is currently undergoing. This case was opened in November 2013, after an anonymous whistle-blower sent a letter to the Director of the PJ.

PEP Case - A high-level domestic PEP supposedly received large sums of money from a banking group in order to allegedly interfere and illicitly benefit from the privatisation of a public company, as well as influence public procurement procedures and partake in other corrupt activity. A total of EUR 23 million was allegedly funnelled through foreign bank accounts in the name of off-shore entities. Afterwards, money was moved to Portugal-based bank accounts. This money was used to purchase property and other luxury goods. The case has several defendants and hundreds of witnesses. EUR 17 million were frozen and real estate valuing EUR 156 000 was seized. The case is ongoing and an eventual indictment may include, inter alia, corruption and ML.

147. Another clear threat highlighted in the NRA is the use of cash, be it for payment or for physical transportation of stored value. Concerning the use of cash, officers from the Tax and Customs Authority (AT) assist in detecting ML activity through the monitoring of cash movements across borders (see IO.6 and R. 32 in the TC Annex).

Table 9. **Number and amounts (EUR) of incoming and outgoing declarations submitted between 2012-2016**

Year		2012	2013	2014	2015	2016
Incoming	Number	985	1090	997	839	513
	Amounts	134 835 149	107 852 028	130 090 195	155 329 207	124 728 613
Outgoing	Number	85	79	64	73	108
	Amounts	2 780 980	2 517 118	4 197 513	2 804 377	4 609 871

Source: Portuguese authorities

Table 10. **Countries of origin of incoming declarations submitted between 2012-2016**

Country	Angola	Cape Verde	South Africa	Brazil	Venezuela
Number	2 861	446	166	148	111

Source: Portuguese authorities

148. Information generated through declarations is recorded in the national "Cash Control" database under the responsibility of the AT (see IO.8). This database centralises electronic reports that are sent to the FIU (see c. 32.7 in the TC Annex). No detailed statistics about investigations arising from cross-border declarations were provided; although, authorities provided few case studies. It is unclear whether investigations into this activity accurately reflect Portugal's risk profile.

Box 6. **Examples of ML investigations arising from cross-border declarations**

Case 1 - Following a customs declaration presented to the AT at the Lisbon Airport, goods that were declared as being 16 boxes of printed forms were checked. 102 Treasury Bonds of Brazil were identified, verified and seized to the face value of BRL 579 800 million. An ML suspicion was noted, and the case was referred to the Public Prosecutor's Office. The case is still under investigation. However, preliminary findings point to the probability of high quality bond counterfeiting.

Case 2 - Following customs checks in the Lisbon airport, six bearer checks were discovered and seized, amounting to a value of EUR 418 552, plus EUR 261 in Yen banknotes. There was suspicion of ML, and the case was referred to the Public Prosecutor's Office and is still under investigation.

Types of ML cases pursued

149. The authorities demonstrated that they prosecute and obtain convictions for a range of different types of ML, including the laundering of the proceeds of foreign predicate offences, third party offences, stand-alone offences and self-laundering. Comprehensive and reliable statistics are lacking, in particular regarding the ratio of prosecutions to investigations, but 62 case examples

were provided to enable assessors to reliably draw conclusions, which was deemed a significant number when considering the size of Portugal. 60% of these cases had been completed with convictions, while the other 40% was still ongoing.

Box 7 **Prosecuting different types of ML - Illustrative examples**

ML offence, based on a foreign predicate - The case, which began in November 2012, involves ML in relation to the predicate offence of cybercrime (phishing) committed abroad. The case stemmed from an STR received by the Portuguese FIU from a Portuguese banking entity regarding an online transfer of funds from an account at a bank from the foreign jurisdiction. The suspension of the defendant's debit account transactions was ordered. In July 2016, the defendant was indicted and sentenced to 4 years in prison for the commission of cybercrime and ML.

Self-laundering and Third party ML - A former member of Parliament, his son, and another former member of Parliament created a real-estate investment fund, Homeland, for illicit purposes. The two former Parliament members also opened accounts in a foreign country in the name of off-shore entities, where all funds were concentrated. In order to obtain personal gain from this operation these two individuals sold property at artificially inflated prices and funds were laundered through accounts in the same foreign country. After appeal, one defendant was convicted of a cumulative penalty of 6 years imprisonment for aggravated fraud and ML (self-laundering); a second defendant was convicted of aggravated fraud to 4 years' imprisonment; and a third defendant was convicted of ML (third party) to 3 years' imprisonment (Decision of the Court of Appeal of Lisbon of 1 April 2016).

Stand-alone ML – This case opened in September 2015. A company located abroad, H.O., received a fraudulent email indicating that 388 052.50 USD should be transferred for services provided. The company transferred the funds to an account in the name of a legal person at Bank X in Portugal. The natural person entitled to manage the account then transferred EUR 269 524 to an account in the name of a company situated in a third foreign country. Bank X asked for justification of such transfer, but the documents provided were suspicious, so the bank filed an STR, and the account was temporarily frozen. The public prosecutor in charge of the STR immediately contacted H.O., which was only then made aware that it was the victim of fraud. Following the seizure of the account, an investigation was opened. The natural person was indicted and convicted of ML to 2 years and 6 months' imprisonment. The legal entity owning the account through which funds were laundered was convicted of ML and fined EUR 30 000.

Effectiveness, proportionality and dissuasiveness of sanctions

150. No comprehensive statistics are available on sentencing data. This presents a challenge for assessing effectiveness. Based on the cases provided, criminal sanctions applied appear to be proportionate and dissuasive in each instance. Sentences with aggregate sanctioning for the underlying predicate offence applied are usually high ranging from 8 to 15 years and natural persons convicted of ML receive prison sentences ranging from 3 to 5 years, with some higher terms of imprisonment ranging from 6 to 8 years in the most severe cases. Portuguese authorities are convinced that the key sanction for criminals is the deprivation of assets and funds, which are actively pursued (see IO.8).

151. Based on cases provided, legal persons are also prosecuted and convicted to a lesser extent. Authorities note that the reason for this is that legal persons are often merely "fronts" without any actual physical existence, or they tend to be victims of ML operations. An illustrative case involving crimes of qualified fraud and the laundering of proceeds through shell companies was provided by Portuguese authorities for review.

152. ML sanctions are often integrated into an aggregated sentence with the sanctions for the underlying predicate offence. In Portuguese, this is referred to as the "cumulo juridico" where the final, cumulative penalty cannot exceed the sum of the penalties imposed for each crime. This could raise concerns, in principle, but assessors were satisfied that several contextual circumstances, including the gravity of the crime and the value of the assets recovered, are also taken into consideration when handing down a sentence. From the examples provided by Portugal, this practice results in high and dissuasive sanctions.

Box 8. **Illustrative examples of ML convictions aggregated with sanctions of the underlying offence**

Decision of Paços Ferreira Judicial Court from 28 June 2012 - Three defendants were accused of tax fraud and ML. The Court convicted each of them to 4 years' imprisonment for ML. Having been aggregated with the tax fraud sanction, the final sentence was 6 years' imprisonment for each defendant. All frozen assets were confiscated, and the defendants were ordered by the Court to pay EUR 2 718 653.22 plus interest to the State.

Decision of the Supreme Judicial Court from 8 January 2014 - One defendant was charged with document falsification, falsification, qualified embezzlement, racketeering and ML. He was convicted to 5 years' imprisonment for ML. The final aggregated sentence, covering the aforementioned charges, was 13 years' imprisonment.

Decision of Sintra Judicial Court from 11 July 2014 - A defendant was charged with drug trafficking and ML. He was convicted to 3 years' imprisonment for ML. This sentence was aggregated with the criminal sanction for drug trafficking, and resulted in a final sentence of 10 years' imprisonment. Two motor vehicles and 2 motorcycles were also confiscated.

Use of alternative measures

153. When a criminal conviction for ML is not possible for justifiable reasons, prosecutors may instead focus on the predicate offence(s). By pursuing the underlying predicate offence(s), confiscation of all proceeds (including those related to ML activities) can be achieved under the relevant provisions of the Criminal Code (art. 109 to 111). In addition, with the use of enlarged confiscation (see IO.8), the difference between the value of the defendant's actual property and the one that is consistent with his/her lawful income over the last 5 years is confiscated.

154. Another alternative approach is the provisional suspension of cases. This is a good tool when prosecutors decide to pursue the underlying predicate crime: in cases involving crimes with a penalty that is no higher than 5 years of imprisonment, prosecutors can require the judge to suspend the case for up to 2 years, so long as the defendant agrees to repay money to cover punitive and other damages (art 280 of the Code of Criminal Procedure). Through this strategy, substantial volumes of assets are recovered and substantial financial penalties are applied which lead to the

resolution of cases in a prompt and more expeditious way than through the trial of an ML case in Court.

Box 9. **Application of the provisional suspension of cases approach (*Furacão* Operation)**

This operation involved around 100 cases of tax offences, 5 of which involved ML charges.The operation involves roughly 700 defendants, including natural and legal persons (of which 144 defendants on ML charges). In several of these cases, the difficulty in obtaining a successful ML conviction was largely due to the fact that it was not possible to prove that the use of companies in a foreign country (i.e. off-shore entities) took place with the intention to dissimulate the proceeds of crime. Portuguese authorities decided to pursue the tax crimes by alleging that the use of offshore companies took place with the intention to hide proceeds in order to not pay taxes. Provisional suspension was applied, on the condition that the amount of overdue tax and interests, as well as a substantial financial penalty were paid. Through this strategy, it was possible to recover until now more than EUR 160 million.

Overall conclusions on IO.7

155. Overall, Portugal demonstrates many of the characteristics of an effective system for investigating, prosecuting and sanctioning ML offences. Portugal has, and efficiently uses, its legal and institutional framework to investigate and prosecute ML offences. The outcome of ML investigations and prosecutions are in line with the risk profile of the country. Coordination among authorities is frequent and productive. LEAs use appropriate measures and techniques to obtain access to available information and there is clearly a "follow the money" approach to prioritising and investigating cases. The authorities regularly pursue ML as a stand-alone offence, or in conjunction with the predicate offence, third party ML, self-laundering and/or the laundering of the proceeds of foreign predicate offences. The authorities were able to provide cases which demonstrate their ability to work on large and complex cases. There is no statistical information available, especially on the rate of ML prosecutions and convictions based on the total number of investigations launched, but assessors are confident that cases provided enable them to draw conclusions.

156. ML sanctions are integrated in an aggregated sentence with the sanctions of the underlying predicate offence(s) when prosecuted and convicted together. The final aggregated sentence applied is generally high, proportionate and dissuasive. Nevertheless the absence of statistical information on all convictions on a national level limits the ability of Portugal to demonstrate the extent to which investigations and prosecutions lead to convictions.

157. **Portugal has achieved a substantial level of effectiveness for IO.7.**

Immediate Outcome 8 (Confiscation)

Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

158. Confiscation of criminal proceeds[71] and property of equivalent value is pursued as a policy objective by Portuguese authorities. Portugal is taking actions to recover the proceeds of crime. A number of measures have been implemented in recent years to confirm this approach, including the set-up of the Asset Recovery Office (ARO) in 2011[72] under the direction of the Public Prosecution service, with the mission of identifying, locating and seizing the goods and proceeds of crime at a domestic and international level. ARO is responsible for financial and asset investigation in cases of crimes punishable with prison sentences greater than 3 years (which includes ML and most predicate crimes), and when the estimated sum of the goods identified, located or seized is greater than 1 000 units of account (EUR 102 000[73]). Furthermore, even if these cumulative criteria are not met, ARO may also carry out financial or patrimonial investigations, taking due account of the economic, scientific, artistic or historical estimated value of the property to be recovered and the complexity of the investigation, whenever authorised by the PGR or upon delegation by the district deputy prosecutors general.[74] ARO has a multidisciplinary structure that includes the PJ, AT and the Institute of Registries and Notary (IRN). It became operational in 2014 and its full capabilities to provide support for ML investigations should be further developed (see below), following the initial focus of defining its structure and operational procedures (e.g. exchanges of information). Some results have been shown, but due to its recent establishment, it is still too early to assess the effectiveness of its operations.

159. Another positive measure is the 2015-2017 criminal policy objectives and priorities of Portugal, which include the confiscation of assets through provisional measures in ML cases.[75]

160. These initiatives are supported by concrete actions on the part of authorities (see IO.7 and below): prosecutors and LEAs met during the on-site visit showed a high degree of commitment to tracing and freezing the proceeds of crime. They explained that the seizure of assets in the early stage of investigations is standard and gave many examples of this approach. Furthermore, according to prosecutors and judges, the deprivation of the financial benefits of crime is considered to be the most effective tool for disrupting criminal activity, and this is actively pursued. Combined with the "enlarged confiscation" approach (see below), it demonstrates the prosecution's priority to make crime unprofitable.

Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad

161. While confiscation of criminal proceeds and instrumentalities is a policy objective, Portugal unfortunately does not maintain detailed statistics on the confiscation, freezing and seizure of criminal proceeds.

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71 The term "lost in favour of the State" is used in the Portuguese language, instead of the term "confiscation," because the term "confiscation" in Portuguese is equated to expropriation without indemnity under the Portuguese Constitution. This report uses the two terms interchangeably, and "confiscation" in this report refers to the concept defined in the FATF Glossary.

72 Law No. 45 of 24 June 2011.

73 Equivalent amount in EUR based on the conversion rate applicable on 12 May 2017.

74 Art. 4 (1) and (2) of Law n. 45 of June 2011.

75 Directive No. 2 (2015) of the Prosecutor General's Office.

162. Criminal investigations in Portugal include an initial phase, during which preventive measures, including the freezing and seizing of funds and assets, are implemented under the strict control of the Public Prosecution Office. All investigative bodies met (including relevant PJ units and the AT) indicated that the first action taken in ML-related cases is to identify and trace assets and funds as well as secure freezing orders from the Prosecution. In general, the threshold of suspicion required by the Prosecution to take action is not high, and the simple appearance of money from an illicit source is enough to take action to seize assets. The indirect access of ARO to the Banco de Portugal central database of bank accounts and direct access to the IRN database are also useful channels to gather relevant information.

163. The Portuguese ML prevention legal framework[76] also allows for the provisional freezing of suspicious transactions before a criminal investigation is opened. Reporting entities are obligated to refrain from carrying out transactions which they know or suspect to be related to the commission of ML or TF offences, and should file an "art. 17 STR" with the FIU and PGR simultaneously (see IO.6). Upon receiving an STR in which a transaction has been refused, the PGR can request the freezing of such transaction within 48 hours by the Criminal Investigative Judge, as well as the seizure of the amounts involved. In these cases, a criminal investigation is always opened. This approach provides an effective mechanism for ensuring that criminal proceeds are unable to flee Portugal upon detection. Other STRs (art. 16) can also lead to freezing measures being taken if there is sufficient ground that the suspected transaction is linked to ML. This is usually based on the existence of law enforcement records, ongoing investigations, the 'unusual' nature of the transaction and the known activities of participants linked to the transaction.

Table 11. **Number and value of proposed transactions suspended (2012 – 2016)**

Year	2012	2013	2014	2015	2016
Number of transactions suspended	51	39	44	63	45
EUR (million)	16.8	20.0	34.4	47.1	23.9

Source: Portuguese authorities

164. Another good tool for securing criminal assets is the use of "enlarged confiscation"[77]. Portuguese authorities have, and use in practice, their power to investigate suspicious discrepancies between the value of declared property and income against publicly displayed wealth. In most ongoing ML investigations, ARO is assigned to perform financial and asset investigations, with the aim of identifying assets of suspected persons and entities, as well as assets registered in their name dating back 5 years. Prosecutors can request the seizure of identified assets under this enlarged confiscation regime, whereby the suspected person and/or entity is subject to a reverse burden of proof (i.e. the owner has to establish the lawful origin of his/her funds and assets held). In order to conduct this work, ARO has direct access to the AT database, as well as the information held by the Institute of Registries and Notary (property, land) and the police. Authorities are planning to extend ARO's direct access to available social security data and to the Banco de Portugal central database of bank accounts.

165. ARO has published basic statistical data on assets and goods frozen and seized from 2013 to 2016 (see Table 12 below). Supplementary information concerning the destination of assets,

[76] Art.17 of Law 25/2008 of 5 June 2008 and art.4 of Law 5/2002 of 11 January 2002.
[77] Art.7 (2) of Law 5/2002 of 11 January 2002.

anticipated sales, values lost in favour of the State, etc. would also be useful information to collect. This is expected to be done in the future since part of ARO's mission is to collect, analyse and handle statistical data on the seizure, loss and destination of goods, as well as the proceeds of crimes. Authorities indicated that ARO's tools to fulfil this task are still being developed, which includes the development of a new asset recovery database, expected in September 2017. This new platform will register the exchange of information relating to assets subject to a financial or property investigation and management. The information collected in the platform will be accessed and shared by ARO, the Asset Management Office (AMO, see below), the competent judicial authorities and other criminal police bodies who assist magistrates.

Table 12. **Quantity and value (million EUR) of goods frozen or seized (2013-2016)**

Year	2013		2014		2015		2016		Total
	Number	Value	Number	Value	Number	Value	Number	Value	
Number of cases		5		18		34		32	89
Property	52	4.59	94	10.68	765	179.86	336	25.86	220.99
Bank products	112	11.91	459	6.23	322	3.40	275	25.54	47.08
Vehicles	33	0.90	89	1.62	129	2.25	89	1.63	6.4
Other goods	0	-	6	0.13	58	0.41	26	1.02	1.56
Total (value)		17.4		18.66		185.92		54.05	276.03

Source: Portuguese authorities

166. Another positive improvement was the setup of the Asset Management Office (AMO) in 2012 .[78] AMO is within the Institute for Financial Management and Justice Infrastructures of the Ministry of Justice, and is responsible for administrating, conserving and managing seized and recovered assets within the framework of national criminal proceedings or acts of judicial cooperation. AMO intervenes if the value of the seized assets is higher than EUR 5 100, at the request of the ARO or judicial authorities. Although its establishment demonstrates that authorities are taking steps to enhance Portugal's confiscation system, AMO has still to show results. AMO is understaffed (only 3 staff) and lacks the necessary IT infrastructure to effectively do its job. The creation of a new asset management system is envisaged, which would encompass AMO and ARO. Assessors were told that, currently, coordination between AMO and ARO could be improved.

167. Portugal has had very good results in freezing assets at the earlier stage of the investigation to prevent the flight and dissipation of assets. However, apart from examples of cases where assets were confiscated by the Courts after an ML conviction was obtained (e.g. enlarged confiscation of EUR 692 694, and "standard" confiscation of EUR 975 115 of luxury cars and real state (see Box 3 - Case 1), confiscation of EUR 485 227 (see Box 4 – Case 1) and enlarged confiscation of EUR 430 645 in a drug trafficking and ML case), no overall statistics on the number or value of assets confiscated have been provided by the Portuguese authorities. The absence of concrete information on the overall number and value of assets confiscated limits the ability of assessors to fully evaluate to what extent the assets obtained through seizing measures in the early stages of investigations are

[78] Art.10 and s. of Law 45/2011 of 24 June 2011 and art. 9 of Portaria 391/2012 from the Minister of Justice

subsequently confiscated. The assessment team was informed that Portugal is currently not able to provide statistics on confiscations because the platform used (CITIUS) does not have the information in a "structured way", but the matter has been included in the list of new technical developments to be designed for CITIUS, which is closely monitored by the Secretary of State for Justice.

168. The repatriation, sharing and restitution of assets is a full part of the confiscation policy and actions developed by Portugal, although Portugal did not provide specific information on these aspects.

Confiscation of falsely or undeclared cross-border transaction of currency/BNI

169. According to the Portuguese system[79], cash movements of EUR 10 000 (or more) must be declared through a mandatory declaration form to the AT in cases where cash is coming or going to countries outside the EU as well as in case of cash coming from or going to another EU member state (see IO 7 and R.32 in the TC Annex). The omission to submit declarations is criminalized. Cash smuggling is punishable as a customs criminal offence when cash amount exceeds EUR 300 000 and the traveller does not justify the origin and destination of the cash, and sanctioned with imprisonment up to 3 years or fine.[80] It is too early to assess the effectiveness of these measures, but assessors have concerns regarding the dissuasiveness of the applicable sanctions when the undeclared amounts are between EUR 10 000 and 300 000.

170. Between 2012 and 2016, 198 cases of undeclared or falsely declared cash and/or BNI were detected. Statistics below present the top ranking values and origin of the currency seized through cross-border cash controls:

Table 13. **Sample of amounts seized and detained (currency of country of origin)**
Value in parentheses is equal to the equivalent value in EUR

Currency (country)	2012	2013	2014	2015	Total
USD (US)	542 668[1] (476 463[2])	1 892 135 (1 661 297)	1 114 810 (978 805)	671 646 (589 706)	4 221 259 (3 706 272)
EUR (Eurozone)	520 742	704 453	723 567	556 683	2 505 445
AOA (Angola)	-	-	28 865 000 (152 778)	5 000 000 (26 464)	33 865 000 (179 242)
BRL (Brazil)	-	-	-	80 000 (21 402)	80 000 (21 402)
GBP (UK)	10 712 (12 103)	-	260 (293)	5 000 (5 649)	15 972 (18 046)
VEF (Venezuela)	3 724 (327)	2 130 (187)	15 372 (1 352)	-	21 226 (1 867)
CNY (China)	-	5 66 (731)	-	-	5 665 (731)

1. Currency of country of origin.
2. Currency in EUR.
Source: AT-DSAFA (SIIAF, Integrated Anti-fraud Customs Information System (Sistema Integrado de Informação Aduaneira Anti-fraude)) - June 2016)

[79] Decree-Law 61 of 14 March 2007 and TC Annex R.32.
[80] Art.92 (1) (e) of General regime of Tax Infractions, RGIT (Law no. 15/2001, of June 5). This amendment was introduced by Law 42/2016 of 28 December 2016 that entered into force on 1 January 2017.

171. Overall, currency seized and detained at the border is primarily USD or EUR, although, the Angolan Kwanza (AOA) is also an important currency for cross-border flows into and out of Portugal. Authorities displayed a good awareness of cross-border risks in relation to Angola and other former Portuguese colonies, which maintain close trading and commercial ties with Portugal today. Portuguese efforts in controlling such cash movements at the border seem to be in line with the country's risk profile.

172. Fines of a total of EUR 379 674 were issued regarding those 198 cases (table below).[81] According to authorities, these figures are largely indicative of successful customs operations at the border, as well as broader cooperation with domestic and international partners. However the assessment team is concerned regarding the decrease in the numbers of administrative offences issued in recent years.

Table 14. **Administrative offences for cash controls violations (2012 – 2016)**

Year	Administrative Offences	Fines (EUR)
2012	43	86 516
2013	58	116 754
2014	49	98 399
2015	28	56 420
2016	20	21 585

Source: Portuguese authorities

173. Portuguese authorities explained that most cases in 2016 were settled in advance of a case arriving in Court. In these cases, only the minimum amount of the fine applies (EUR 250)[82]. Authorities also noted that, in 2016, there were numerous cases when individuals voluntarily submitted themselves to the AT after becoming aware that they had not properly declared. In these cases, individuals only pay 12.5% of the minimum limit of the fine (EUR 250), i.e. EUR 31.25.[83] Assessors are concerned that the sanctions, as applied, are not dissuasive enough (despite the current system being technically in conformity with the FATF Recommendations, see c. 32.5 in the TC Annex).

174. Assessors understand that the approach described above explains the drop in numbers of administrative offences and total amount of fines in 2016. However, the decreasing trend over the past four years is still disconcerting and suggests that authorities either lack the resources necessary to handle cash controls violations or the political will to prioritise pursuing these violations.

Consistency of confiscation results with ML/TF risks and national AML/CTF policies and priorities.

175. The fact that Portuguese authorities demonstrated that all ML-related investigations prioritise asset tracing and seizing measures at the earliest stage of the investigation is a positive

[81] The data collected does not differentiate between undeclared and falsely declared situations.
[82] Art. 75 of the General Taxation Infringements Law (*Regime Geral das Infracções Tributárias,* RGIT) in conjunction with art. 108, §6 and §7, of the RGIT.
[83] Art. 108, §6 and §7, of the RGIT.

sign, and most of these cases are associated with high risks areas for Portugal, such as tax crimes, drug trafficking or corruption (see IO.7). Assessors are therefore of the view that the authorities' efforts appear to be consistent with the risks identified. Nevertheless, the absence of detailed information on the value of proceeds of crime, instrumentalities or property of equivalent value confiscated, broken down by foreign or domestic offences, make it difficult for assessor to evaluate effectiveness.

Overall conclusions on IO.8

176. Portugal has a good legal framework and broad confiscation powers. Confiscation of criminal proceeds is a policy priority and prosecutors and LEAs show a high degree of commitment to trace and freeze proceeds of crime. Portugal has shown good results in seizing assets in the earlier stage of ML investigations, ensuring that these assets do not disappear upon detection. Sufficient cases were provided to enable assessors to draw reliable conclusions, but comprehensive statistics on the numbers and values of assets effectively confiscated at a domestic level or lost in favour of the State are lacking, which make it difficult for assessors to verify to what extent Portuguese authorities are achieving effective results, and to what extent criminals are effectively and permanently being deprived of their proceeds upon conviction.

177. Portuguese authorities' detection and confiscation of illicit movements of cross-border currency have decreased over the last years, as have the amounts of fines applied. The sanctions regime in place has recently been reviewed, but the effectiveness of this regime still remains to be demonstrated.

178. Portugal has achieved a moderate level of effectiveness for IO.8.

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 9

- TF activities are identified and investigated by LEAs and intelligence services, with cooperation and coordination with international law enforcement and intelligence services when dealing with international terrorism.
- TF prosecutions have been initiated, but there are no convictions for TF to date. Disruption tactics and prosecution for related offences is undertaken to address TF activity.
- TF is pursued as a distinct criminal activity, and parallel financial investigations are conducted to support CT investigations. Furthermore, TF assets and instrumentalities related to TF activities are seized and confiscated.
- TF risks are mitigated with a high degree of commitment and coherent action by the authorities.

Immediate Outcome 10

- Designations at the UN level apply directly in Portugal without the need for EU transposition. Processes and procedures are in place to fully implement TFS in relation to TF, and authorities demonstrated a high degree of competency in coordinating CFT activities.
- TF preventive measures, including TFS, are considered as tools by the CT authorities when managing TF risks, including in relation to FTFs and FTF returnees.
- The limited assessment of vulnerability of the NPO sector to TF abuse impacts on the supervision and targeted outreach required from relevant supervisory bodies. The impact of AT oversight of registered NPOs to protect those entities from abuse by terrorist financiers is limited to tax compliance and does not cover TF investigations, which are the sole responsibility of the Public Prosecutor.

Immediate Outcome 11

- Designations at the UN level apply directly in Portugal without the need for EU transposition. Processes and procedures are in place to fully implement TFS in relation to PF, and authorities demonstrated a high degree of competency in coordinating CPF activities.
- The export control authorities have a good understanding of proliferation and PF risks, including risks related to diversion and sanctions evasion.
- Portuguese authorities have been active in investigating and disrupting potential cases, and have good cooperation with authorities of other jurisdictions.
- FIs demonstrated a good understanding of their obligations to implement TFS. To a lesser extent, the DNFBP sectors also demonstrated awareness of these obligations. BdP's supervisory approach includes the full review of compliance by supervised entities of their obligations in

relation to TFS, while other financial supervisors monitor the application of TFS controls.

Recommended Actions

Immediate Outcome 9
Portugal should:

- continue current efforts to detect possible TF offences and undertake parallel financial investigations as part of all terrorism investigations, whether or not this results in TF charge(s).
- collect and maintain comprehensive, reliable statistics on confiscations of TF assets and instrumentalities related to TF activities, whether through criminal, civil or administrative processes.

Immediate Outcome 10
Portugal should:

- conduct a comprehensive review of the NPO sector to identify the features and types of subsets of NPOs that are particularly at risk of being abused for TF or other forms of terrorist support.
- adopt a targeted, coordinated approach to the oversight of higher-risk NPOs, and conduct systematic engagement and outreach to raise awareness of the risk of TF abuse for NPOs and relevant supervisory bodies.
- broaden the focus of audits and supervision of NPOs by the relevant competent authorities and supervisory bodies to include CFT.

Immediate Outcomes 10 and 11
Portugal should:

- ensure that all FI and DNFBP supervisors disseminate UN TFS lists related to TF and PF to supervised institutions immediately.
- provide appropriate guidance to obliged entities on the implementation of the TFS TF and PF regimes.
- conduct systematic engagement and outreach to raise awareness of the TFS TF and PF obligations and the potential for sanctions evasion.
- provide appropriate awareness and training for DNFBP supervisory bodies to monitor the application of TFS controls.

179. The relevant Immediate Outcomes considered and assessed in this chapter are IOs 9 - 11. The recommendations relevant for the assessment of effectiveness under this section are R.5 - 8.

Immediate Outcome 9 (TF investigation and prosecution)

Prosecution/conviction of types of TF activity consisten with the country's risk-profile

180. Overall, Portuguese authorities demonstrated a good understanding of TF risks. Despite not being a hotspot for terrorist activity, Portuguese authorities remain vigilant, as Portugal is a transit

country for conflict areas in the MENA region, as well as a source country for foreign terrorist fighters (FTFs).

181. TF risk is primarily related to the activities of migrant communities from North Africa. Furthermore, financial support, in the form of remittances from certain communities settled within Portugal (e.g. from former colonies in Africa) to conflict zones in the Middle East, is also viewed by authorities as an at-risk activity, as reflected by the composition of FTFs traveling from Portuguese territory to conflict zones in the Middle East after being radicalised abroad. Detected activities related to Portuguese nationals and residents are mainly related to small cells, self-financed through legal and illegal means (including bank card fraud and the forgery of documents in Portugal and other European countries; social security fraud and marriages of convenience in Europe; and kidnapping and hostage taking in the Middle East). Remittances are generally made through payment entities, the *hawala* system and cash couriers. Law enforcement authorities are working with Banco de Portugal to address risks related to the use of *hawala* (see IO.3).

182. International cooperation and information exchange is a key component of Portugal's TF risk management. Furthermore, multilateral and bilateral mechanisms, both formal and informal, are utilised effectively by LEAs and intelligence services for CFT purposes.

183. Portuguese authorities investigate and prosecute terrorist activities, despite the limited cases, with parallel TF investigations conducted for terrorism investigations in order to look into the source of terrorist funds. In certain cases, a financial investigation is not undertaken because it may not be warranted by the facts ascertained or because the terrorism case is dismissed. There has been one conviction for terrorism in relation to a separatist group (see ETA case), but no convictions for TF to date. Cases that have not resulted in criminal investigations and prosecutions are primarily due to the lack of sufficient evidence for the Prosecution services (PGR) to formally initiate criminal charges of terrorism or TF crimes. Nonetheless, authorities have successfully prosecuted other related crimes (see *Kalunga* case). Criminal investigations are in progress which may involve TF.

Box 10. **Example of prosecution of related offences (Kalunga Case)**

In 2015, a foreign national was arrested at the Lisbon International Airport (LIS) after attempting to sabotage an aircraft. Investigations by Portuguese authorities revealed that he was radicalised over the Internet and went to Syria for training with the Al-Nusrah Front. After two weeks of military training, he returned to a European country where he was residing at the time. Afterwards, he travelled by train to Portugal and carried out surveillance at LIS. On the day of the intended attack, he was found with a 23-cm knife concealed on his person together with Al-Nusrah propaganda. He was arrested, confessed and was placed under a preventive prison order. MLA requests to the European country of his residence led to searches and the collection of further evidence. He was convicted in Portugal for a civil aviation offence, not terrorism, as the confession was rejected by the presiding judge.

TF identification and investigation

184. From 2012 to 2016, the Criminal Police (PJ) investigated 10 cases linked to terrorism and 3 associated with TF. 7 of these cases are still being investigated while, in the remaining 6 cases, there was a lack of incriminating evidence to continue an investigation. From 2015 to 2016, the number of

references[84] made to the PJ by LEAs of other countries in the framework of international cooperation also increased. This increase is largely explained by the occurrence of several terrorist attacks in Europe.

185. From 2011 to 2016, the PGR carried out 41 investigations for terrorism, of which 4 cases were found to involve a TF component. Financial investigations were also undertaken as preventive measures. These are not included below in the statistics provided in Table 15, since formal TF investigation files are normally only opened when judicial authorisation is required for special investigative measures like wiretaps. In the same period, there were 3 prosecutions for terrorism, involving 4 defendants.

186. The 41 terrorism investigations and 4 TF investigations should not be understood as a ratio of terrorism investigations to TF investigations and prosecutions. In many of the 41 terrorism investigations, the police reports were found to have no sound basis. For example, in one case that was referred to authorities by a country where a terrorist attack had recently taken place, information on a suspect terrorist's bank account in Portugal was investigated. It was confirmed within 24 hours that the account holder was a different person with the same name, and no further financial investigation was done (see Box 9). In another case, suspect individuals made a two day visit to Portugal, but did not carry out any suspicious activity, thus no financial investigation was undertaken.

Table 15. **PGR records on terrorism and TF (2011 to 2016)**

Years	2011	2012	2013	2014	2015	2016	Total
Investigations for terrorism	8	5	5	7	12	4	41
Investigations for TF (also included in the investigations for terrorism)	0	0	2	2	0	N/A	4
Indictments for terrorism (Number of accused defendants charged)	2	0	0	0	2	1	5
Indictments for terrorism (Number of court cases charged)	1	0	0	0	2	N/A	3

Source: Habilus/DCIAP

TF investigation integrated with -and supportive of- national strategies

187. LEAs and intelligence services are responsible for identifying and investigating TF activities, in coordination with international law enforcement and intelligence services when combating international terrorism.

188. In terms of structure, the National Counter-Terrorism Unit (NCTU) of the PJ has competence over the prevention and investigation of terrorism offences. The NCTU has a team of 80 staff, of which 65 are investigators. It also has branches in major Portuguese cities. The NCTU

[84] According to the National Counter-Terrorism Unit (NCTU) of the PJ, a "reference request" is made at an early stage of a police investigation and normally requires the sharing of information with foreign LEAs based on simple enquiries, a search of available databases and, if necessary, surveillance. If more information is requested and the suspects are identified, the NCTU normally opens a formal inquiry.

coordinates its investigations closely with the FIU. Likewise, the NCTU works with the Asset Recovery Office (ARO), which has the capability to carry out financial investigations. If further details or information are required by the NCTU from financial institutions, the NCTU obtains this information directly from relevant parties once a criminal investigation is initiated.

189. Within the PGR, the Central Department for Criminal Investigation and Prosecution **(**DCIAP) is responsible for investigating all serious crimes, which includes TF. DCIAP has a specialised unit (the Violent Crime Unit) with 4 specialised prosecutors dedicated to the identification of TF situations. DCIAP undertakes TF investigations either i) when it opens a case file or ii) as part of a terrorism investigation. When DCIAP undertakes a financial investigation, it can obtain information and evidence from various sources. As part of a TF investigation, the prosecution determines which evidence is needed and seeks appropriate expertise as required (e.g. forensic financial investigations by AT). DCIAP also exhausts all legal sources at its disposal, including MLA, to obtain financial information and procure the seizure of assets in third countries, as required.

Box 11. **TF investigations lead to false positives and clearing of suspicious activity**

TF investigation, based on a filed STR

Following the lone-wolf attack on the British Parliament in March 2017, British authorities identified the attacker as 52-year old, Mr. A. The same day, the Portuguese FIU and DCIAP received an STR from an FI, identifying a bank account under Mr. A's name. After due inquiries through its resources, the FIU was able to confirm that this was a false positive case.

TF investigation into suspicious MVTS activity

DCIAP received information from the PJ arising from its investigation into a small-time drug dealer from an African country who was making bank transfers to Africa. Due to the activities of Boko Haram in that country, authorities prioritised the further investigation of this activity. After due inquiries, DCIAP confirmed that TF was not involved.

Box 12. **International cooperation against international terrorism (ETA case)**

In February 2010, during a routine auto-stop operation, the Portuguese *Guarda Nacional Republicana* (GNR) stopped a vehicle on the way to Caldas da Rainha bearing a Portuguese license plate. The driver and passenger fled, and the vehicle was abandoned. Inside, several homemade explosives were found. A criminal investigation was opened by the PJ – NCTU, which involved extensive collaboration with foreign counterparts and led to the subsequent arrest of the suspected individuals.

In January 2012, the defendant, a member of the terrorist organisation *Euskadi Ta Askatasuna* (ETA), was convicted of 7 terrorism-related offences in relation to this case and sentenced to a cumulative sentence of 12 years' imprisonment. The individual is still serving his sentence and is currently the only individual in Portugal serving imprisonment for terrorist offences.

190. Information obtained on TF cases is shared among LEAs at the weekly meetings of the National Anti-Terrorism Coordination Unit (UCAT). The UCAT is a legal forum chaired by the NCTU alongside other relevant LEAs and security bodies to confidentially exchange information and coordinate investigations on cases.

191. International cooperation and information exchange is also a key component essential to the prevention and investigation of terrorism and TF. Portuguese LEAs and intelligence services have close cooperation with their European counterparts, in particular with neighbouring countries, and are working on enhancing cooperation with counterparts in Africa. A key component of their CFT network mapping includes financial flows. Portuguese authorities are also active in a number of international cooperation groups. This includes the Police Working Group on Terrorism, which brings together intelligence and law enforcement authorities in Europe to share information and coordinate on operational TF-related issues, as well as the CIMO Working Group (see Chapter 1), which offers a forum for cooperation between the heads of police of Portugal, key European partners and MENA region countries. Likewise, the *Agreement between the Portuguese Republic and the USA for the Exchange of Terrorism Screening Information* (in force since June 2013) also enables the NCTU to access the Terrorism Screening Centre database under the management of the US Federal Bureau of Investigation as an additional information source.

TF investigation integrated with – and supportive of – national strategies

192. Portugal adopted its first National Counter Terrorism Strategy (NSCT) in 2015, which established five strategic goals and measures to detect, prevent, protect, pursue and respond to terrorism. A strategy document specific to TF does not exist, but the activities of the various agencies in regard to TF are well integrated in the general terrorism-related strategy.

193. The UCAT coordinates the implementation of the NSCT 2015 as well as international cooperation. Since 2003,[85] the courts are required to send extracts to the UCAT of the final conviction decision for criminal cases in relation to the commission of the offences of *terrorism*, *terrorist organisations*, *international terrorism* and *TF*. However, it is not clear if this is actually done in practice. In terms of policies, the UCAT reviews ongoing threats and its internal work processes every two years in order to undertake necessary improvements, such as the creation of the UCAT technical team as an operational unit in 2017. This technical team seeks to further improve coordination, with its current priority being the combating of radicalisation and cyber security/terrorism. Previously, the UCAT served solely as a channel for information exchange. It is too early to assess the effectiveness of the changes to this mechanism.

Effectiveness, proportionality and dissuasiveness of sanctions

194. Law 52/2003 sets out the penalties for terrorism offences, including TF (see TC annex, R.5). However as there have been no convictions for TF, the proportionality and dissuasiveness of the sentences that may be imposed upon conviction cannot be assessed. It is noted that, for the ETA case described above, the cumulative sentence appears to be dissuasive for terrorism-related offences. Given the lack of international terrorist organisations operating in Portugal, the ETA case – in line with the risk profile of Portugal – is provided as an example of Portuguese authorities' cooperation with international partners to combat terrorism, including individual terrorists, on its territory.

Alternative measures used where TF conviction is not possible (e.g. disruption)

195. Under the Portuguese legal system, authorities are obliged to pursue and prosecute crimes, as established by the evidence available, and do not have an option to choose between available

[85] Art.6-A of Law 52/2003.

offences. They are also statutorily obliged to dismiss any case that is not supported by evidence. This does not preclude them from pursuing alternative charges under CT legislation, or under other criminal legislation, if it is not practical to secure a TF conviction due to a lack of sufficient evidence. Authorities provided the example of prosecuting a suspect for bank fraud if there is insufficient evidence to charge for TF.

196. Judges also apply a wide range of preventive measures to prevent the dispersal of suspected terrorist assets such as seizure and confiscation. Portuguese authorities explained that if there is a criminal case, the seized assets would be confiscated on both a conviction and non-conviction basis. In this regard, Portugal also applies an "enlarged confiscation" regime (see IO.8). In the case of the sole terrorism conviction (see ETA case), assets were not domiciled in Portugal, thus the conviction was communicated to the country concerned via judicial cooperation in order for it to follow-up with the confiscation process. Aside from this case, no funds or other property has been confiscated in Portugal linked to TF, as there were no funds or property, or only minimal amounts, in the cases investigated.

197. In addition, administrative actions in relation to TF (see IO.10) and civil actions are also taken to freeze financial accounts and suspected transactions preventively. However, administrative action cannot result in confiscation of the frozen assets. Civil claims against suspect terrorists and terrorist financiers can be considered on a case-by-case basis but there has never been recourse to this mechanism in a TF case in Portugal.

198. In cases where a terrorism and/or TF crime has yet to be committed, authorities demonstrated that they are able and prepared to use a range of measures, including preventive seizures as well as counselling and rehabilitation (see Box 13), to counter radicalisation.

Box 13. **Detecting radicalisation and preventively seizing funds**

Portuguese authorities detected a case of a young girl (age 17), who was being radicalised over the Internet, and convinced to convert religions and go to conflict zones in the Middle East to marry FTFs. It was discovered that she was saving money to make the trip. When she turned 18 and preparations to travel to the conflict zone began to move forward, Portuguese authorities intervened, undertook a house search and seized her money while informing her parents. Advice and guidance counselling were provided. She was successfully rehabilitated and is now pursuing studies in Portugal. Portuguese authorities did not prosecute her as she did not demonstrate any terrorist intentions, and funds were ultimately returned as no criminal act was committed.

199. Financial accounts and transactions are subject to freezing measures in order to prevent funds from being used to commit terrorist acts. Foreign citizens (including refugees and asylum seekers), under certain prescribed circumstances, are expelled if their activities are deemed contrary to national security. Portugal is in the process of revoking the asylum status of one suspect in a TF case.

Box 14. **Alternative measures to prevent terrorist activity**

Q, born in Africa, came to Portugal as a refugee and was granted asylum. Portuguese authorities became suspicious when he was found to be committing bank fraud using fake credit cards and travelling across Europe without any clear source of income. Subsequent investigations found that he was radicalising and recruiting FTFs in refugee camps and offering to pay their travel, meals, expenses, etc. to join jihadists in conflict zones in the Middle East. He has since been charged with terrorism recruitment, international terrorism acts and TF. In view of ongoing criminal investigations, he has also been placed under a preventive prison order.[86] Proceedings are underway to revoke his asylum status. His assets in Portugal, including his bank account, have been seized, and an MLA request was made to freeze assets in another country, as well. Authorities expect to eventually confiscate these assets.

Overall conclusions on IO.9

200. Portugal demonstrates characteristics of an effective system for investigating and prosecuting those involved in terrorist activity, including TF. TF investigations are undertaken in parallel, and as part of, terrorism investigations. The low number of prosecutions and convictions for terrorism and TF activity is largely attributed to the fact that there are no active terrorist groups currently operating in Portugal, and identified risks are related to small cells and radicalised lone wolves. TF risks are well identified, understood and known and are being mitigated as a matter of priority, and with a high degree of commitment and coherent action, by the authorities. Preventive measures have been taken when necessary.

201. Overall, moderate improvements are needed in relation to the detection, investigation and prosecution of all types of TF activity, including by improving information sharing between the FIU, intelligence services and other competent authorities, as well as international cooperation for CFT purposes. While Portuguese efforts are to be applauded, moderate improvements are still required, bearing in mind the issues identified in relation to the effectiveness of the FIU (see IO.6) and Portugal's international cooperation (see IO.2). Also, despite 41 terrorism investigations having been initiated, only 4 investigations were related to TF. Likewise, only 1 person has been charged with a TF offence according to the statistics provided by authorities. With regard to the disruption of TF activities, Portugal places an emphasis on preventive and rehabilitative measures, as well as on the criminal justice process, based on the specific facts of each case.

202. Portugal has achieved a substantial level of effectiveness for IO.9.

Immediate Outcome 10 (TF preventive measures and financial sanctions)

Implementation of targeted financial sanctions for TF without delay

[86] A preventive prison order places a suspect in preventive detention during an investigation, leading up to the final conviction (after appeals have been exhausted). Preventive detention is the final, and most severe, measure that may be taken against a person who has not yet been convicted. It can only be applied to suspects that are under investigation for specific crimes. Specific time limitations for the preventive prison order apply. While the order is in effect, it is obligatory for a judge to review every three months as to whether or not to extend the preventive prison order. The suspect may appeal at any time or appeal to a higher court within 30 days.

203. Designations at the UN level pursuant to UNSCR 1267 and its successor resolutions apply directly in Portugal without the need for EU transposition (see TC Annex, R.6). In accordance with art. 8(3) of the Constitution of the Portuguese Republic[87], which provides for the automatic application of UNSCRs in Portugal, any designation by the UNSC is immediately enforceable in Portugal.

204. Portugal has a good understanding of TF risks and takes appropriate and proportionate actions to mitigate those risks. Portugal is actively implementing TF preventive measures, including TFS, which are considered by the CT authorities as tools to manage TF risks. Terrorists, terrorist groups and terrorist support networks, including FTFs and FTF returnees, are proactively identified by the security services even if they are not yet listed persons or entities. Suspected terrorist funds have been seized from cash couriers in at least two cases involving a UN designated terrorist group, and investigations are currently ongoing to establish a link to terrorist activity. However, no funds or other economic resources related to persons or entities designated under the UN or EU TFS lists have been located in Portugal. The scarcity of freezing action may be explained by the lack of connection between the Portuguese financial sector and the countries and jurisdictions that have been the target of restrictive measures for both CFT and CPF.

205. The Ministry of Foreign Affairs (MoFA) and Ministry of Finance (MoF) are the competent authorities for the implementation of restrictive measures under TFS for TF and are responsible for the communication and dissemination of the consolidated lists of designated persons and entities. Portugal has adopted an automated dissemination system via e-mail for both UN and EU designations, which enables communication of the designations to FI and DNFBP supervisory bodies without delay. Onward communication of the designations to obliged entities is the responsibility of the respective supervisory bodies.

206. The banking supervisor, BdP, disseminates UN and EU lists to supervised entities through an automated e-mail system, and posts links to both consolidated sanctions lists on its website[88]. The Securities Market Commission (CMVM), the Insurance and Pension Funds Supervisory Authority (ASF), the Institute for Public Procurement, Real Estate and Construction (IMPIC) and the Economic and Food Safety Authority (ASAE) also post links to both the UN and EU lists on their respective websites.[89] Both IMPIC and ASAE have recently created automated e-mail systems to disseminate notifications. Other DNFBP supervisors do not provide links to the updated lists on their websites. However, Portuguese FIs and DNFBPs generally use commercial databases to screen existing and potential customers against sanctions lists (see IO.4).

207. Portugal implements TFS pursuant to UNSCR 1373 through the same mechanism as described above, as well as European Council Regulation 2580/2001. Portugal has not made any domestic designations or proposed any designations to date.

208. Both the FIU and DCIAP review updates to the UN and EU lists and conduct searches through their databases to determine whether listed persons or entities maintain any accounts or

[87] Art.8(3) reads as follows: "The norms issued by the competent organs of international organisations to which Portugal belongs come directly into force in Portuguese internal law, on condition that this is laid down in the respective constituent treaties."

[88] http://bportugal.pt/page/medidas-restritivas?mlid=862

[89] Insurance and Pension Funds and Supervisory Authority, www.asf.com.pt/EN; Instituto dos Mercados Públicos do Imobiliário e da Construção, www.impic.pt/impic/; Autoridade de Segurança Alimentar e Económica, www.asae.pt; CMVM, Money Laundering and Financing of Terrorism, www.cmvm.pt/en/The_CMVM/branqueamento/Pages/terroristas.aspx

property in Portugal. Other relevant LEAs such as the PJ, Security Intelligence Service (SIS), the Tax and Customs Authority (AT) and the Immigration and Borders Service (SEF) also review lists to cross-check their databases. Furthermore, the Institute of Registries and Notary (IRN) checks and flags related property in its real estate register. In case a hit is made, authorities note that transactions would be immediately frozen. If the FIU (or any other LEAs) locate assets, DCIAP is notified, which then decides on the necessary investigative action and/or provisional freezing measures. If the funds or assets belong to a designated person or entity, a notification is also made by the FIU/LEA to the MoF and MoFA. The PJ-NCTU and DCIAP are also notified if there is suspicion of a crime. Although, there have been no instances where any authority has located relevant assets of designated persons or entities pursuant to UNSCR 1267 and its successor resolutions, there have been cases when there have been assets detected in Portugal that belong to persons and entities designated under non-TF sanctions regimes, which demonstrates the operationalisation of the system and procedures. The assessment team is confident from the information provided by authorities that, if assets, funds or other economic resources linked to TF/PF designated persons and entities were uncovered, they would be immediately frozen.

209. As a matter of course, FIs and DNFBPs take a defensive approach to reporting the names of persons or entities potentially linked to UN and EU lists. The MoF then works with other agencies, such as SIS, as well as obliged entities and their supervisors. Open-source information is also used. The feedback received by BdP to its Circular Letter on Terrorist Financing Indicators (January 2017) is indicative of a high degree of awareness on the part of obliged entities in regards to their TFS obligations. Furthermore, the MoF, through the GPEARI (see IO.3), also regularly (every 3 months) requests feedback directly from FIs and DNFBPs on freezing actions taken pursuant to the UN and EU TFS regimes. Due to this action, the MoF has seen improvement in the feedback received over the past 3 years.

Targeted approach, outreach and oversight of at-risk non-profit organisations

210. Portugal has not undertaken a comprehensive review to identify the subset of NPOs that are particularly at risk of being abused for TF purposes (see TC annex, R.8). No potential abuse of NPOs has been detected, and competent authorities such as the IRN, LEAs and intelligence services are of the view that NPOs in Portugal are at low risk of TF abuse. However, based on profiling of the NPO sector by the Ministry of Finance that was done in 2012, Portugal has identified the 'social economic sector NPOs' as potentially being at a higher risk of being abused for TF or other forms of terrorist support. This assumption appears to be made on the basis that poor financial management and non-compliance with financial procedures and tax obligations raises their vulnerability to TF abuse. There are currently 17 410 NPOs (foundations, associations and private legal persons of public utility) that would fall within the FATF NPO definition.

Table 16. **Overview of NPOs in Portugal (April 2017)**

Type of NPO	Number*
Foundations	88
Associations	4 736
Private Legal Person of Public Utility	12 586
Total	17 410

* Number of entities that fit the NPO concept as defined by the FATF.
** Private non-profit collective persons to which administrative entities (legally empowered) have assigned a status of public utility. The attribution of this legal status is dependent on the pursuance of general interest tasks by the referred legal persons in cooperation with the central or local Administration. This would include environmental NGO, or entities supporting disabled people or regional/local development.
Source: IRN / BdP

Table 17. **Total NPO number distribution by type of main activities (April 2017)**

NPO Type	Number	Percentage Distribution
Culture & Arts	13 253	76.1
Education & Investigation	370	2.1
Health	142	0.8
Social Services	2 190	12.6
Civil Protection	32	0.2
Environment Protection and Sustainable Development	480	2.8
Development	0	0.0
Human Rights Defence and Active Citizenship	0	0.0
Philanthropy, Funds Raising, Sharing of Resources, Volunteers Promotion	930	5.3
International Activities	13	0.1
Total	**17 410**	**100.0**

Source: IRN / BdP

211. The AT conducts oversight of NPOs from a tax compliance perspective. This oversight covers general tax reporting obligations. Between 2014 and 2016, the Tax Audit Services of the AT performed 2 238 tax audits in relation to NPOs; however, TF is not under the competences of the AT. According to the AT, this monitoring is supplemented by information from the FIU and intelligence services in order to identify potential TF activities. However, the AT did not provide any examples to show that this approach has mitigated TF risks or led to the detection of TF abuse within the NPO sector. If indicators of possible TF activity would be identified during the tax inspection procedure, they would be reported to the Public Prosecutor.[90]

212. In addition, the various types of NPOs are subject to sectoral inspections according to their scope of activities (e.g. welfare, health, education, sports, etc.), which includes an obligation to prepare an annual report with NPO-specific information, including information on accounts and donations. Investigations and inspections by the respective supervisory body are also undertaken; although, this is also not TF-specific. No further information on outreach or training activities on TF risks was provided. LEAs and intelligence services noted that they carry out engagement and community policing with vulnerable migrant communities, including NPOs active in these communities, to raise awareness of TF risks and encourage voluntary cooperation to deter TF activities. Authorities note that cooperation between migrant diasporas in Portugal and the authorities for CT/CFT purposes is good.

[90] Based on the legal obligation to report crimes (art. 242 Code of Criminal Procedure).

213. Large foundations, including foundations that are members of the National Association of Foundations, are well aware of the risks of abuse for TF purposes. Foundations are subject to various controls, such as registration in the National Registry of Legal Persons (RNPC) and the Commercial Registry, as well as annual management reports. Associations are deemed to be equivalent to commercial companies in regards to registration obligations, management and representation and transparency. Furthermore, they are subject to various controls, such as the evaluation of their detailed history of activities carried out (with a special emphasis on the preceding three-year period). This also covers proposed projects as well as the public and private entities with whom they collaborate, or from whom support is received. It is unclear if NPOs, as a whole, understand TF vulnerabilities and take risk mitigation measures to protect themselves in equal measure as the subset of large foundations.

Deprivation of TF assets and instrumentalities

214. Although there has been no detection of any designated persons or entities holding accounts or assets in Portugal under the TFS regime for TF, there has been freezing of accounts and assets of persons and entities in Portugal that have been designated under non-TF sanctions regimes. Several suspect TF TFS cases have been confirmed as false positives by the authorities. In the event that funds or assets are located, authorities are confident that funds would be automatically frozen. In the instance that freezing action is taken under the TFS regime related to TF, FIs would report to the NCTU regarding the amount frozen. Dealings with any real estate or other property of designated persons or entities located by the IRN would also be frozen and reported to the NCTU. If there is suspicion of a crime, notification would also be made to the MoF and MoFA, as well as the FIU, PJ-NCTU and DCIAP. In practice, this has not yet occurred.

Consistency of measures with overall TF risk profile

215. The measures taken by Portugal for the implementation of TFS in relation to TF are consistent with the overall TF risk profile (low), but broader supervision and targeted outreach to the NPO sector on the risks of terrorism and TF are needed.

Overall conclusions on IO.10

216. In conclusion, Portugal demonstrates many characteristics of an effective system on TFS implementation. Moderate improvements are still needed, including the need for a comprehensive assessment of the vulnerability of the NPO sector to TF abuse; broader supervision for CFT purposes; and targeted awareness raising and outreach to the NPO sector on TF risks. Nonetheless, Portugal has taken substantial measures (as outlined above) to mitigate risks and, given the TF risk profile of the country as a whole, has taken proportionate actions to mitigate those risks.

217. Portugal has achieved a substantial level of effectiveness for IO.10.

Immediate Outcome 11 (PF financial sanctions)

Implementation of targeted financial sanctions related to proliferation financing without delay

218. Portugal has a good understanding of PF risks and takes appropriate and proportionate actions to mitigate those risks. Portugal is neither a major weapons manufacturing country nor a

large market for proliferation goods; however, Portugal has well-developed industries in the manufacturing of certain dual-use goods, and ports along its long sea border allow for the importation, exportation, transit and transhipment of goods between Europe, South America and the MENA region.

219. Portugal is effectively implementing PF preventive measures, including TFS without delay, in tandem with its export control regime. As stated previously (see IO.10), UN designations apply directly in Portugal without the need for EU transposition. The communication mechanism for the dissemination of both UN and EU lists to FIs and DNFBPs is the same as for TFS TF (see TC annex, R.7 and IO.10).

220. In addition, dissemination of TFS lists and outreach to the economic operators and export manufacturing sector of sensitive controlled goods and technologies as well as dual-use goods is done under the purview of the AT. The AT is charged with responsibility for the implementation of the EU export control regime as well as the EU's prior authorisation process for transactions with Iranian entities under the Iran Sanction's regime and DPRK (see TC annex, R.7). As part of its duties, the AT makes use of a comprehensive set of counter-proliferation risk indicators, which include indicators of WMD PF.

Identification of assets and funds held by designated persons/entities and prohibitions

221. The AT is the leading agency on export control. It works closely with the intelligence services, as well as conducts audit inspections (which include a CPF element) as part of its regulatory functions. Currently, the AT has a team of 6 individuals that do risk analysis, while 3 individuals deal with export licensing. This appears sufficient and proportionate to Portugal's risk profile; although, authorities note that increased staffing would be welcome. Under the export control regime, the AT does automated risk assessments of all customs declarations using its IT tools and works closely with relevant licensing authorities. However, the AT does not deal specifically with the financial aspect of the licensing process unless there is specific information provided which raises concerns (e.g. regarding the activities of procurement networks).

222. The AML/CFT Coordination Commission is the national coordination mechanism for, *inter alia*, coordinating and implementing policies and strategies to counter PF (see IO.1). It accomplishes this task primarily by offering a forum through which competent authorities can exchange information in regards to the application of restrictive measures adopted by the UN, the EU and other international organisations.[91] Authorities note that information exchange for CPF purposes is facilitated by the Coordination Commission, and *ad hoc* meetings are no longer necessary. Specifically, the weekly meetings of the Permanent Technical Secretariat provide a channel to raise relevant issues, facilitate the flow of information, and issue feedback directly to companies and other interested persons and entities.

223. The authorities and FIs identify funds and assets held by designated persons and entities. Authorities note that the scarcity of freezing actions may be explained by the lack of connection between the Portuguese financial sector and the jurisdictions that have been the target of PF-related TFS. No violations regarding TFS have been found, including through the use of shell companies. The AT studies all reports of non-compliance with the export control regime, but so far, it has not detected any cases of non-compliance.

[91] Art. 3(q) of Resolution of the Council of Ministers No. 88/2015.

224. There are no reports of assets frozen under the TFS regime against the DPRK. Portugal has limited business relationships and commercial transactions with the DPRK, and the limited external trade with DPRK that exists is not related to dual-use items. In March 2017, a survey was carried out to identify all accounts held by North Koreans in Portugal. With regard to Iran, prior to the lifting of TFS for PF against Iran, all transactions were subject to the prior authorisation regime imposed under EU Regulation 267/2012. In regard to Iran, Portugal's commercial and business relationship has been relatively weak; although, there is now growing interest in establishing trade relations with Iran. The ministries and authorities involved have made efforts to provide clarification and explained the implications of sanctions relief to relevant economic and financial institutions in order to contribute to the full implementation of the 2016 Joint Comprehensive Plan of Action (JCPOA), while at the same time respecting relevant EU sanctions still in place. In June 2016, 158 FIs confirmed to the MoF and BdP that they had no relations or activities with Iran, and all but one (subsequently subject to further study) had no intention to initiate relations after the lifting of sanctions.

225. Between 2011 and 2016, the competent authorities (MoF and MoFA, concurrently) dealt with 9 cases involving the freezing and unfreezing of funds and economic resources belonging to both natural and legal persons; 3 cases where FIs informed the competent authorities of the freezing of funds and economic resources; and 6 cases where competent authorities granted authorisation upon request for the partial or total unfreezing of funds. However, these cases are not specific to the Iran and DPRK PF sanction regimes, and include actions taken in accordance with other past and ongoing sanctions regimes.

226. Between 2014 and 2016, the competent authorities received 24 requests for information on TFS obligations and 7 requests related to the authorisation of the export of products or the execution of the transfer of funds. The requests were mostly related to the Iranian TFS regimes under the UN and EU framework. All 7 requests for authorisations of the export of potentially sensitive goods were duly issued. The response time in each instance was less than 10 working days.

Box 15. **Examples of requests for further information and authorisation**

Request for further information

Example 1: In February 2015, a Portuguese company requested information from the competent authorities (MoFA and MoF) on whether TFS against Iran applied to the export of ceramic ovens, as well as the provision of technical assistance for the operating of heavy-duty ceramic equipment and the transfer of funds related to payments under that business. Based on the information provided, the Portuguese authorities concluded that the export of the ceramic ovens as well as the provision of technical assistance was not covered by UN/EU sanctions in force.

Request for authorisation

Example 2: In September 2015, a Portuguese bank requested authorisation for the transfer of funds from an Iranian company to a Portuguese company for the total amount of EUR 1 920 000 as payment for the export of automobile parts to Iran. This was granted on the basis that these parts were not covered by the sanctions regime.

Example 3: In October 2015, a Portuguese bank requested authorisation for a funds transfer, originating in Germany, for accounts held by Iranian citizens for the total amount of EUR 2 258 000

to fund a real-estate transaction in Portugal. As the subject of the contract was not prohibited, the Iranian citizens were not listed persons, and authorities of another EU Member State had issued a prior authorisation, the transaction was authorised by the Portuguese authorities.

227. The Ministry of Defence (MoD) and the Public Security Police (PSP) are the competent authorities to oversee sanctions concerning the trade of weapons and military-grade material when issuing authorisations for export. The MoD and PSP also coordinate with other authorities (such as the AT) for the implementation of TFS obligations, by requesting *inter alia* legal advice on the scope of sanctions when deemed necessary. This coordination supports the overall implementation of the TFS regime.

Box 16. **Example of use of targeted screening system for licensing requirement**

Filters on the end-user or the tariff code indicate whether an export licence is required. Comprehensive statistics are unavailable; however, the AT has identified export companies without appropriate licensing and taken preventive action. For example, in March 2017, an Export Customs Declaration was submitted at the Lisbon International Airport Customs Office identifying goods as "Artificial Graphite" intended for shipment to Iran. The exporter declared that the goods were not on the dual-use list of EU Regulations No. 428/2009.

The targeted screening system was triggered based on automatic risk indicators. A physical inspection was organised and further technical documentation for the goods was requested. After examination and analysis, it was determined that an export licence was required, as the goods were under export control under Annex VII-B of the EU Regulations concerning restrictive measures against Iran. The export licence was duly issued as all the prescribed requirements under the applicable EU Regulations were fulfilled, and no objections were raised by other EU Member States, nor did the AT Licensing Department have further information or intelligence to support an export denial.

Nonetheless, the AT initiated an administrative procedure against the exporter, given the initial irregularities in the case. This information was uploaded to the Customs Anti-Fraud System. This information will subsequently be taken into account for the selection of exporters for the Annual Plan of Audits by the AT Risk Management Department (DSAFA), where an in-depth audit of the company is undertaken. At the same time, all Customs Declarations submitted by the company are placed under surveillance and are subject to real-time risk mitigation measures.

228. Where an export licence or authorisation is denied (or where advisory opinions are required), referral may be made to the Inter-Ministerial Commission (IMC) for the trade of dual-use goods and technology. The IMC is chaired by the MoFA and includes representatives from the MoF, MoD, Ministry of Interior, PSP and intelligence services. Technical experts also participate in the IMC. The IMC is the final authority on the granting or refusal of export control licences and authorisations, and provides legally binding decisions on the export of dual-use goods. The IMC may deny a licence or authorisation on the basis of intelligence. The IMC has only been convened once since its establishment in 2015. The IMC appears to have worked diligently and in a timely manner on that single occasion; however, given that it has only been convened once to date, it is difficult to assess the criteria that would be used to escalate a case to the IMC as standard practice. Nonetheless, the

IMC appears to be a practical inter-agency mechanism to resolve issues relating to cases that are not explicitly addressed by the export control and TFS regimes.

Box 17. **Export licensing process denial**

A customs broker contacted AT on behalf of a Portuguese exporter, which was manufacturing machine tools and seeking an export license for Pakistan. The AT had received specific information on this commercial transaction from the intelligence services. Furthermore, the EU dual-use goods database flagged that an export licence denial by another EU Member State had previously occurred in relation to this individual. The customs broker was advised to contact the relevant licensing authority.

In the meantime, Portugal contacted the EU Member State that had denied the licence for more information and convened the IMC to assess the case for granting or denying an export licence. In July 2016, the IMC denied the request for an export licence. EU customs authorities were notified, accordingly, of the denial.

229. The economic operators and export manufacturing sector of sensitive controlled goods and technologies and dual-use goods generally have a high awareness of proliferation obligations involving the two UN and EU-sanctioned countries (i.e. Iran and the DPRK). Nonetheless, there is a lack of knowledge about TFS among smaller companies. The awareness raising programme, "Know Your Product, Know Your Client," is currently seeking to address this deficiency. Companies report any suspicious activities to authorities and seek advice on transactions when they are uncertain as to whether licences are required. This collaborative approach between the authorities and the private sector facilitates the implementation of TFS. Sound CPF awareness on the part of exporters assists FIs, who are generally not trained to identify the technical specifications of controlled goods when providing banking, trade financing or insurance products.

230. In terms of training, the MoF and MoFA provide regular, in-depth training to its officers about the UN and EU TFS regimes. The MoFA offers specialised training on TFS obligations while the AT carries out regular (twice a year) training and outreach to customs and other authorities, as well as the economic operators and export manufacturing industry. In addition, the MoFA holds preparatory meetings and training sessions with relevant actors to provide clarification on the applicable legal framework concerning TFS (e.g. business missions to countries subject to restrictive measures like Iran). The AT also hosts meetings with export trade companies upon request to provide information on applicable procedures for the licensing of dual-use goods. Furthermore, the AT has issued guidance and best practices for customs authorities, which is publicly available on its website. In 2014 the AT published a guide for economic operators, which sets out applicable procedures and licensing requirements. This was last updated in 2016. The training provided has led to better overall compliance with the TFS PF regime

FIs and DNFPBs' understanding of and compliance with obligations

231. FIs demonstrated a good understanding of their obligations to implement TFS. To a lesser extent, the DNFBP sector also demonstrated awareness of these obligations. TFS implementation in Portugal is one of the issues that financial supervisors reviewed during both on-site inspections and off-site reviews. To date, no detailed guidance on how to implement TFS regarding PF has been issued by the competent authorities or relevant supervisory bodies of FIs and DNFBPs. Thus, FIs and

DNFBPs must rely on the controls implemented for CDD purposes, which are aimed at identifying beneficial ownership. The potential for sanctions evasion (particularly through the use of persons or entities owned or controlled by a designated person or entity) is not widely understood, and awareness of the dual-use goods regime is limited (see Chapter 5, IO.3 and IO.4 concerning implementation of the TFS obligations by FIs and DNFBPs).

Competent authorities ensuring and monitoring compliance

232. The MoF and the MoFA rely on the supervisory bodies of FIs and DNFBPs for monitoring to ensure compliance with TFS. However, since 2006, the MoF has also gone directly to FIs and DNFBPs to procure their feedback on compliance and the implementation of TFS. The MoF has noted improvement in the awareness of TFS requirements by FIs and DNFBPs. To date, no FIs or DNFBPs have detected suspicious PF activity. In the instance that a suspected case of PF is detected by an FI or DNFBP, it would be reported to the relevant supervisory body for appropriate action.

233. AML/CFT financial and non-financial supervisors (see Tables 1 and 2) have the duty to supervise obliged entities in relation to TFS compliance (both TF and PF). As part of this duty, BdP, the banking supervisor, has the most advanced approach. It tests the IT infrastructure used by obliged entities to identify designated persons and entities in real time. The BdP also scrutinises the seniority of the management level authorised to intervene in the screening process, as well as the supervisory capacity checks of the screening of consolidated sanctions lists, and the frequency that customer databases are verified against these lists. The BdP supervision team includes 3 information technology engineers who specifically check the IT functionalities used by supervised institutions to screen their customers/ potential customers against the lists. From 2011 to 2016, BdP detected 25 situations that justified the use of supervisory measures. 13 of these actions related to inadequate screening procedures. As a result, 2 administrative proceedings were opened. All 13 cases led to corrective measures being taken. This has had a positive impact on the level of compliance.

234. The BdP also disseminates information it receives to the MoF and MoFA. In 2016, 4 FIs communicated possible name matches, of which 3 were false positives. The final hit involved a suspect designated person and an indirectly held entity, where the company's principals were sanctioned persons even though the company itself was not a listed entity. No further action was taken by BdP as no active relationship was ever established with the entity concerned.

Overall conclusions on IO.9

235. Portugal demonstrates many characteristics of an effective system in this area and only moderate improvements are needed. Financial supervisors monitor the application of PF-related TFS controls. However, appropriate guidance on how to implement TFS regarding PF has not been issued by the competent authorities or relevant supervisory bodies.

236. **Portugal has achieved a substantial level of effectiveness for IO.11.**

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

Financial institutions (FIs)

- The understanding of ML/TF risks is good among FIs. Specifically, this understanding is more developed among larger banks and MVTS providers, or those belonging to international groups.
- FIs have implemented procedures to identify, assess, understand and document their risks. The implementation of risk-based model is relatively new for some FIs, and models are being further developed.
- FIs seem to have implemented adequate mitigation measures concerning CDD, record-keeping and monitoring, based on relevant risks.
- Regarding the identification of beneficial owners, overall there is a good level of implementation of the requirements among FIs, but assessors have noted that some FIs do not seem to have a full understanding of the concept of beneficial ownership and tend to equate it to legal ownership.
- FIs have an adequate understanding of specific high risk situations that require additional measures, particularly in relation to PEPs, TFS and higher risk countries.
- STR requirements are understood by FIs. The number of STRs filed is in accordance with the expectation of supervisors and the risk level of FIs.
- FIs indicated they have difficulty in detecting suspicious transactions related to TF, and would welcome additional guidance in this area.
- The internal control policies and procedures in place are adequate, and no obstacles with respect to information sharing within international financial groups have emerged.

Designated Non-Financial Businesses and Professions (DNFBPs)

- The understanding of risks by DNFBPs, as a whole, is moderate. While few sectors have a comprehensive understanding, certain sectors focus only on some of the risks (e.g. high-value goods dealers) and others underestimate their overall exposure (e.g. lawyers).
- Most DNFBPs apply rule-based measures to mitigate risks.
- DNFBPs seem to take adequate, formal identification measures of their customers, with the exception of BO-related obligations and record-keeping measures.
- DNFBPs have a general knowledge of EDD requirements, but applicable measures do not seem to be rigorously implemented.
- DNFBPs know about the reporting obligations of suspicious transactions, but only a few of them are duly filing STRs (e.g. registrars).

5

Recommended Actions

Portugal should

- prioritise actions targeting high risk obliged entities whose involvement in AML/CFT is still insufficient (e.g. lawyers, real estate sector).
- take action to increase the understanding of obligations to identify and assess ML/TF risks on the part of reporting entities and, in particular DNFBPs, including the need to take adequate risk-based preventive measures for their clients.
- provide obliged entities with concrete and sector-specific tools and guidance on implementing AML/CFT measures proportionate to the risks identified, with a particular focus on smaller and non-bank institutions, such as MVTS providers and investment services firms.
- further enhance the education of obliged entities on the extent of BO requirements.
- further raise awareness amongst DNFBPs of the importance of STR filing, and develop guidelines and typologies to help them identify suspicious transactions and file reports. Supervisors' focus on compliance with the filing of STRs obligation should also be intensified.
- provide more guidance on suspicious transactions and typologies concerning TF to all obliged sector

237. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The recommendations relevant for the assessment of effectiveness under this section are R.9-23.

Immediate Outcome 4 (Preventive Measures)

Understanding of ML/TF risks and AML/CTF obligations

Financial institutions (FIs)

238. FIs met have a good understanding of their exposure to ML/TF risks. They have implemented processes and procedures to identify, assess and document these risks. Furthermore, FIs have undertaken risk analysis, based on various risk factors related to, *inter alia,* customers, products, geographical location and distribution channels. In addition, FIs determine risk mitigation measures for identified inherent risks, and make use of monitoring systems to determine the adequacy of controls implemented to mitigate risks. This risk assessment is conducted on an annual basis.

239. Information included in the NRA and sectoral risk assessments (SRA) is mentioned by FIs as a source of information. It is considered useful and relevant, but the conclusions are also considered to be high-level and not always specific enough to be included in the annual risk assessment of the sector. This is especially the case for larger FIs belonging to international financial groups, which note that additional, and more recent, sources of information are used.

240. The implementation of a risk-based approach (RBA) is still relatively new for some FIs, and models are being further improved. Overall, the understanding of risks seems the most developed in

large banks and MVTS providers which are part of international financial groups. This is less the case in other sectors or smaller institutions. Banco de Portugal (BdP), the banking supervisor, has performed a cross-cutting analysis of the risk assessments of FIs. It concluded that the results from the risk assessments may be considered overly optimistic in certain situations (such as the classification of certain risks), but are generally consistent with the perception of the underlying ML/TF risks in Portugal. FIs noted that the guidance that has been received on 'the implementation of a risk assessment' from financial supervisors has been useful. The continued focus of financial supervisors on the implementation of the RBA should contribute to a better understanding and implementation of the requirements in the sector.

241. Overall, there is a good level of understanding of AML/CFT obligations among FIs, with the exception, in some cases, of the implementation of BO-related obligations (see below).

Designated Non-Financial Businesses and Professions (DNFBPs)

242. The DNFBPs met seem to have a moderate understanding of their AML/CFT risks on average. The level of understanding varies between sectors. Some sectors have a more comprehensive understanding (e.g. auditors), while others (e.g. high-value goods dealers and real estate) seem to focus on certain risk elements only (i.e. the use of cash); disregard other possible risks; or under-estimate their risk exposure and do not agree with the level of risk associated with their activities, as reflected in the NRA (e.g. legal professions, see IO.1). In addition, entities belonging to an international group (e.g. high-value goods dealers), or of a larger size (e.g. auditors from an international firm), are generally more aware of their ML/TF risks than smaller institutions. Some of the larger DNFBP institutions have recently started to adopt risk-based models, categorising customers and transactions into different risk levels.

243. In general, DNFBPs have a basic understanding of the need to conduct due diligence on their customers and to report suspicious transactions. This does not mean that appropriate mitigation measures are always implemented (see below).

Application of risk mitigating measures

Financial institutions

244. Based on the risk analysis of the FIs met, customers are categorised in risk profiles (usually low, medium and high) that require different CDD measures and monitoring procedures in accordance with the risk identified. For example, the mitigating measures differentiate according to the risks identified, in which more scrutiny is expected in higher risk cases, such as additional information and escalation procedures for higher risk clients and stricter monitoring rules. The understanding and sophistication of implemented measures seems most developed in larger institutions belonging to (international) financial groups.

245. BdP has concluded from its on-site inspections that some common deficiencies in the financial sector concern risk management models, such as the updating of customer information according to their risk profile; the lack of a risk-based approach culture; CDD measures not being in line with customers' risk profiles; the need for improvements that are necessary in assigning risk profiles to clients; and the lack of diligence in determining the source and destination of funds. Approximately 12.5% of supervised entities presented such weaknesses, but only 6.8% of them have

structural deficiencies in this area. At this early stage of the implementation of the RBA, these findings from BdP contribute to enhancing the proportionality of mitigating measures applied.

246. MVTS providers with agent networks have implemented agent-oversight policies and procedures. Some examples are 'know your agent' policies and procedures; on-site agent review; and training of agents to ensure that they comply with group-wide policies and procedures.

DNFBPs

247. Most non-financial entities met continue to rely on a rule-based approach to mitigate risks. However, in some specific cases identified as higher risks in the NRA, additional measures are applied (e.g. requesting senior management approval for cash payments exceeding certain threshold amounts in high-value goods dealer or accountancy firms). DNFBPs that belong to international groups have recently started applying differentiated sets of preventive measures, whose depth and intensity increase with the risk level, including for monitoring purposes.

248. In the real estate sector, obliged entities must report all real property transactions that they have been involved in to their supervisor, IMPIC, on a bi-annual basis[92].This reporting has been automated, since March 2010, through the platform "MOTRIM". Obliged entities are required to specify the amounts involved, as well as if the transactions are settled in cash payments. In 2013, MOTRIM registered 29 740 reports from 2 933 agents, involving a total transaction amount of more than EUR 4.5 billion. 420 reports were transactions paid exclusively in cash in a single payment, amounting to a total of EUR 16 859 371.33.[93] Given the resource constraints faced by IMPIC to monitor reporting by real estate entities and to analyse those transactions (see IO.3), including for potential ML/TF suspicions, assessors question the overall effectiveness of this approach.

Application of enhanced or specific CDD and record keeping requirements

249. The FIs met seem to have implemented adequate risk-based mitigation measures concerning CDD, record keeping and monitoring. They do not consider themselves to have any issues with record-keeping requirements, and are aware that they should refuse or terminate client relationships if the CDD process cannot be completed, and then consider filing an STR. Deficiencies regarding basic AML/CFT obligations were still noted by the supervisors of insurance intermediaries (e.g. regarding proper keeping of identification documents, due diligence identification duty).

250. For monitoring purposes, FIs make use of different scenarios and rules, which they include in their operations and transactions monitoring systems. The alert thresholds are more stringent for high risk situations. Additional or different scenarios are also developed according to the risk level of the client. Similarly, the understanding and sophistication of implemented measures are mostly developed in larger FIs belonging to (international) financial groups.

251. Regarding the identification of beneficial owners, depending on the risk situations they face, FIs have made use of a range of tools, ranging from the use of commercial registries to requiring more documentation (e.g. audited report). They generally agreed that a centralised register should further facilitate such identification (see Chapter 1 and IO.5). Based on the on-site discussions, assessors have noted that some FIs do not seem to have a solid understanding of their beneficial

[92] Art.34 (1) (b) AML/CFT Law.
[93] NRA Portugal

ownership requirements, and tend to equate beneficial ownership with legal ownership. While BdP does not consider the understanding of BO requirements to be a major deficiency for its supervised entities, it does recognise the difficulties that FIs have in implementing their requirements.

DNFBPs

252. The DNFBPs met seem to implement adequate formal identification and record keeping measures. Some supervisors (IMPIC for real estate and ASAE for high-value goods dealers) have provided templates and other forms to assist obliged entities to collect required CDD information from their customers. These tools have proved useful to DNFBPs. DNFBPs met are also aware that they should refuse or terminate client relationships if the CDD process cannot be completed, and then consider filing an STR. However, no examples of a refusal or termination of a client relationship have been provided to demonstrate that this approach has been applied in practice.

253. There is also, in general, a lack of understanding, and of proper implementation, of the beneficial ownership requirements in the DNFBPs sectors (see above).

Application of EDD measures

Financial Institutions

254. The FIs met seem to have an adequate understanding of specific high risk situations, such as high risks associated with Politically Exposed Persons (PEPs); Targeted Financial Sanctions (TFS) for TF and PF; and higher-risk countries, which require additional measures. As stated previously, the understanding and sophistication of implemented measures are mostly developed in larger institutions belonging to (international) financial groups.

a) Politically exposed persons (PEPs)

255. FIs met are aware of the enhanced measures required for PEPs, and most of them do not distinguish between domestic and foreign PEPs. Most FIs have computer systems in place to check for PEPs, their family members and close associates. Generally, FIs make use of commercial databases for the screening process and conduct their own research, as well. Some difficulties arise when identifying foreign PEPs. All FIs met require the approval of PEPs as clients to be taken by senior management, and several FIs were able to give concrete examples of business being refused to PEPs.

256. In certain cases (e.g. insurance sector), the absence of legal requirements to determine whether the beneficiaries of a life insurance policy and their beneficiary owner(s) are PEPs (see c. 12.4. in the TC Annex) is mitigated by actual screening for PEPs by insurance companies.

b) Correspondent banking and wire transfers

257. For FIs with cross-border correspondent banking relationships, the additional AML/CFT requirements seem to be well understood; although, legal requirements present deficiencies for relationships with EU financial institutions (see R. 13 in the TC Annex). Thanks to self-assessment questionnaires filled out by supervised entities, BdP is aware that there are some shortfalls concerning correspondent banking relationships in some of the five largest banks where a written document with each institution's responsibilities is missing.

258. Some FIs indicate that they have implemented requirements resulting from the new EU Wire Transfer Regulation before the actual implementation date (June 2017).

c) New technologies

259. FIs met indicate that the development of new products and services, including the ones involving new technologies, are subject to AML/CFT analysis and that (mandatory) advice from the compliance department is part of the product approval process.

260. FIs met take into account the risks associated with new technologies, such as (anonymous) e-money and prepaid cards, and include this in the risk assessment.

d) Targeted financial sanctions (TFS)

261. The FIs met are aware of their requirements in relation to TFS relating to TF, and have measures in place to comply and screen before the establishment of a business relationship, as well as during the course of the business relationship, for potential hits. FIs have made use of commercial databases for screening purposes, and some FIs still apply manual checks but indicate that the process needs to be improved. FIs have processes and procedures in place to further investigate positive hits.

e) Higher risk countries identified by the FATF

262. The FIs met are aware of the FATF public statements concerning higher risk countries, which are included in their risk assessment models for geographical risk (in addition to other sources of information). Larger FIs keep track of new lists through the FATF and financial supervisors' websites (BdP[94] and CMVM[95]). Financial supervisors also issue circulars to all FIs, normally a week after publication on their respective websites.

DNFBPs

263. DNFBPs seem to have a general knowledge of EDD requirements applicable in the presence of higher risks, especially in relation to PEPs and TFS. They are also aware of the need to pay attention to the jurisdictions where customers have links or are active, but the connection with the FATF list is not systematic for all DNFBPs. Most DNFBPs apply the measures required by merely screening customers against UN/EU TFS lists for the presence of any unusual or atypical profile. Regarding PEPs, only the more established DNFBPs (e.g. international accountancy firms, high-value goods dealers belonging to an international group, etc.) have these databases integrated into their IT screening systems. Most of the others rely on self-declarations from customers.

Reporting obligations and tipping off

Financial institutions

264. The STR requirements are understood, and all FIs met have filed STRs over the last few years. Financial supervisors indicate that the number of STRs is in accordance with expectations, given the risks and activities of FIs in Portugal. The quality of STRs is also considered reasonably

[94] Banco de Portugal (nd), Financial Action Task Force, www.bportugal.pt/en/page/financial-action-task-force
[95] CMV (nd), Money Laundering and Terrorism Financing, www.cmvm.pt/en/The_CMVM/branqueamento/Pages/jurisdicoes-risco.aspx

good by the supervisors, who based this assessment on their interaction with the FIU and DCIAP, as well as on-site and off-site supervisory activities.

Table 18. **STR filing by FIs (and supervisors)**

Reporting entities		2012	2013	2014	2015	2016
Credit institutions		1 444	1 771	2 285	2 307	2 698
Payment institutions and exchange offices		945	413	941	1 926	1 722
Insurance companies and brokers		19	11	12	11	11
Brokers (providers of management services in the securities sector)		8	4	10	3	16
Postal services providers		152	120	151	133	174
Total		2 568	2 319	3 399	4 380	4 621
Supervisory authorities	BdP	80	77	150	172	210
	CMVM	1	0	0	1	2
Total		**2 649**	**2 396**	**3 549**	**4 553**	**4 883**

Source: FIU

265. The banking sector files most STRs in Portugal, followed by the MVTS sector. This is in line with the identified risks in the sectors and their familiarity with the STR filing requirements. There has been a sharp increase in STR filing by payment institutions in 2015, which according to BdP is the result of growing awareness in the sector following off-site and on-site supervision. It is also due to the internal reorganisation in the compliance service of one of the major payment service providers with a network of agents in Portugal. Most of the reports filed by BdP are not based on suspicious transactions identified as part of their supervisory activities, but rather automatic reports based on the amounts of banknotes and/or coins exchanged (see c. 29.4 in the TC Annex).

266. The insurance sector files only a few STRs. The ones that are filed by insurance companies come from a limited number of institutions (normally not part of a financial group). The assessment team agrees with ASF's observation that the number of STRs filed is in line with the size and low risk profile of the insurance sector. ASF estimates that other insurance companies are probably filing STRs via the financial group to which they belong.

DNFBPs

Table 19. **STR filing by DNFBPs (and supervisors)***

Reporting entities	2012	2013	2014	2015	2016
Notaries	2	4	5	11	6
Registrars	354	333	316	387	460
High-value goods dealers	22	22	18	32	20
Betting and lotteries	13	8	13	34	14
Real estate agents	0	0	1	0	0

Reporting entities		2012	2013	2014	2015	2016
Supervisory authorities	SRIJ	1	0	0	0	0
	IMPIC	0	5	2	3	0
	OROC	0	1	2	0	2
	IRN	0	0	3	8	9
	ASAE	0	0	0	13	13
	OA	0	0	0	0	2
	Tax and Customs Authority	3	3	0	0	4
	Non-specified	3	4	1	6	5
Total		**398**	**380**	**361**	**494**	**535**

Source: FIU
* The obliged entities which do not appear in the table have not submitted any STRs.

267. DNFBPs met know about the reporting obligation, but the understanding of what it entails and when it should be applied does not seem to be strong, and is unevenly distributed amongst different sectors. For instance, casinos do not consider the filing of STRs to be among their obligations and rely on their supervisor (SRIJ) for Cash Transactions Reports (CTRs) filing (see IO 6). In the real estate sector, supervised entities consider that the reporting of transaction data to the general, and non-AML/CFT-focused, MOTRIM database would satisfy their reporting obligations (see above and IO 3), as illustrated by the low number of STRs filed (see Table 19 above). Some other sectors (e.g. lawyers and notaries) do not consider that their services can be used for ML/TF purposes, even unwittingly, and therefore do not even consider the possibility that a transaction or service for a client could be suspicious. This reinforces the concerns expressed about the lack of understanding of ML risks by these professions (see above). Some other sectors (e.g. auditors and accountants, high-value goods dealers, real estate operators) are unclear about what could indicate that a transaction is potentially suspicious, and at times may consult and seek advice from the FIU prior to filing, which is not viewed as a good practice by the assessment team (see IO.6).

268. With the exception of registrars, all other DNFBPs met have filed few STRs in the past five years. This does not appear to be consistent with the risk level of some DNFBP sectors (e.g. real estate sector, lawyers).

269. In some cases, the FIU directly reaches out to individual reporting entities to ask for additional information or clarification about a filed STR. This feedback takes place on an informal basis. On a more formal basis, FIs and DNFBPs receive quarterly and annual reports from the FIU on the status of STRs that they have filed and other aggregated information. FIs are generally satisfied with the feedback that they receive from the FIU as well as information received concerning suspicious activities, but are of the view that it could be further improved through the provision of information on the usefulness or quality of filed information, complemented by strategic analysis and typologies tailored to the needs of individual sectors (see IO.6).

270. Both FIs and DNFBPs met indicate difficulties in detecting suspicious transactions related to TF and would welcome additional guidance from authorities in this area. Some of the FIs met have filled STRs related to TF (mostly banks and MVTS providers), mainly based on the specific typologies provided by their international parent company.

271. Regarding tipping off, FIs met appear to have a good understanding of the importance of preventing the disclosure of STR information. They have implemented different measures, such as confidentiality agreements signed by employees, as well as restrictions to the number of employees involved in the analysis and filing of STRs. Front-office employees are often not aware of investigations relating to transactions or customers. As for DNFBPs, given the low number of STRs filed, it is difficult for the assessment team to draw conclusions as to whether tipping-off preventive measures that are in place are effective. One DNFBPs met did explain that it filed few STRs due to the potential of tipping-off.

Internal controls and legal/regulatory requirements impending implementation

Financial institutions

272. The requirements for FIs to understand and mitigate their ML/TF risks (described above) are complemented by requirements to develop and implement adequate internal policies, procedures and controls.

273. The internal control policies and procedures of FIs met are adequate, and no obstacles with respect to the sharing of information within an international group have emerged so far. FIs belonging to international groups have implemented group-wide policies and procedures. However, the NRA does mention that restrictions to prevent the circulation of relevant information within financial groups is a significant vulnerability. This would prevent the parent company from accurately understanding the ML/TF risks within the group in order to take appropriate measures against contagion emerging from transactions in certain jurisdictions. Financial supervisors believe that the implementation of the 4th EU AML Directive will reduce the risks that emerge from the restrictions on the sharing of information within financial groups. The impediments to information exchange within financial groups seem to be based in jurisdictions abroad whose legislation prohibits the disclosure of personal information, and not in the Portuguese legal framework. In this case, BdP requires additional measures to be taken by the FI to ensure compliance with AML/CFT requirements, including prohibition or the restraining of transactions involved.

274. All FIs met indicate that they have compliance programmes in place and are subject to internal audits. They provide training to (relevant) employees and have implemented screening procedures for employees. As noted previously, the understanding and sophistication of implemented measures seem most developed in larger institutions belonging to (international) financial groups, and less in smaller institutions.

DNFBPs

275. In general, DNFBPs met which are part of an international group or of a larger size (e.g. high-value goods dealers or accountant firms), have put in place compliance programmes subject to internal audit on their own initiative. The smaller size of some other DNFBPs, and the limited number of people employed (e.g. accountants, real estate agencies, law firms and some high-value goods dealers), would not justify having such internal processes in place. For casinos, the effectiveness of the recent mandatory legal requirement for appointing a compliance officer is yet to be demonstrated, but it should relieve the SRIJ (the gambling supervisor) from filing CTRs on behalf of casinos.

Overall conclusions on IO.4

276. Overall, the understanding of ML/TF risks and the application of AML/CFT preventive measures on a risk basis by FIs is satisfactory in Portugal, despite some concerns from assessors about the requirements concerning the identification of beneficial owners. For the DNFBP sector, there is a mixed and unevenly distributed level of awareness and understanding of exposure to ML/TF risks, which is insufficient for some sectors. This has an impact on the level of implementation of AML/CFT measures and STR reporting in these sectors. Given that a number of DNFBP sectors are identified as high risks, such as real estate, the overall rating for IO 4 is moderate.

277. **Portugal has achieved a moderate level of effectiveness for IO.4.**

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

Financial Sector Supervision

- Financial sector supervisors base their understanding of the risks on the NRA and sectoral risk assessments finalised in 2015 with data from 2012-2013. New and emerging threats are taken into account on an ad-hoc basis.
- Financial supervisors have a good understanding of the risks faced by individual FIs and have developed models to map these risks. These models are currently more advanced in the banking sector.
- The financial supervisory approach to ML/TF takes the risks faced by FIs into account, especially for the banking sector. Financial supervisors conduct AML/CFT on-site and off-site supervision, including on higher risk activities and entities. They still focus more on the implementation of AML/CFT requirements by FIs than on their understanding of risks.
- Financial supervisors apply adequate fit and proper assessments to prevent criminals or their associates from entering into the market.
- Financial supervisors take good measures to prevent and detect unauthorised financial activities in the market.
- Financial supervisors have a range of remedial actions available, and all are used by BdP. Other supervisors take mainly corrective measures, which seem consistent with the risks and findings in their respective sectors.
- Financial supervisors provide financial sector-wide guidance to FIs through different channels (e.g. circulars, websites, communication, etc.) and on-site inspections.
- Financial supervisors and other competent authorities cooperate and exchange information on an informal basis (i.e. concerning sectoral risk assessments, issuance of guidance, supervisory and enforcement actions).

Supervision of DNFBP

- DNFBP supervisors have a limited understanding of the risks of individual DNFBPs.
- The AML/CFT supervision of DNFBPs is limited, and supervisors have not clearly demonstrated how risk is incorporated into their AML/CFT supervisory approach. For some DNFBPs (lawyers), AML/CFT supervision is not exercised at all.
- Only some DNFBP supervisors apply fit and proper assessments to prevent criminals or their associates from entering into the market (e.g. accountants, auditors).
- Supervisors of DNFBP sectors where informal activities are a major issue (e.g. real estate, high-value goods dealers) take appropriate measures to prevent and detect unauthorised financial

activities in the market.

- AML/CFT-related sanctions imposed by DNFBP supervisors are low in number and in the severity of the sentence.
- DNFBP supervisors mainly make use of training to raise awareness amongst their obliged entities on ML/TF issues

Recommended Actions

Financial Sector Supervision

- Financial supervisors, especially in the securities and insurance sectors, should further develop and improve the methodology to identify and assess new and emerging risks in their sectors more regularly.
- Financial supervisors should further develop their risked-based supervisory models, especially in the securities and insurance sectors, taking into account the identified risks in these sectors, as well as for FIs.
- Financial supervisors should further strengthen their AML/CFT supervision with a focus on the implementation of the RBA in the sector, including the understanding of ML/TF risks by FIs and their application of appropriate risk-based policies and measures.
- BdP is encouraged to continue its increased focus on AML/CFT supervision in the MVTS sector, which is identified as a high risk area in Portugal.
- Financial supervisors should continue to take dissuasive sanctions against FIs that do not comply with their AML/CFT requirements in line with the findings and risks associated with the sectors.
- Even if the informal sharing of information and exchange of intelligence between financial supervisors seem to serve the needs for cooperation, more formal channels should be developed

Supervision of DNFBPs

- Portugal should take appropriate measures to ensure that resources allocated to DNFBP supervision are adequate to conduct the full extent of their mission, especially for high risk non-financial sectors like real estate.
- DNFBP supervisors should further develop and improve their methodology to be able to identify and assess ML/TF risks in the sector on an ongoing basis.
- DNFBP supervisors should conduct focused AML/CFT supervisory activities and take risks into account in the development of their supervisory programmes and priorities.
- DNFBP supervisors should provide tailored guidance to supervised entities to improve their awareness and understanding of the AML/CFT requirements that they need to implement, including STR reporting.
- DNFBP supervisors should implement an adequate and effective sanctions policy in line with the findings and risks of DNFBPs.

278. The relevant Immediate Outcome considered and assessed in this chapter is IO.3. The Recommendations relevant for the assessment of effectiveness under this section are R.26-28 & R.34 & 35..

Immediate Outcome 3 (Supervision)

Licensing, registration and controls preventing criminals and associates from entering the market

Financial sector supervision

279. Final fit and proper decisions are made through the EU Single Supervisory Mechanism (SSM) for members of the management board and supervisory board of the four significant banks in Portugal[96], and for qualifying shareholders of all banks (significant and non-significant). BdP does the initial analysis, and its advice is taken into account by the European Central Bank (ECB), the SSM decision-making body, which makes its own assessment and final decision. BdP's proposals are generally taken into account by the ECB. BdP applies SSM-requirements to all institutions under its supervision.

280. For other FIs, all financial supervisors (BdP, CMVM, ASF in their respective remits, see table 1) apply fit and proper assessments to prevent criminals or their associates from entering into the market. This entails the assessment of criminal records of qualifying shareholders, beneficial owners of FIs and members of the management and supervisory boards. If a suspicion arises on the suitability of applicants, other sources of information are used as well, such as adverse public information, internal information from the enforcement, legal and/or investigation departments.

281. To determine the suitability of applicants, criminal records are checked through several sources, which include open-source data; internal databases of the supervision departments; and information held by FIU and Criminal Police (PJ). Other supervisory authorities are consulted as well. This includes both national (e.g. CMVM where the FI is under the main supervisory responsibility of BdP but also has securities activities) and international sources.

282. Prior to 2014, court decisions in Portugal limited the assessment by BdP to criminal convictions.[97] If there was a doubt regarding the 'fit and properness' of the applicant without any criminal convictions, BdP could not oppose the application. It therefore took additional supervisory measures by putting the FI under higher scrutiny and applying intensive on-site inspections and off-site inspections focusing on internal governance and ML/TF risks of the FI. Since the introduction of Decree-law No.157/2014, BdP can and does take into account different sources of information, in addition to criminal convictions.

283. Financial supervisors rarely reject applications formally, but applicants usually withdraw their application when supervisors request additional information or inform the applicant that there are doubts and the application will most probably be rejected. Financial supervisors were able to give examples of applications that were withdrawn following additional information requests (e.g. CMVM: corporate body members of two credit securitisation companies and the corporate body

[96] European Central Bank (2014), The list of significant supervised entities and the list of less significant institutions, www.ecb.europa.eu/pub/pdf/other/ssm-listofsupervisedentities1409en.pdf

[97] Supreme Administrative Court's decisions: reference/process number 01009/04 of 3 May 2005, or 03836/08 26 April 2012.

members of two venture capital companies; BdP: three withdrawn requests in the last two years; and ASF: one registration refusal of an insurance intermediary and eight withdrawals in the last three years).

284. Upon granting licences, financial supervisors make use of regular on-site and off-site inspections, as well as information received from other authorities (especially other financial supervisors) to detect breaches of market entry requirements. In addition, approved applicants have the obligation to inform supervisors of any changes in their situation that might impact their position. When necessary, for example, in the case of serious suspicion of infringement, supervisors conduct re-assessments of the suitability of person(s) responsible.

285. Regarding shell banks, Portuguese law prevents their establishment or continued operation (see c.26.2 in the TC Annex), and the market entry process includes elements to prohibit this. An on-site visit by BdP is a legal requirement before a license can be granted. A physical presence of the bank (e.g. with physical address) is also required. BdP checks AML/CFT and governance requirements before the commencement of business by the bank.

286. Financial supervisors take good measures to prevent and detect unauthorised financial activities in the market. Among them, BdP has the most sophisticated programme and allocates the most resources, commensurate with the relative size and structure of the financial sector in Portugal. Specifically, BdP has a dedicated team to investigate and detect unauthorised activities. CMVM has also assigned staff from its supervisory and investigation departments specialised in AML/CFT, market abuse and non-authorised financial intermediation to this task. ASF has assigned staff in the supervisory department for this purpose. Information is received from, and shared among, different sources, including the intelligence services as well as other supervised entities and consumers (and from on-site inspections). In cases where there are suspected unauthorised activities, financial supervisors conduct their own investigations, develop joint operations with relevant law enforcement agencies, as well as take actions if necessary, such as public warning, administrative fines and referral to the prosecution. The measures taken have proven to be effective, given the number of investigations completed and sanctions applied (in cooperation with law enforcement agencies, see the Table **20** below).

Table 20. **Investigations and sanctions for unauthorised financial activities (BdP, CMVM and ASF)**

	2013	2014	2015	2016	2017*
Investigation proceedings (BdP)					
Opened	54	67	50	63	13
Completed[98]	43	56	65	72	19
Measures/Sanctions (BdP)					
Administrative offences proceedings	3	5	13	7	1
Specific recommendations (cease activity, change information)	3	3	8	12	0

[98] As investigation of cases may last longer than a year, the number of completed case may not correspond to the number of opened cases of the previous or the same years.

	2013	2014	2015	2016	2017*
Inspected entities	8	16	4	4	2
Winding up/Liquidation companies	0	0	3	4	0
Entities subject to Public warnings	1	27	12	10	1
Other supervisory communication	4	13	10	5	1
Criminal offence communication	2	5	12	26	5
Joint action with judicial authorities	9	21	31	23	7
Fines (BdP)					
Number	5	2	0	3	0
Amount (EUR)	12 500	828 500	0	965 000	0
Investigations (CMVM)	17	16	15	19	5
On-site investigations	3	2	3	2	2
Enforcement proceedings	2	5	3	1	0
Measures (CMVM)					
Public alerts	402	381	261	375	125
Other supervisory communication	6	5	6	2	1
Exchange of information with other regulatory entities	2	3	5	2	0
Investigations (ASF)	8	7	12	13	3
Enforcement Proceedings (ASF)	0	1	5	1	0

*as of 5 April 2017
Source: BdP, CMVM and ASF

287. To stimulate the use of the formal financial system by the broader public, financial supervisors issued a national plan for financial education in 2011, with the objective of informing the general public on situations that might indicate fraud and raising their awareness on authorised companies, thereby minimising the potential for informal financial activities (e.g. informal lending and MVTS activities).

Supervision of DNFBPs

288. DNFBP supervisors implement fit and proper assessments of those entities or professionals who are subject to license and registration regimes (such as accountants, auditors, lawyers and casino operators, see c. 28.4 in the TC Annex). To determine the suitability of applicants, DNFBP supervisors require applicants to submit a certificate issued by the Ministry of Justice, proving the applicants have no criminal record. In general, DNFBP supervisors do not take additional steps to

verify the certificate received for every application, nor collect additional information. Only some of them do this when a suspicion arises (e.g. CMVM and OROC for auditors), and take subsequent steps to verify the certificates received or seek verification from additional sources of information (e.g. the Internet, news reports, and other authorities such as tax authorities).

289. To ensure approved applicants' ongoing compliance with licensing requirements, DNFBP supervisors mainly rely on information received from registered entities or other authorities (such as tax authorities), but less so through on-site and off-site inspections (see below). Some DNFBP supervisors (such as IMPIC for real estate) have put in place regular re-assessment mechanisms for market players (e.g. ex-officio of real estate companies provide annual verification of licensing requirements), thereby helping detect breaches of licensing or registration.

290. In the case of the gambling sector, Portuguese law[99] requires that operators know their shareholders, but this knowledge is limited to a minimum threshold of 60% of their capital that must be represented by nominative or registered bearer shares. Such a provision does not allow supervisors and operators to obtain a comprehensive picture of the identity of the owners of the remaining 40% of shares. This lowers the effectiveness of the fit and proper tests with regard to persons holding a significant or controlling interest. For other DNFBPs, the fit and proper requirement applies only to professionals and individuals holding management positions, but does not extend to applicants for qualifying shareholding.

291. DNFBP supervisors rarely reject applications, but mainly rely on applicants' withdrawals during clarification or request for additional information to prevent unfit applicants from entering or continuing to operate in the market.

292. DNFBP supervisors are aware of the presence of a significant informal market, especially in the real estate and high-value goods dealers sectors. The relevant supervisors of these sectors (ASAE for high-value goods dealers and IMPIC for real estate) take measures, such as cross-checking the information of some databases on obliged entities, to prevent and detect unauthorised activities in the market. They conduct their own investigations and take action if necessary. Progress has been noted by authorities. For example, there has been an increase of 15.09 % in the number of real estate brokerage firms registered between 2012 and 2013, due to the registration of brokers previously in the informal sector. However, authorities recognise that the level of informal activity in the real estate sector still remains a major issue in Portugal.[100]

[99] Art.26.3 of Decree-Law No. 66/2015 of 29 April and other legal texts.
[100] NRA.Portugal

Table 21. I**nvestigations and sanctions for unauthorised non-financial activities(real estate/IMPIC and high-value goods dealers/ASAE)**

	2012	2013	2014*	2015	2016**
IMPIC					
Inspections opened (to physical facilities and offices)	519	367	288	443	332
Number of inspected entities on AML/CFT	437	311	270	500	387
Number and amount (in million EUR) of real estate transactions communicated to IMPIC	30 266 4 622	33 066 5 296	37 090 5 828	50 033 8 778	28 806 4 732
ASAE					
Number of inspected entities	0***	2	92	94	109

* Counting criteria have been changed since the end of 2014 to include real estate brokers.
** First half only
*** In 2012, pursuant to Decree-law 194/2012 of 23 August, ASAE recovered AML/CFT sanctioning functions, that were meanwhile assigned to an agency whose activities were terminated under the National Plan for the Reduction and Improvement of the Central Administration.
Source: ASAE and IMPIC

Supervisors' understanding and identification of ML/TF risks

Financial sector supervision

293. Financial supervisors (BdP, CMVM and ASF) have developed different methodologies for sectoral ML/TF risk assessments (SRAs) and have documented their conclusions in three separate reports which were finalised in 2015 (based on data from 2012-2013) and included in the NRA. For these SRAs, all financial supervisors have taken into account input and data from FIs and have identified a number of inherent risks and vulnerabilities in the financial sector.

294. The NRA and SRAs are the main sources of information when considering the national risks that FIs are exposed to. Financial supervisors indicate that they also use other sources of information to determine the overall ML/TF risk context (e.g. feedback from professional bodies; the exchange of information with other financial supervisors and competent authorities, including LEAs; STRs, etc.). Financial supervisors indicate that they have taken into account new and emerging threats on a macro-level, such as cybercrime, during the course of preparing the SRAs. However, financial supervisors indicate that they are developing their RBS-models to further incorporate the assessment of new and emerging threats in their SRAs on a systematic basis to be able to focus on the most important and updated risks in the annual supervisory programme of activities.

295. Financial supervisors do take into account institution-specific risks and shortcomings identified either through on-site or off-site supervision. But a more thematic, sector-wide approach should also be applied in order to reflect the overall vulnerabilities of and threats to the sector. This would require a systematic sector analysis of the risks on a more regular basis. BdP indicates a willingness to move towards this approach and intends to focus more on specific thematic reviews and risks in the sector.

296. Financial supervisors have a good understanding of the risks of supervised entities and have developed specific models to map the risks of individual institutions under their supervision. The development and sophistication of these models differs between financial supervisors, which seems to be consistent with the identified risks of the relevant sectors.

297. Among financial supervisors, BdP has the most comprehensive assessment in place, through the Supervisory Attention Index (IAS). The IAS interacts with data included in the NRA and the SRA, and draws information from on-site and off-site inspections. BdP is therefore able to assign and apply a risk ranking to each individual supervised institution. This ranking is based on various quantitative and qualitative parameters, including activity risk of the institution, risk analysis following general and AML/CFT-specific inspections, off-site supervisory information (such as the mandatory annual AML/CFT report and self-assessment questionnaire from institutions) and supervisory assessment. During the on-site, BdP provided extensive information to assessors on the methodology applied and demonstrated how the different parameters were combined for the risk analysis and classification of FIs. This was presented with the current classification of FIs and the number of institutions assigned to each risk category. Assessors consider that the approach adopted by BdP is satisfactory and is able to help BdP devise supervisory programmes commensurate with identified risk levels.

298. The IAS is updated every month to reflect information collected and analysed during new inspections. BdP then uses the ranking to determine specific supervisory activities for individual institutions. This monthly update provides BdP with an effective tool to implement and adjust its risk-based supervision.

299. CMVM's and ASF's risk models take into account inherent risk factors and mitigating measures of individual institutions to categorise them according to different risk levels. This enables supervisors to conduct risk-based supervisory activities. CMVM's AML/CFT RBA model was first developed in 2016 and needs to be further tested and calibrated based on initial 2016/2017 findings. Prior to 2016, entities subject to detailed supervision by CMVM were selected based on a behavioural supervision risk model (including a specific risk evaluation of ML/TF), which took into consideration the general compliance profile and financial risk characteristics of obliged entities. Indirectly, ML/TF deficiencies of these entities were taken into account when identified in internal control reports and/or detected during CMVM on-site supervision.

Supervision of DNFBPs

300. In general, DNFBP supervisors have a moderate to low understanding of the risks in the various non-financial sectors. Specifically, some of the supervisors met (e.g. lawyers) do not have comprehensive and updated information about the scope and size of the supervised sector that is subject to the AML/CFT regime. They could not provide an analysis of the conclusions of the NRA that directly targeted their specific sector(s), nor clarify the source(s) of data.

301. Other DNFBP supervisors (such as IMPIC for real estate or ASAE for high-value goods dealers) indicate that the high ML/TF risk level attributed to their supervised sectors in the NRA was partly due to the difficulties in identifying fully and comprehensively the entities active in the sectors. There was also a lack of participation by obliged entities in the NRA process, due to their limited knowledge of AML/CFT obligations. Nevertheless, Portuguese authorities acknowledge that a number of factors present in the NRA do justify the high risk classification. This includes the level of informality; their exposure to cash; the poor level of awareness of AML/CFT obligations; etc. Some

other supervisors (e.g. OROC and CMVM for auditors and OCC for accountants) have a fair understanding of the ML/TF risks of their supervised entities.

302. A number of DNFBP supervisors have undertaken substantial work in identifying and assessing the ML/TF risks of their respective sectors, and identified a number of inherent risks and vulnerabilities in contributing to the 2015 NRA. The tools and mechanisms that are in place, or are being developed, by financial supervisors to better assess the ML/TF risks of obliged entities, on an individual basis (see below), will help financial supervisors to improve their ongoing understanding and knowledge of the risks at a sectoral level. This should also enable them to identify new and emerging threats.

303. Regarding the risk assessment of individual DNFBPs under their responsibility, only a limited number of supervisors (e.g. CMVM for auditors) have developed a methodology or criteria to classify individual institutions into risk categories (see below).

Risk-based supervision of compliance with AML/CTF requirements

Financial sector supervision

304. The RBA adopted by financial supervisors covers the selection of FIs and the types of supervisory activities, based on the risk assessment systems in place, which includes the allocation of specific resources to high risk situations. The AML/CFT RBA model is the most developed within BdP, which has created an Inspection and Investigation Database that includes not only information about the IAS, but also adds external and internal information sources on all institutions.

305. Financial supervisors execute a number of different supervisory activities based on their risk assessments, including on-site and off-site supervision of obliged entities.

Off-site

306. Off-site inspections include an analysis of the mandatory annual report that FIs need to submit to financial supervisors. These reports include information on the implementation of AML/CFT requirements and mitigating measures. Financial supervisors have recently started to use these reports for their risk mapping of the sector.

307. BdP receives ML/TF risk reports (RPB) and AML/CFT self-assessment questionnaires (QAA) on an annual basis from all supervised entities. The RPB includes a description of the ML/TF risk management model of FIs, including relevant risk factors and an explanation of the control mechanism implemented to mitigate risk factors. The QAA considers and assesses controls implemented by FIs automatically, while the RPB is analysed manually on a risk-based approach (i.e. outliers in the answers, selection of institutions for on-sites). These reports are used by BdP to conduct cross-cutting analysis of the sector (e.g. certain high risk jurisdictions' investments in Portugal, including capital connected to high risk jurisdictions that is located within or channelled through the Portuguese banking system). In addition, news reports or indicators can be triggers ad-hoc, off-site supervisory activities by BdP. For example, the publication of the Panama Papers and 2016 FATF's TF Risk Indicators Report resulted in the issuance of a circular to institutions as well as information requests analysed by the AML division.

308. Off-site supervisory actions of ASF includes the analysis of surveys addressed to FIs; the analysis of FI's annual reports on the organisational structure and risk management systems; and

the analysis of the annual opinion of the auditor of life insurance undertakings. Insurance intermediaries are not yet subject to off-site supervision, but ASF is working on the development of an on-line tool for this sector. CMVM began issuing an off-site questionnaire in 2016, following its taking up of AML/CFT regulatory duties and the implementation of its new ML/TF risk model. This questionnaire was sent to 153 supervised entities.

Table 22. **Number of AML/CFT off-site inspections per financial supervisor**

	2012	2013	2014	2015	2016
BdP (301 supervised entities in 2016)					
- **QAA**	275	273	274	267	265
- **RPB**	277	273	270	269	264
- **RPBs analysed**	35	35	17	8	21
CMVM (120 supervised entities in 2016)					
- **Investment fund management companies**	53	49	51	49	49
- **Financial intermediaries**	52	46	52	57	56
ASF (32 supervised insurance companies in 2016 and 13 342 intermediaries)					
- **Insurance undertakings**	22	21	0	21	151*
- **Intermediaries**	0	0	0	0	0

* The significant increase in the number of off-site inspections is mainly due to an increase in cooperation requests from GPEARI, the Gabinete de Planeamento, Estratégia, Avaliação e Relações Internacionais, at the Ministry of Finance for asset freezing information relating to Libya and Iraq (93 off-site inspections) as well as specific surveys conducted on pension fund management companies that year (22 off-site inspections).
Source: BdP, CMVM and ASF

On-site

309. The number of on-site AML/CFT inspections in the financial sector is relatively low (see below), but the on-site supervisory activities in BdP and CMVM are very thorough and can take up to two months or more with a team of multiple supervisors. For BdP and CMVM, prior to the on-site, desk-based research involves the review of the RPB and/or internal control reports, respectively, as well as previously applied supervisory measures and information requested from the FI. It should be noted that CMVM started specific AML/CFT on-site inspections in 2016. Previously, AML/CFT was included as part of general supervisory on-site inspections. Since 2015, it has been mandatory that every on-site supervisory inspection should cover compliance with all AML/CFT duties. For ASF, on-

site inspections usually start with an off-site analysis of information. This may take a few days, depending on the complexity of the FI.

310. In 2015, BdP conducted a thematic review of banks from a specific high-risk jurisdiction and, in 2017, on the AML/CFT-related IT-systems of FIs. This was based on deficiencies identified during on-site and off-site. The AML division of BdP is currently shifting towards a more thematic-based inspection, based on new or emerging identified sectoral risks. Another supervision tool (inspections prior to the start of business of FIs) further strengthens BdP's risk-based supervision programme.

Table 23. **Number of AML/CFT on-site inspections per financial supervisor**

FI entity	2012	2013	2014	2015	2016
Total BdP	17	14*	10	12	9
- **Banks**	6	10	4**	6	6
- **MVTS providers**	11	3	6	6	3
Total CMVM	8	10	7	19	4
- **Investment fund management companies**	6	4	3	11	2
- **Financial intermediaries**	2	6	4	8	4
Total ASF	5	1	9	2	8
- **Insurance undertakings**	2	1	4	2	7
- **Intermediaries**	3	0	5	0	1

* One of the inspections involved a financial company.
** One of the inspected FIs was SICAM (*Sistema Integrado do Crédito Agrícola Mútuo – Integrated System of Mutual Agricultural Credit*), and the mission covered the 83 entities which are part of SICAM.
Source: BdP, CMVM and ASF

311. Based on the results of the inspections conducted and shared with assessors, it appears that the focus of BdP financial supervisory activities has been on the implementation of specific AML/CFT obligations (i.e. record-keeping, CDD obligations) until now. BdP demonstrated that its focus is shifting towards the understanding of risks and the implementation of the RBA by FIs. BdP also illustrated how the frequency, scope and depth of on-site inspections correspond to the identified risk categories of individual institutions. Assessors note the progress made by BdP over recent years to supervise the MVTS sector, which is considered a high risk sector in Portugal, more closely. BdP carried out its first horizontal round of on-site inspections in 2012. It also issued a sector-wide questionnaire to check supervised entities' compliance with AML/CFT obligations, and then conducted off-site analysis based on the results received, and followed up with on-site or off-site supervision in cases of non-compliance or identified high risk situations in the period from 2013 to Q1 2015.

Resources

312. Financial supervisors indicate that there will be a further strengthening of AML/CFT supervision in the coming years, with an increased focus on the implementation of the RBA in the sector. The level of resources allocated has an implication for the implementation of risk-based supervision among financial supervisors. Since 2011, BdP has had a dedicated AML division. It currently has 23 full-time employees working on inspections, policy and institutional issues related to AML/CFT. This division seems well-resourced, and corresponds well to the size of the supervised sector. It also appears to be well-equipped to take up AML/CFT supervisory obligations and conduct thorough AML/CFT-specific, and increasingly more targeted inspections, instead of focusing on comprehensive inspections concentrating on larger institutions only, which has been the approach over the last five years.

313. CMVM and ASF do not have dedicated AML/CFT teams, but this supervision is grouped under the (conduct) supervision departments. CMVM has set up a coordination unit (one full-time employee) since the end of 2015, facilitating cooperation and information exchange amongst different departments involved in AML/CFT supervision (including nine employees from seven departments who spend part of their time on AML/CFT-related issues). In ASF, six employees work on AML/CFT-related issues part-time. There are less resources than those of BdP but this seems to be in line with the risks identified in the sectors under its supervision. CMVM and ASF conduct some specific AML/CFT activities, but most inspections are part of generic supervisory activities. Both CMVM and ASF consider their resources to be sufficient for now. Further strengthening AML/CFT supervisory authorities will need to be supported by additional resources.

314. Financial supervisors and other competent authorities cooperate, exchange information (including on an informal basis) and share intelligence. BdP also works together with other competent authorities, such as the Prosecution service (DCIAP), as part of a formal framework. For example, in the case of the review of banks associated with a specific high-risk jurisdiction, joint inspections are performed. MoUs were also established in 2005 and 2008 to formalise cooperation between BdP, CMVM and ASF. The National Council of Financial Supervisors (CNSF) focuses on policy-related issues.[101] This applies, for example, to the methodology and implementation of the SRAs; fit and proper assessments; issuance of guidance; supervisory activities; and enforcement actions. Even if informal information sharing and the exchange of intelligence between financial supervisors seems to serve current cooperation needs, more formal channels could be developed as a means of keeping records of cooperation and ensuring continuity at an institutional level.

Supervision of DNFBPs

315. The level of AML/CFT supervision is highly uneven in the DNFBP sector. Some sectors (e.g. lawyers under the Bar Association (OA), solicitadores under the Order of solicitadores (OSAE), or tax advisors and legal professionals other than lawyers, solicitadores under ASAE) do not have any AML/CFT-focused supervision. Other sectors incorporate AML/CFT elements in their overall supervision, but only a few of them have started to incorporate risk-based elements when

[101] Banco de Portugal (nd), National Council of Financial Supervisors, www.bportugal.pt/en-US/OBancoeoEurosistema/Cooperacaoinstitucional/ConselhoNacionalSupervisoresFinanceiros/Pages/ConselhoNacionalSupervisoresFinanceiros.aspx

conducting supervision. For example, CMVM has taken steps to adopt a risk-based approach as part of its supervision of auditors.

316. Regarding other DNFBP supervisors:

- IMPIC, the real estate operator supervisor uses a database in which all obliged entities in the real estate sector have to report transactions biannually ("art. 34" reports in the MOTRIM database, see IO 4). According to IMPIC, this database includes indicators that are relevant for ML/TF and helps IMPIC perform searches and evaluate transactions on a monthly basis to determine any irregularities in transactions. Upon receiving positive hits from the system, and depending on circumstances of the cases, IMPIC then adopts targeted supervisory actions (such as specific thematic inspections of entities) or seeks clarification of specific transactions (e.g. persons involved, means of payment, identification procedures, etc.). During the on-site visit IMPIC did not demonstrate that the application of this approach enabled it to identify ML/TF deficiencies and/or to conduct supervision based on this tool. Furthermore, IMPIC recognises that it cannot appropriately use and process the MOTRIM database information (e.g. ongoing monitoring, cross-check with other databases) to support its supervisory activities, mainly due to resource constraints.[102]

- ASAE, the high-value goods dealer supervisor, has identified certain higher risk sectors, based on the NRA and the SRA (e.g. jewellery, motor vehicle traders, art galleries and auctioneers). In addition, it mentioned different risk criteria, such as geographical area, business activity, goods or services profile (e.g. luxury brands are targeted as privileged trades) and client profile (e.g. nationality, consumption behaviour). ASAE indicated that the inspection plan for 2014 places a special emphasis on AML/CFT functions for the first time. This includes the focus and frequency of general inspections and takes into account the complaints received against particular businesses; intelligence gathered; information coming from other authorities; etc. to determine if supervision needs to be increased. However, ASAE did not demonstrate during the on-site visit that the inspection plan has been fully implemented, particularly given its limited human resources available and the large number of entities and activities under its supervision.

317. Assessors note that the application of these approaches by ASAE and IMPIC is in progress. They were not provided with sufficient or relevant information on the findings of the inspections and supervisory activities conducted on this basis. They are confident that these risk-based approaches (implementation commenced in April 2017), can produce positive results for ML/TF prevention and mitigation. However, this is predicated on the important condition that, both, IMPIC and ASAE receive relevant resources.

318. In the gambling sector, there is no risk-based AML/CFT supervision system. For casinos, the supervisor, SRIJ, relies on tools currently used for general supervision purposes to carry out AML/CFT supervision. This includes (i) on-site SRIJ ground inspection staff stationed on a permanent, daily basis, as well as (ii) computer monitoring systems and CCTV. Considering the amount of gaming activities in Portugal and the general focus of these tools, this does not appear to be an effective and efficient supervision method for AML/CFT purposes.

[102] NRA.Portugal

319. Regarding online gambling, there are systems in place to supervise the games, themselves, as well as the financial transactions associated with them. Safeguards are in place for the identification of parties involved and for the traceability of gambling activities and funding to some extent. However, there was no demonstration of how SRIJ makes use of such information to determine the nature and level of risk, as well as for the definition of its supervisory programme.

320. With regards to registrars, the supervisor, the Institute of Registries and Notary (IRN), conducts permanent supervision of registered entities (436 services comprising 596 Registrars or assimilated in 2016) with a team of 25 auditors, and both on-site and off-site supervision. It has direct, remote access to the database where all transactions are recorded. Applying more enhanced supervision could be envisaged in cases where certain red flags are raised, such as delays in the formalisation of certain acts or tax irregularities. In cases that trigger any red flag indicators, IRN may step up supervision. This includes conducting monthly, face-to-face monitoring or audit action to investigate violations.

321. Concerning notaries, IRN has initiated an AML/CFT-focused inspection programme since 2016, and has started 20 inspections alone since 2017. However, it does not specify how ML/TF risks are taken into account as part of this programme. IRN has also published a list of risk indicators applying to both registrars and notaries.

322. Recently, CMVM has taken steps to adopt a risk-based approach in its supervision of auditors. At the moment of the on-site, CMVM was circulating a questionnaire to public-interest entities (PIEs) and auditors (see Chapter 1) to help categorise the risks of these professionals, and better allocate resources for supervision.

Remedial actions and effective, proportionate, and dissuasive sanctions

Financial sector supervision

323. Financial supervisors have a broad range of supervisory and enforcement measures at their disposal, ranging from warnings to revoking of licenses and monetary fines. Corrective measures in the financial sector include the issuance of recommendations aimed at improving the mechanisms and procedures of ML/TF prevention; the issuance of injunctions, imposing the termination of irregular practices; or imposing the adoption of necessary procedures to avoid future occurrences and restricting or limiting the activities and/or operations of FIs. Financial supervisors can also withdraw the authorisation of FIs, due to serious or reoccurring infringements of legal and/or regulatory provisions that can lead to administrative proceedings. There is no written sanctions policy that describes specific corrective and sanctions measures to be taken for specific deficiencies identified, but any infringement and inspection reports are always submitted to enforcement units for further assessment. All measures have been used by BdP, and some measures have been used by CMVM (CMVM has not revoked licences or issued injunctions). ASF has only issued corrective measures. The injunctions and recommendations issued by financial supervisors seem to be applied by supervised entities in an adequate way.

324. Especially for BdP, the number of injunctions and recommendations has sharply increased since 2015 due to more intrusive supervisory actions. In 2016, one institution was issued 53 injunctions by BdP for major shortcomings. BdP was able to provide case examples of cooperation with public prosecutors in the context of sanctions proceedings. BdP has also taken action (fines) against natural persons within an FI for infractions. For BdP, a significant number of

administrative proceedings are still ongoing, which makes it difficult to conclude the extent to which sanctions applied in practice are effective, proportionate and dissuasive.

Table 24. A**ML/CFT remedial actions and sanctions against FIs**

	2012	2013	2014	2015	2016
BdP					
- **injunctions**	15	9	11	176	106
- **recommendations**	16	14	7	36	29
- **withdrawals of authorisation**	0	5	0	1	4
- **administrative proceedings**	22	71	24	21	36
- **number of fines**	5	8	8	3	5
- **amount of fines total (EUR)**	205 750	293 500	140 000	1 000 000	103 500
- **amount of fines legal persons (EUR)**	97 750	222 500	140 000	475 000	95 500
- **amount of fines natural persons (EUR)**	108 000	71 000	0	525 000	8 000
- **number of admonitions**	0	55	16	1	12
CMVM					
- **injunctions**	0	0	0	0	0
- **recommendations**	30	30	27	41	38
- **withdrawals of authorisation**	0	0	0	0	0
- **administrative proceedings**	5	2	0	7	8
- **number of fines**	7	0	2	0	8
- **amount of fines (EUR)**	505 000	0	1 540 000	0	900 000
- **number of admonitions**	0	0	0	0	0
ASF					
- **injunctions**	0	0	0	0	0
- **recommendations**	1	1	1	3	3
- **warning notices**	2	0	0	1	0
- **withdrawals of authorisation**	0	0	0	0	0
- **administrative proceedings**	0	0	0	0	0
- **amount of fines (EUR)**	0	0	0	0	0
- **number of admonitions**	0	0	0	0	0

Source: BdP, CMVM and ASF

Supervision of DNFBPs

325. DNFBP supervisors also have a broad range of corrective and enforcement measures at their disposal, ranging from warnings to the revoking of licenses and monetary fines. However, given that AML/CFT supervision is still limited in a number of sectors, very few corrective actions or sanctions have been taken. In any case, the sanctions which have been applied are too low. This is explained by the nature of the deficiencies most often identified under supervision. For example, in the case of IMPIC, deficiencies have all been related to late or non-submission of reports to MOTRIM (see IO.4). The increase in the number of real estate transactions communicated to IMPIC in the MOTRIM database could nevertheless partly result from these sanctions. Other widely used corrective measures in the real estate sector include the issuance of recommendations aimed at improving the mechanisms and procedures of ML/TF prevention, and to a lesser extent, the issuance of admonitions (also due to late or non-submission of reports). As for ASAE, deficiencies have mainly been related to the failure to comply with identification requirements and obligations to monitor for and report suspicious transactions.

326. The low figures make it difficult to conclude the extent to which sanctions applied in practice are effective, proportionate and dissuasive.

Table 25. **AML/CFT remedial actions and sanctions against DNFBPs**

IMPIC	2012	2013	2014	2015	2016[1]
Recommendations issued to correct or prevent breaches	0	0	134	817	480
Administrative procedures started	7	81	155	283	298
Convictions applied	0	0	13	29	31
Admonitions issued	0	0	0	10	22
Amount of fines (EUR)	0	0	7 500	59 000	20 000
ASAE	**2012**	**2013**	**2014**	**2015**	**2016[2]**
Number of infringements/administrative proceedings	0	0	2	2	5
Amount of fines (EUR)	0	16 000[3]	0	0	5 000
CMVM*	**2012**	**2013**	**2014**	**2015**	**2016**
Supervisions to auditors including evaluation of AML/CFT procedures	N/A	N/A	N/A	N/A	4

1. First half only.
2. First half only.
3. Administrative proceeding was initiated in 2010.
* CMVM has taken up its supervisory role in relation to auditors from 1 January 2016 (see Chapter 1).
Source: IMPIC, ASAE and CMVM

Impact of supervisory actions on compliance

Financial sector supervision

327. Financial supervisors perform follow-up inspections after their supervisory activities (both on-site and off-site). In general, FIs seem to take up the injunctions and recommendations issued by the supervisor. The time between an inspection and subsequent follow-up actions, including supervisory actions, when deficiencies identified are not well or fully addressed could be decreased. However, ASF indicates that it has limited resources to take swift action. When FIs do not comply with recommendations, supervisors can take additional corrective and sanctions measures.

328. Given the fact that AML/CFT supervision is still developing and will be further strengthened amongst financial supervisory authorities, it is difficult to determine the impact of supervision on the level of compliance in the sector. BdP has just finished its 5-year cycle of AML/CFT supervision, and the extent to which FIs having repeating AML/CFT identified deficiencies are yet be determined.

329. Based on initial findings and the cross-cutting analysis of off-site inspection reports by BdP, the initial trend has been an increase in FIs' understanding and level of compliance. FIs are aware of supervisory activities taking place within other FIs, especially in the insurance sector. Supervisory actions are believed to have a cascading effect on other FIs. The number of STRs filed is in line with supervisory expectations and has been increasing in recent years (see IO.4), which could be attributed to supervisory actions taken within the sector. However, for some sectors under the supervision of CMVM and ASF, the number of STRs is still low or non-existent. Supervisors attribute this to a number of sector-specific factors. For instance, in the case of the insurance sector, one of the potential reasons could be that insurance companies are filing STRs via the banking institution of the financial group to which they belong (see IO.4). As for the securities sector, this may be due to the relatively smaller scale of some investment services and relatively low risks in certain investment products. In any case, cross-cutting, supervisory analysis of the reporting policies and processes of FIs could help to improve the situation.

Supervision of DNFBPs

330. Given the low level of AML/CFT supervision, its impact on the level of compliance in this sector is also very limited, except for improvements noted in the article 34 reporting obligation for the real estate sector operators (MOTRIM transactions, see IO.4).

331. The number of STRs submitted by the entities, themselves, to FIU/DCIAP is poor within the non-financial sectors (with the exception of registrars). This could be improved through more focused supervision.

Promoting a clear understanding of AML/CTF obligations and ML/TF risks

332. Financial supervisors use a variety of means to promote the understanding of AML/CFT obligations amongst FIs. Among financial supervisors, BdP is more proactive in making use of formal channels to foster the understanding of FIs, given BdP's available resources and identified risk levels. Financial supervisors have issued AML/CFT regulations, and BdP has issued additional written guidance. In addition, guidance is provided through financial supervisors' websites and issuance of circulars, which are sent to all FIs and BdP has organised a number of training sessions and seminars for the sector. BdP also has a dedicated AML/CFT email address, which is frequently used by FIs,

regarding specific questions on AML/CFT obligations. On-site inspections are used to a limited extent, given the relatively low number of inspections, and off-site supervisory activities are used as a means to provide guidance and promote a clear understanding of AML/CFT obligations, as well. CMVM has also developed an AML/CFT website[103] and undertaken information sessions with obliged entities.

333. However, the level of understanding of AML/CFT obligations in the financial sector is not consistent. The feedback received from FIs met is that smaller FIs and non-bank FIs seem to need more specific and practical guidance with respect to the implementation of AML/CFT requirements. The MVTS sector, for example, receives general guidance that is meant for the banking sector, even though the activities and risks are different and requires a different focus and means of implementation. BdP recognises that there is room for further differentiation in this regard, and indicates that specific MVTS information was provided at the occasion of the dissemination of the results of the sectoral risk assessment, with a focus on the vulnerabilities of MVTS providers, as well as guidance on preventive measures to be adopted.

334. Some DNFBP supervisors have also issued written guidance, such as the SRIJ. Many supervisors are strongly convinced that training is key to raising awareness and further educating obliged entities on their AML/CFT obligations. Most supervisors organise training sessions, at least yearly, and sometimes with the participation of FIU representatives (e.g. training sessions for notaries). Some believe that compulsory training programmes would be the best way to ensure full awareness of AML/CFT obligations, especially for higher risk sectors.

335. Other forms of interaction, during which there is more face-to-face contact between FIs /DNFBPs and their supervisor(s), have also been mentioned by different sectors as a means of improving outreach activities. In addition, good and bad practices identified through specific on-site inspections and thematic reviews could be useful for FIs and DNFBPs that have not been included as part of specific supervisory activities (given the limited number of on-site visits that take place on a yearly basis).

Overall conclusions on IO.3

336. The level, scope and sophistication of the application of risk-based supervision are unevenly distributed amongst different supervisors in Portugal. This is mainly due to an uneven level of understanding of ML/TF risks and the availability of resources for conducting AML/CFT-specific supervision. This issue is more acute for the DNFBP sectors.

337. **Portugal has achieved a moderate level of effectiveness for IO.3.**

[103] CMVM (nd), Branqueamento de capitais e financiamento do terrorismo, www.cmvm.pt/pt/CMVM/branqueamento/Pages/bcft_home.aspx

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

- The various websites provided by public authorities make general information on legal persons publicly available. This is not the case for information concerning the different categories of legal arrangements existing in Portugal.
- The NRA does include certain crucial elements, highlighting indicators of ML/TF risks associated with legal entities, but is not a comprehensive assessment, including in respect to foreign trusts operating in the Madeira Free Trade Zone.
- Measures are in place to ensure the transparency of basic information on legal persons and arrangements created in Portugal. Measures have been taken to remove dormant companies from public registers.
- Information on beneficial ownership is mainly available from FIs. However, the lack of understanding of beneficial ownership requirements by some FIs creates some concerns regarding the collection of this information.
- The application of sanctions available for non-compliance with information and transparency obligations regarding legal persons and arrangements does not appear to be effective or dissuasive.

Recommended Actions

Portugal should

- ensure that information on all types of legal arrangements are available to the public.
- conduct a full ML/TF risk assessment of all legal persons and arrangements in Portugal, and collect statistics, examples and typologies of ML/TF abuse and misuse.
- review existing AML/CFT measures applicable to legal persons and arrangements in light of the findings and conclusions of the risk assessment conducted.
- ensure that the concept of beneficial ownership is fully understood by all parties involved in ML/TF prevention, especially private sector entities.
- ensure early introduction of the central register of beneficial ownership being set-up.
- implement measures to strengthen the accuracy of information in public registries, including the material verification and automatic update of information available, and measures to strengthen the application of an efficient sanction regime.

338. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The recommendations relevant for the assessment of effectiveness under this section are R.24-25.[104]

Immediate Outcome 5 (Legal Persons and Arrangements)

Public availability of information on the creation and types of legal persons and arrangements

339. Information on the creation and types of legal persons (including legal provisions, incorporation process, etc.) is available on various websites (e.g. Entrepreneur's Desk of the Citizen's Portal[105], the Entrepreneur Manual[106], the Commercial Registry[107], On-the-Spot Firm[108] (*Empresa na Hora*), National Registry of Legal Persons (*Registos Nacional de Pessoas Colectivas* - RNPC) and the Institute of Registries and Notary (IRN)[109]). Some of these websites (e.g. the Citizen's Portal and IRN's website) also specify the information required and procedures involved (e.g. documentation and specific information required) for making changes to legal information after incorporation. There is no central point of access to give simple and user-friendly guidance to the general public on how to create legal persons, or facilitate the understanding of the specific features of each type of legal person.

340. There is no general information on the creation and types of legal arrangements (as defined in art. 2 (4) of the AML/CFT Law[110]) available in the public domain.

341. In the Madeira Free Trade Zone (FTZ, also see Chapter 1), Portugal implements a number of tax-related incentives, such as reduced corporate tax rates to support the development of the local economy. It is also the only area in the country where trusts that have been legally constituted under foreign laws, with terms exceeding one year and whose settlor(s) are non-residents in Portugal, can be recognised and authorised to perform business activities ("foreign trusts"). The Portuguese legal framework applicable to foreign trusts, which includes basic requirements regarding incorporation, registration and operation, is publicly available.[111]

Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

342. The National Risk Assessment (NRA) identifies some vulnerabilities of legal entities created in the country, such as the potential misuse of bearer shares, the lack of information on beneficial

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104 The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum's respective methodologies, objectives and scope of the standards.

105 Portal do cidadão, http://bde.portaldocidadao.pt/evo/landingpage.aspx

106 www.iapmei.pt/PRODUTOS-E-SERVICOS/Empreendedorismo-Inovacao/Empreendedorismo/Guia-pratico-do-Empreendedor.aspx

107 http://bde.portaldocidadao.pt/evo/landingpage.aspx

108 "On-the-spot firm" is an initiative to allow for the creation of companies at a one-stop office in a single day. Applicants are no long required to obtain, in advance, a certificate of company admissibility from RNPC and sign a public deed, prior to the incorporation process. Upon providing the necessary information, applicants receive a memorandum and articles of association, as well as an extract of their entry into the Commercial Registry on that same day. Empresa ña hora, On the spot firm, www.empresanahora.pt/ENH/sections/EN_homepage.html

109 Instituto dos registos e do notariado, www.irn.mj.pt/sections/empresas

110 Under art. 2(4) of the AML/CFT Law, "legal arrangements" are defined as "*autonomous property, such as condominium based building, claimed but undistributed inheritances, and trusts governed by foreign law, where and under the terms recognised by Portuguese Law.*"

111 International Business Centre of Madeira, www.ibc-madeira.com/en/ibc-legislation.html

ownership, and the potential use of foundations and other NPOs for ML/TF purposes. During on-site visit, law enforcement agencies such as prosecutors (DCIAP) identified ML cases that involved the use of front companies, straw persons or foreign legal arrangements whose beneficial owners were hidden.

343. Some obliged entities also mentioned that they categorise some legal entities, such as foundations and one-person companies, as high risk entities. Other private sector institutions indicated that registration in the Madeira FTZ was considered a high risk indicator, due to a possible lack of transparency.

344. Regarding Madeira FTZ foreign trusts, public authorities explained that their exposure to ML/TF risks is considered low since those entities are submitted to transparency measures (see below) through registration in the dedicated FTZ Registry, and are subject to the same AML/CFT safeguards and oversight as other legal arrangements that are created in mainland Portugal. Besides, there are only a limited number of registered foreign trusts in the FTZ (currently 47 active foreign trusts). According to Portuguese authorities, the main reason for the low presence of foreign trusts is that, following the 2011 termination of the preferential tax regime for financial institutions in Madeira, foreign trusts registered in Madeira, which were customers of these "departing" FIs, have left the FTZ.

345. Assessors believe that there is a need for Portugal to conduct a comprehensive ML/TF risk assessment of legal entities (legal persons and arrangements) in the country, particularly given the indicators of ML/TF vulnerabilities highlighted in the NRA and ML cases involving such entities. A comprehensive assessment could also remove any possible misperception associated with some of these entities by private stakeholders as being high-risk. Reports on typologies, including scenarios and mechanisms, and the extent to which legal entities and "gatekeepers" involved in the formation and administration of legal persons and foreign trusts have already been misused for ML/TF purposes would be a valuable input into Portugal's understanding of risks. Overall, the development of such a comprehensive assessment would contribute to improving the public and private sectors' understanding of such risks in the country.

346. Regarding the legal persons which are part of the NPO sector (e.g. foundations and associations), authorities have not yet undertaken a comprehensive review to identify the subset of NPOs that are particularly at risk of being abused for TF purposes (see IOs 1 and 10).

Mitigating measures to prevent the misuse of legal persons and arrangements

347. As Portugal has not yet conducted a full assessment of the ML/TF risks of all types of legal entities, it is difficult to determine whether the country has taken appropriate and proportionate measures to mitigate the specific vulnerabilities associated with them.

348. Nevertheless, Portuguese authorities did implement some measures to dissuade criminals from using legal persons and arrangements for ML/TF purposes. For example, the banking supervisor, BdP, has included specific features of legal persons and arrangements as examples of potentially high risk factors (Annex I.A 2. to 4. BdP Notice 5/2013), and encourages FIs to apply enhanced due diligence, depending on the particular circumstances of each customer's case. FIs closely follow this guidance.

349. Some basic transparency measures are applicable to all legal entities in Portugal, including in the Madeira FTZ, which help prevent their misuse. Specifically, the incorporation process of all

types of legal entities involve registrars (i.e. public officers responsible for maintaining the National Registry of Legal Persons (RNPC) and Commercial Registry, see Chapter 1) and, in some cases, notaries. These intermediaries are subject to the AML/CFT regime, thus requiring the identification and verification of a number of information. AML/CFT supervision of intermediaries is somewhat limited (see IO.3), but registrars regularly report STRs (460 STRs in 2016, a 19% increase as compared to 2015), and are actually the entities which report the most amongst all DNFBPs (see IO.4). Assessors were provided with examples of STRs filed by registrars in relation to the operations of legal entities that successfully led to ML investigations.

350. Basic information included in the registries is publicly available, such as ownership; identity information; the name and purposes of a business; capital amount; operating address; mergers; and information related to the winding-up and liquidation of legal entities. Additional information, such as: company by-laws; the management and supervisory bodies and their members; the identification of shareholders and the amount of capital they hold; and annual accounts of the companies are also available on the online Commercial Registry. Portuguese authorities also require legal entities to report any changes to the aforementioned information (within a two-month period) and the updated information is subsequently reflected in the online registry. Various online databases that contain legal information have also been set up.[112] In particular, transfers of shares when this involves limited liability companies (LLCs) need to be executed by means of a notarial deed and then registered with the Commercial Registry.[113] They also need to be updated in the financial accounts of the companies, themselves. Share transfers of joint-stock companies (SAs), partnership limited by shares (PLSs) and European companies (SEs) also need to be registered in the Commercial Registry.

351. In addition, foundations are required to be set up by notaries and registered with the National Registry of Legal Persons, thereby bringing transparency into the process and contributing to the prevention of potential misuse. Information on founders, members of the foundation's administration board, management board, supervisory board and beneficiaries (if any) (including the name and nationality of non-national members) is also made available on the website of the Ministry of Justice[114]. Foundations are also required to provide relevant information on their websites (e.g. name, date and information about the recognition act and the date of disclosure in the official gazette).

352. As a separate measure to prevent and reduce the number of dormant companies, the Tax and Customs Authority (AT) and the Commercial Registry have taken an annual initiative since 2014 to de-register, dissolve and liquidate companies, as well as all types of legal persons that had no indication of activity. The criteria used include, inter alia, the lack of publication of annual accounts or submission of tax returns for two consecutive years. The unregistering procedure is reported to IRN for the subsequent application of the Dissolution and Termination of Liquidation Legal Regime (RJPADLEC), leading to the cancellation of the register. At the initiative of AT, 10 147 legal persons were unregistered in 2015 and 2 649 in 2016, out of a total of 465 685 and 467 736 legal persons registered in Portugal.

[112] Such as Central Register of Legal Entities, Commercial Registry Integrated System, Annual Accounts Database, Information System of the Portuguese Classification of Economic Activities.
[113] Art. 3(1)(c) and 15 of the Commercial Registration Code; art. 228, 242-A and 242-B of the Commercial Company Code.
[114] Portal de Justica, http://publicacoes.mj.pt/Pesquisa.aspx

353. Regarding foreign trusts in the Madeira FTZ, basic information (such as the name and identification of the trust with the indication of the trust object, name and registered office of the trustee), and other information on the trust deed, have to be registered with the dedicated Commercial Registry (see R. 25 in the TC Annex). Information relating to settlors and beneficiaries has to be included in trust deeds, but access to this data is restricted (see below). There are also obligations to publish this information in the Official Journal of the Autonomous Region of Madeira.[115] Similar publication requirements apply at the time of incorporation, modification in the act of incorporation and dissolution of the trust.[116] Basic transparency measures are therefore in place.

354. In regards to bearer shares, these are used in only a limited portion of joint-stock companies (SAs) in Portugal (representing 7.5% of the total number of companies, see Chapter 1). Portugal has adopted certain safeguards, such as the compulsory disclosure of the issuer of ownership and identity information of the subscribers of bearer shares above certain thresholds or among certain class of shareholders, as well as compulsory notification of subsequent transfers to the AT (see c. 24.11 in the TC Annex) to mitigate potential misuse. Law 15/2017 enacted after the on-site visit will terminate the use of bearer shares in Portugal by November 2017 (see Chapter 1 and above).

Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

355. Basic information on legal persons (both civil and commercial nature) filed in the National Registry of Legal Entities (RNPC) and Commercial Registry is available publicly, including to competent authorities (supervisors of FIs and DNFBPs, as well as LEAs). The information registered is validated during the registration process by registrars to some extent. Officers at the registrars conduct legal verification of the information provided by applicants (e.g. the identity of founders of a foundation). However, they do not check the role and status of the designated person(s) or entities vis-à-vis the legal entity (e.g. check if the applicant is actually the founder or if the person designated as the beneficial owner is actually the beneficial owner), even though the provision of false declaration before a registrar constitutes a criminal offence. Registrars also raise queries in case of doubts and reject registration if such doubts were not dispelled.

356. Updates to certain basic information (e.g. identity of original SA or LLC types of company shareholders, see Chapter 1) are required to be sent to the Commercial Registry within a two-month period of changes taking place. The mechanism of transferring SA or LLC shares (quotas) through a written agreement process generally takes two months. This means that competent authorities might not always have the most up-to-date, basic information from the Registry. In addition, the absence of an express obligation to inform the Commercial Registry in the case of a transfer of the ownership of shares of SAs is also an impediment to competent authorities getting access to the most up-to-date information on an ongoing basis.

357. As for beneficial ownership information, the upcoming establishment of a new central beneficial owner registry intends to facilitate the timely access of competent authorities to

115 JORAM (nd), Jornal Oficial da Região Autónoma da Madeira, www.gov-madeira.pt/joram/
116 Art. 2, 6 (3) and 9 of Decree-Law 149/94.

comprehensive, reliable and updated information on beneficial owners[117]. In the meantime, the Commercial Registry contains information on legal ownership that does not always coincide with beneficial ownership information. Separately, Banco de Portugal (BdP) maintains its own automated registry system of authorised institutions, which includes beneficial ownership-related information (such as property and control structure, composition of share capital and qualifying holdings, identity of beneficial owners, etc.). This data is based on corporate information that FIs subject to its control are legally requested to provide. BdP also reported cases detected upon inspection, where the BO could be identified through the reconstruction of financial flows between various legal persons, and which led to STRs being filed. BdP information is made available to LEAs as appropriate. In addition, LEAs get access to the database of bank accounts held by BdP for investigation purposes, and request that FIs concerned furnish account information to determine beneficial ownership information.[118] LEAs also go directly to the relevant FI if and when they know which institution the suspected person or legal entity has opened an account with.

358. However, assessors have noticed during the on-site interviews that a number of obliged entities, including FIs, do not seem to have a solid understanding of beneficial ownership requirements (see IO.4). This raises concerns regarding the accuracy of the beneficial ownership information collected and recorded by obliged entities. Assessors take note that BdP does not consider the understanding of BO requirements as a major deficiency of its supervised sector. Given that this information collected seems to be a central source of information on the beneficial ownership information of legal persons for competent authorities, improvements need to be brought to the current system in Portugal.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements

359. Basic information on foreign trusts registered in the Madeira FTZ is available from the public FTZ Registry, as previously explained (see above). However, information that identifies the settlors and beneficiaries of such trusts operating in the Madeira FTZ is included in trust deeds only. This information is legally subject to secrecy and may only be disclosed, including to competent authorities, by way of a court decision (see c.25.4 in the TC Annex). Authorities met indicated during on-site visit that such request has never occurred in practice.

360. Regarding beneficial ownership information, authorities have not mentioned any specific difficulties in obtaining beneficial ownership information in relation to Madeira FTZ-based entities, except when intermediate legal entities are located in jurisdictions which are not fully cooperative. Similar means as those identified for legal persons are available. Thus, competent authorities seem to overly rely on beneficial ownership information collected by FIs with which foreign trusts develop relationships (see above). Assessors have similar reservations, as those expressed on legal persons, concerning the lack of understanding of the extent of the concept of beneficial ownership (see above).

[117] See Chapter 1, a draft law proposal for the setting up of a beneficial owner register was adopted by the Council of Ministers in April 2017 and was being discussed by the Parliament at the time of the on-site.
[118] Banco de Portugal informed that in 2015, there were 3 402 requests for access to the account database from the FIU, the judicial and law enforcement authorities, and 3 675 in 2016. These numbers do not single out the requests for beneficial ownership information.

Effectiveness, proportionality and dissuasivness of sanctions

361. To ensure the timely provision of information to the National Registry of Legal Persons, registration fees are doubled for entities that do not submit the information required by the deadline. However, Portugal has not applied this tool in practice, as there have been no cases.

362. Failure to comply with the mandatory registration obligation with the Commercial Registry, the provision of accounting requirements, or other registration requirements within the designated time leads to civil sanctions, as the facts/events subject to mandatory registration will not produce effects for third parties until they have been registered. Fines ("administrative fees") are also applicable (see Table 26 below)[119]. The average fine was EUR 296 in 2016. Assessors acknowledge the severity of the sanctions regime, based on civil sanctions, but they question the overall dissuasiveness of the sanctions regime, given the high number of cases that has almost doubled since 2013. Sanctions applicable do not extend to civil or administrative penalties for legal entities' representatives that have failed to communicate relevant changes to the Commercial Registry (see c.24.13 in the TC Annex).

Table 26. **Fines applied for failure to comply with registration obligations (Commercial Registry)**

Year	Case number	Administrative fees (EUR)
2013	5 209	1 600 202.88
2014	8 456	2 509 233.53
2015	8 951	2 690 034.46
2016	9 507	2 816 177.21

Source: IRN

363. Administrative fines can also be imposed on foreign trusts in the Madeira FTZ in the case of failure to comply with registration-related obligations.[120] However, Portugal has not applied any fines, thus far, as there have been no breaches.

364. The dissolution and liquidation of commercial entities, as a result of an entity's failure to submit accounting statements for two consecutive years, is considered an effective tool to ensure transparency of the commercial entities, thereby contributing to the prevention of misuse (see above).

365. Portuguese authorities indicate that other sanctions include tax sanctions (e.g. for lack of presentation of the declaration for the transmission of shares by both the transferor and the transferee to the tax administration, see c.24.13 in the TC Annex). Such absence of declaration is identified through tax audits, but the number of sanctions taken in this field is limited.[121]

[119] Art.17 (1) of the Commercial Registry Code.
[120] Art 4 (1) Decree-Law 149/94.
[121] Portugal informed the assessment team that a process for the automatic initiation of an infraction proceeding is being developed and implemented, based on the matching of information provided by the transferor and the transferee of shares.

Table 27. **Sanctions taken for failure to declare transfers of shares**

	2013	2014	2015	2016	Total
Number of infraction proceedings	9	5	22	2	38
Administrative penalties (EUR)	861	900	2 058	750	4 569

Source: AT

Overall conclusions on IO.5

366. Portugal has not yet conducted a full review of the ML/TF risks associated with legal persons and arrangements created in Portugal, including foreign trusts operating in the Madeira FTZ. Basic transparency requirements of legal persons and arrangements are effectively implemented, but access to all relevant parties involved in trusts in the Madeira FTZ could be a concern. There are also some reservations regarding the accuracy of beneficial ownership information available. The level of sanctions applied by competent authorities for the failure to comply with reporting obligations does not amount to a dissuasive regime.

367. **Portugal has achieved a moderate level of effectiveness for IO.5.**

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

- International cooperation between Portuguese authorities and foreign counterparts is proactive, collaborative, and provided both upon request and spontaneously, with priority given to terrorism and TF-related requests.
- In general, cooperation amongst Portuguese-speaking countries is well developed, and information exchange with EU Members is a priority for Portuguese authorities.
- MLA is used by authorities, together with other forms of cooperation, such as informal cooperation and the use of liaison officers, which are complementary means of obtaining and exchanging information.
- Overall, Portugal provides good quality MLA and extradition across a range of international requests.
- Despite not having a broad network of LEA agents posted abroad, authorities use every formal and informal means at their disposal to facilitate cooperation with foreign counterparts in a constructive manner.

Recommended Actions

Portugal should:

- ensure that the full range of international cooperation channels is used, including for MLA and extradition, to combat ML and TF.
- maintain more comprehensive statistics on international cooperation, including specific statistics for ML/TF-related cases, and further develop IT tools to streamline the collection of relevant statistics, including statistics on the underlying criminality and the time taken to respond to requests.
- continue to establish appropriate bilateral and multilateral mechanisms to facilitate the exchange of information and other cooperation.

368. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40.

Immediate Outcome 2 (International Cooperation)

Providing constructive and timely MLA and extradition

369. The Prosecutor General's Office (PGR), as the central authority for international judicial cooperation in criminal matters, is the competent authority to provide timely assistance for MLA and

extradition requests, or forward incoming requests to the appropriate agency (see below). Portuguese authorities often provide MLA and extradition across a range of international cooperation requests.

Table 28. **Types of cooperation (per annum)**

Cooperation	Details	2011	2012	2013	2014	2015	2016	Total
MLA	Request sent	25	4	4	14	5	14	66
	Refused request sent	8	-	-	-	-	-	8
	Received	9	12	13	16	14	44	108
	Refused request received	-	-	-	-	1	-	1
European Arrest Warrant	Received	16	17	19	25	8	6	91
	Sent	1	-	-	-	-	-	1
	Refused request sent	3	2	2	3	2	1	13
Total		**62**	**35**	**38**	**58**	**30**	**65**	**288**

Source: Portuguese authorities

370. FATF jurisdictions that provided input related to the provision of MLA by Portuguese authorities for ML/TF-related cases reported, in general, a good level of cooperation and satisfactory responses from Portuguese authorities, including on the timeliness of responses. EU countries in near proximity to Portugal interact regularly with Portuguese authorities. Spain is a key partner for incoming MLA requests, specifically through the exchange of letters rogatory. Cooperation is especially intense along the northern border (*Minho* and *Galicia* provinces) between Portugal and Spain. Similarly, in terms of the exchange of European Arrest Warrants, French-Portuguese cooperation is high, with 1 004 European Arrest Warrants exchanged during a ten-year period (2004-2014).

371. Existing statistics on MLA and extradition are not comprehensive. This includes statistics on the number of MLA and extradition requests related specifically to ML/TF; the types of predicate offences underlying MLA requests in ML cases; etc. This may compromise the ability of Portuguese authorities to manage incoming (and outgoing) requests.

372. Portuguese authorities note that MLA is normally a laborious process for exchanging information. The PGR has disseminated handbooks on how to issue European warrants to relevant bodies in the country in order to try to facilitate the process. Complementary channels are, consequently, often used by Portuguese authorities for obtaining and exchanging information through other means, such as informal channels or the use of liaison officers.

Seeking timely legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements

373. Portugal, through the PGR's Central Department for Criminal Investigation and Prosecution (DCIAP), uses MLA channels for AML purposes, specifically in relation to cases with transnational elements and cases involving foreign PEPs. Currently, there are no cases of formal judicial cooperation in matters related to TF.

Table 29. **Outgoing MLA requests by DCIAP related to ML investigations (2016)**

Requested Country	Predicate Offence
Brazil	Aggravated Fraud
China	Aggravated Fraud
Switzerland	Aggravated Fraud
Spain	Fraud and embezzlement regarding public subsidies
Italy	Stand-alone ML
Spain	Stand-alone ML
China	Fraud
Switzerland	Corruption
Spain	Corruption
Germany	Fraud and embezzlement regarding public subsidies

Source: DCIAP

374. During the on-site, Portuguese authorities provided a specific, sensitive case example that illustrates the use of European Arrest Warrants, in conjunction with MLA requests, in order to take swift action (under 48 hours) for search and seizure operations. Likewise, MLA requests played a significant role in numerous other cases relating to matters of international cooperation for AML/CFT purposes (see *Kalunga* case – IO.9).

Seeking and providing other forms of international cooperation for AML/CFT purposes

375. Authorities use a wide variety of other forms of international cooperation for AML/CFT purposes. This includes the exchange of administrative, supervisory and intelligence information with international partners.

376. Concerning administrative assistance, the Tax and Customs Authority (AT) is well positioned to exchange information with its partners. Portugal is a signatory of 70 tax conventions and 7 tax information exchange agreements, as of October 2016. On this basis, and through other relevant instruments[122], administrative cooperation and assistance in their various forms occur on a regular basis. This includes cases related to ML/TF.

[122] E.g. Bilateral or Multilateral Convention on Mutual Administrative Assistance in Tax, and other Regulatory Matters; EU Directives on administrative cooperation in taxation and regulatory fields; and the EU Regulation on administrative cooperation and combating fraud in the field of VAT.

377. In terms of the exchange of information for supervisory purposes for the banking sector, Banco de Portugal (BdP) has entered into numerous Memoranda of Understanding (MoU) with foreign supervisory authorities, including several key, strategic partners. This includes, for example, Spain, France, the UK, Brazil, Angola and Macao, China. Authorities note that 8 other protocols are currently being negotiated with international partners including China and the US.

378. Within the scope of its supervisory functions over financial instruments, the supervisory body, CMVM, is competent for exchanging information with counterparts, including beneficial ownership information. CMVM is a signatory of the IOSCO MMoU since 2002, as well as the ESMA MMoU at an EU level. Key partners include Spain, France, the UK, Germany, Switzerland and the US. Between 2010 and 2015, 78% of cases in which CMVM supplied information involved another EU jurisdiction (primarily, the UK). Between 2008 and 2013, 261 international requests for assistance were made, targeting 339 different investors, including legal entities and entities having no legal personality. In regard to cases of suspected market abuse and potentially unauthorised financial intermediation, the CMVM made 174 requests for international assistance during the period 2014 – 2015.

Table 30. **International cooperation requests (BdP and CMVM)**

Year		2012	2013	2014	2015	2016
BdP*	received	44	36	32	30	18
	sent	N/A	N/A	N/A	≥152	234
CMVM **(received and sent)**		74	69	115	98	67

* Statistics provided only relate to requests in the context of suitability assessments of statutory bodies.
Source: BdP and CMVM

379. Both authorities indicate that cooperation is regular, which is supported by the general statistics provided. However, no ML/TF specific information is available, making it difficult to assess effectiveness. All three Portuguese financial supervisors (BdP, CMVM and ASF) are able to conduct inquiries on behalf of foreign counterparts as well as conduct inspections based on notifications from foreign counterparts, and exchange information from these inspections via MoUs.

380. Portugal's FIU is a member of the Egmont Group of Financial Intelligence Units and routinely shares information with its counterparts (see IO.6), based on the Egmont Group Principles. A total of 49 MoUs have been signed by the FIU, and the FIU has prioritised the signing of MoUs with key partners, concluding, for example, an MoU with the Chinese FIU in 2015. Authorities note that the existence of an MoU does not always facilitate information exchange, and highlight the need for continued dialogue with international partners. Feedback provided by FATF delegations noted that cooperation, including information exchange, with the Portuguese FIU is of good quality. Responses are provided to requests in a timely manner, and information provided, which often involves cross-checking the STR database housed within the Portuguese FIU, is found to be useful.

Table 31. **FIU International exchange of information requests**

Year	2012	2013	2014	2015
International cooperation requests received	173	184	185	270
International cooperation requests made	95	167	93	144

Source: FIU

381. For Portuguese LEAs and intelligence services in particular, international cooperation is a key component of their actions for CT/CFT purposes. UCAT, the National Anti-Terrorism Coordination Unit, coordinates action in this field (see IO.9).

382. DCIAP and the Criminal Police (National Unit for Fighting Drug Trafficking) note the importance of international cooperation for drug trafficking investigations, which often involves an ML component (see IO.7). Spontaneous information from foreign counterparts, or received upon request, is one of the major sources for Portuguese authorities in identifying ML cases.

383. Despite not having a wide network of law enforcement attachés posted abroad, Portuguese authorities (e.g. embassies) collect information from foreign counterparts in a constructive manner, through formal and informal channels.

384. As part of the Police Working Group on Terrorism Network, the National CT Unit cooperates and exchanges information with other CT-focused police units in Europe. Customs information is exchanged through the AT, primarily using the Schengen Information System, for matters related to the Schengen Area. Other multi-lateral mechanisms, such as EUROPOL, EUROJUST, CIMO and INTERPOL, are also used regularly by authorities.

International exchange of basic and beneficial ownership information of legal persons and arrangements

385. As far as financial supervisors are concerned, examples and data provided by BdP (see table above) and ASF show that requests made in the context of the fit and proper assessment of statutory bodies of supervised financial entities often involves requesting or sending basic information or beneficial ownership information to foreign counterparts. CMVM indicates that information regarding beneficial owners is part of the routine requests received from foreign counterparts. They usually relate to market abuse, non-authorised investment services or ML/TF enquiries.

386. AT treats beneficial ownership information requests as a priority. It recently requested information concerning payment transfers in the football sector, which involved the identification of beneficial owners. It also gave examples of recent requests concerning the identification of legal persons, including shareholders and their capital share.

387. DCIAP indicates that, based on its experience, in many countries, the main source of beneficial ownership information comes from tax authorities, which hold the most comprehensive data. In most cases, when information on legal persons is needed, prosecutors seek the information from other competent authorities, public databases, public registries, and company registries. They also request field investigations, at times, which are conducted by local law enforcement bodies.

Overall conclusions on IO.2

388. Overall, Portuguese authorities demonstrate a strong commitment to international cooperation on both a policy making and operational level. Authorities make use of both formal and informal channels on an ongoing basis, and cases provided show how a broad range of international cooperation has been used, including to combat ML, terrorism and TF. Overall, specific improvements are needed for the collection of statistics relating to international cooperation and of data relating to the exchange of information in relation to ML and TF cases.

389. Portugal has achieved a substantial level of effectiveness on IO.2

TECHNICAL COMPLIANCE ANNEX

Recommendation 1 – Assessing Risks and applying a Risk-Based Approach

These requirements were added to the FATF Recommendations when they were revised in 2012 and therefore were not assessed under the mutual evaluation of Portugal in 2006.

Criterion 1.1 – In June 2015, the National Risk Assessment of money laundering and financing of terrorism (NRA) conducted by Portuguese authorities was presented to the Minister of State and Finance. Ministerial Order 9125/2013 created the Working group tasked to conduct this work. It is based on a series of risk assessments of the sectors submitted in accordance with the Anti-Money Laundering/Combatting the Financing of Terrorism Law 25/2008 (AML/CFT Law). The NRA benefited from the input of a large range of public sector entities involved in AML/CFT. The private sector also took part in this work. The NRA identifies the threats and vulnerabilities relevant to Portugal; analyses and assesses the risks identified; and defines priorities and measures to be taken to mitigate the risks identified.

Criterion 1.2 – The Commission for the Coordination of National Policies of Prevention and Combating Money Laundering and Terrorism Financing (AML/CFT Coordination Commission) is the national mechanism designated by the Portuguese government to coordinate actions to assess risks (Resolution of the Council of Ministers 88/2015, para.2 assigns the coordination role), and is placed under the authority of the Ministry of Finance.

Criterion 1.3 – The duties of the AML/CFT Coordination Commission include ensuring the update of the national ML/TF risk assessment on a continuous basis (para.3 b) Resolution 88/2015).

Criterion 1.4 – The general channels in place to disseminate information can be used to communicate the results of the NRA. The AML/CFT Coordination Commission is in charge of promoting the dissemination of relevant information on ML/TF, both to obliged entities and to the general public: para.3 I, Resolution 88/2015. A summary of the results of the 2015 NRA was made publicly available in November 2015[123]. The results of the NRA were communicated to self-regulatory bodies (SRBs) and obliged entities on a sectoral basis, due to the sensitivity of information regarding the vulnerabilities of each sector. Competent authorities had direct access to the results of the risk assessment as members of the AML/CFT Coordination Commission (see c. 2.3).

Criterion 1.5 – Some Portuguese competent authorities apply a risk-based approach (RBA), based on the results of their sectoral risk assessments. Portugal has not yet defined a nationally coordinated RBA based on the findings of the NRA, nor has it allocated resources to competent authorities on that basis. Some preventive and mitigating measures have been identified, and some of them are still being implemented, based on the results of the NRA.

Criterion 1.6 – Tourism and travel businesses involved in foreign exchange activities, on an occasional and limited basis, are exempted from the provisions of the AML/CFT Law (art.5), subject to certain conditions and quantitative thresholds described in Decree Law 295/2003 (art. 12 (2) and BdP Notice 12/2003 (art. 2 and 3).

[123] www.portugal.gov.pt/pt/o-governo/arquivo-historico/governos-constitucionais/gc20/os-ministerios/mf/documentos-oficiais/20151125-mf-avaliacao-risco-branqueamento-capitais.aspx

Criterion 1.7 – Financial institutions (FIs) and Designated Non-Financial Businesses and Professions (DNFBPs) are required to apply enhanced due diligence (EDD) measures in higher risk situations: art.12 AML/CFT Law (see c. 10.17).

Criterion 1.8 – FIs and DNFBPs are allowed to apply simplified due diligence (SDD) (see c. 10.18): art. 11 and 25 AML/CFT Law. No analysis of risk is provided to evidence the identification of lower risks. The application of an EU-wide assessment for specified customers (art. 11) does not seem to meet the test of being "adequate" in terms of the FATF Recommendations (see c. 10.18).

Criterion 1.9 – Obliged entities are required to have preventive measures in place that are adapted to the risks identified, and to implement adequate controls for compliance (see c. 1.10). AML/CFT supervisors have the general task of ensuring that supervised entities comply with their AML/CFT obligations, but there are no specific requirements regarding the implementation of the RBA. Banco de Portugal (BdP) is nevertheless required to request FIs (credit institutions, financial companies, payment institutions and e-money institutions – see c. 26.1) to identify their ML/TF risks and to assess their AML/CFT policies and procedures in order to effectively mitigate risks: art.5 (2) (a) (i) and (f) (i) of BdP Notice 5/2013. There is no equivalent provision for other financial and non-financial AML/CFT supervisors.

Criterion 1.10 – All obliged entities are under an obligation to put in place preventive measures adapted to the risks identified and a general duty of control, which involves establishing adequate internal policies and procedures for compliance, as far as evaluation, risk assessment and risk management are concerned: art. 10 and 21 AML/CFT Law. FIs under the BdP are required to internally define a risk management model, according to their specific risk profiles, taking into account the customers risk profiles; the degree of risk associated with the countries or geographical areas where the institution operates; the nature of transactions, products and services available; and the channels used for the distribution of products and services: art. 4(1) to (5) of BdP Notice 5/2013. Thus, obliged entities have to follow the conditions outlined in a) to d) of the criterion. FIs, which are licensed, regulated and supervised both by BdP and CMVM (see table 1) as well as by BdP and ASF for their insurance activities, submit to the requirements of BdP. However, there is no equivalent provision for FIs under the sole regulatory/supervisory regime of CMVM or ASF. There is no equivalent provision for non-financial, obliged entities.

Criterion 1.11 – Obliged entities are required to:

a) adapt the nature and the extent of their verification procedures and due diligence measures according to the risks associated with their customers, business relationships, products, transactions and the source and destination of funds: art 10 AML/CFT Law. The management boards of FIs under the supervision of BdP, and of insurance undertakings, are required to approve the overall risk management policy in place: art. 18 (2) (c) BdP Notice 5/2008 and 9 (2) ASF Regulation 14/2005. There is no equivalent provision for FIs under the sole regulatory/supervisory regime of CMVM or ASF, nor are there equivalent provisions for non-financial, obliged entities.

b) establish adequate internal policies and procedures for compliance, namely as far as internal control and internal audit are concerned, under a general duty of control: art. 21 AML/CFT Law. This would involve enhancing the controls in place, if necessary.

c) take enhanced measures when higher risks are identified: art. 12 AML/CFT Law.

Criterion 1.12 – FIs and DNFBPs are allowed to apply SDD, except when there is a suspicion of ML/TF (see c. 1.8 and 10.18): art. 11 and art. 25 of the AML/CFT Law. However, this is not restricted

to situations where lower risks have been identified and c. 1.9 to 1.11 are met, as is required by R.1. The application of an EU-wide assessment for specified customers (art. 11) does not seem to meet the test of being "adequate" in terms of the FATF Recommendations.

Weighting and conclusion

There is a lack of clarity and deficiencies exist in a number of criteria *(*especially c.1.5, 1.8, and 1.12). The deficiency related to the lack of requirements applicable to FIs under the sole regulatory/supervisory regime of CMVM or ASF is minor given the limited ML/TF risk exposure of these FIs.

Recommendation 1 is rated largely compliant.

Recommendation 2 – National cooperation and coordination

In its 3rd mutual evaluation report (MER), Portugal was rated largely compliant with these requirements: paragraphs (para.) 655-665. The main deficiencies related to the effectiveness of inter-agency cooperation, particularly cooperation between supervisory authorities, the FIU and prosecutors. This is not assessed as part of technical compliance under the *2013 Methodology*. Subsequent, new legislation has further improved Portugal's national cooperation and coordination mechanisms.

Criterion 2.1 – Following the adoption of Resolution 7-A/2015 by the Council of Ministers, the National Counter Terrorism Strategy (approved in February 2015) defines the policy objectives, priorities and guidelines, to detect, prevent, protect, pursue and respond to terrorist threats, including logistic support and financing for the period 2015-2017[124]. Portugal also defines AML/CFT objectives and priorities as part of its broader national criminal policy through its Framework Law on Criminal Policy: Law 17/2006, which is reviewed on a biannual basis. However, Portugal does not demonstrate if and how these policies, including ML preventive measures, are informed by the ML/TF risks identified.

Criterion 2.2 – Portugal has designated the Commission for the Coordination of National Policies of Prevention and Combating Money Laundering and Terrorism Financing (AML/CFT Coordination Commission)[125], which works under the Ministry of Finance, as the key mechanism for implementing and coordinating national AML/CFT policies (see c. 1.2).

Criterion 2.3 – The main channel for competent authorities to coordinate and cooperate at a national level is the AML/CFT Coordination Commission. It is comprised of over 20 of Portugal's key AML/CFT agencies, including policy makers, the FIU, law enforcement authorities (LEAs), financial and non-financial supervisors, the Tax and Customs Authority (AT), intelligence services, prosecutorial authorities, etc. Its main mission is to promote the exchange of information and provide for reciprocal consultation amongst member entities: para.3 j) Resolution 88/2015. Furthermore, numerous information sharing agreements are in place between competent authorities to facilitate real-time exchange of information, spontaneously or upon request.

[124] The updated National Strategy for ML and TF will be available at the end of 2017, after the completion of the FATF mutual evaluation process.
[125] The internal regulations of the Coordination Commission were approved in February 2016 when the Commission started its work.

Criterion 2.4 – The national coordination mechanism for the combating of proliferation financing within Portugal is found within the AML/CFT Coordination Commission: art.3(q) Resolution 88/2015. Furthermore, Decree Law 130/2015 sets up sanctions for infringements of EC Regulation 428/2009 and establishes the Inter-Ministerial Commission for the trade of dual-use goods and technology. Specifically, the Tax and Customs Authority (AT) is responsible for coordinating the control of dual-use exports with other national agencies, and holds responsibility for licensing activities involving dual-use items (e.g. export, transfer, transit), issuing end-use certificates and monitoring compliance.

Weighting and conclusion

Portugal has a comprehensive legal framework in place, as well as appropriate mechanisms, for national coordination and cooperation. However, the national AML/CFT policies in place do not seem to be informed by the ML/TF risks identified.

Recommendation 2 is rated largely compliant.

Recommendation 3 – Money laundering offence

In its 3rd MER, Portugal was rated largely compliant with these requirements (para. 152 – 181). The main technical deficiency was that the criminal liability for ML did not clearly extend to legal persons.

Criterion 3.1 - Money laundering (ML) is criminalised in art. 368-A of the Criminal Code on the basis of the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (the Vienna Convention) and *The Convention against Transnational Organised Crime* (the Palermo Convention)[126].

Criteria 3.2 and 3.3 –Portugal has adopted a combined approach that includes a list of predicate offences and a penalty threshold. Furthermore, any offence that is punishable by a minimum of six months' imprisonment or a maximum term of imprisonment exceeding five years is covered: art. 368-A (1) Criminal Code. This mixed approach covers a wide range of predicate offences within the category of designated offences. Serious offences associated with the high risk areas identified by Portugal in its NRA, such as tax offences, fraud, illegal trafficking of drugs, all forms of corruption and financial infractions relating to the misappropriation of money or property by public officers are ML predicate offences[127].

Criterion 3.4 – The ML offence covers the proceeds of crime as well as 'advantages,' a term which includes goods, products or rights, or interests, profits and other benefits derived from the proceeds of crime: art. 368-A Criminal Code, art. 7(3) Law 5/2002 and Regulation No. 380/2013. This term broadly covers any type of property, regardless of its underlying value, which directly or indirectly is related to the proceeds of crime.

Criterion 3.5 – According to Portuguese law, it is not necessary for a person to be convicted of a predicate offence in order to be able to prove that property constitutes the proceeds of crime: art. 368-A (4) Criminal Code.

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[126] See art.3(1)(b)&(c) of the *Vienna Convention*, and art.6(1) of the *Palermo Convention*.
[127] Two additional types of crimes of counterfeiting (art 323 and 324 of the Industrial Property Code) are envisaged to be soon added.

Criterion 3.6 – The ML offence fully covers predicate offences that occur outside the national territory of Portugal, or if the place where the crime was committed (or the identity of the offenders) remains unknown: art.368-A Criminal Code. It is not mandatory that the underlying facts of the suspect activity that occurs in a foreign jurisdiction be considered a predicate offence in that jurisdiction, and constitutes a predicate offence had they occurred within Portugal.

Criterion 3.7 – The ML offence covers self-laundering: art.368-A Criminal Code.

Criterion 3.8 – No legal provisions exist which restrict the intent and knowledge required to prove the ML offence from being inferred from objective factual circumstances. Evidence is freely assessed according to the 'experience and conviction' of the competent authority: art. 127 Code of Criminal Procedure.

Criterion 3.9 – Sanctions for natural persons convicted of an ML offence range from two to twelve years of imprisonment, which can be increased by one third if the offender committed the crime regularly: art. 368-A Criminal Code. This includes persons found guilty of assisting or facilitating the commission of an ML offence. The level of the statutory sanctions imposed must be proportionate to the circumstances. Sanctions can be increased or reduced pursuant to art. 368-A and art. 71 Criminal Code, based on aggravating or mitigating circumstances. When compared to the criminal sanctions applied to other offences, the criminal sanctions for ML may be considered severe.

Criterion 3.10 – Private and public legal persons and entities (except for the State, legal persons exercising the prerogatives of public authority and organisations of public international law) may be subject to criminal liability and be held criminally responsible for ML. Parallel proceedings of a civil or administrative nature are not excluded, and these measures are without prejudice to criminal liability: art. 11 Criminal Code. Legal persons convicted of ML are liable to a fine with the relevant amount being determined by the Court. Fines range from EUR 50 to EUR 180 000: art. 90-A and seq. Criminal Code. The factors that are taken into consideration when determining the amount of fine to be levied include the gravity of the offence; the damage caused; the economic capacity of the company; etc.: art. 71 Criminal Code. The range of available sanctions allows for the imposition of proportionate sanctions. However, the maximum fine of EUR 180 000 is too low to be sufficiently dissuasive.

Criterion 3.11 – A full range of ancillary offences to the ML offence is available. This includes, *inter alia*: participation, association, attempt, conspiracy, complicity and illicitude: arts. 22, 26, 27 and 28 Criminal Code.

Weighting and conclusion

The ML offence is broad and covers a range of predicate crimes. However, legal persons rendering public services and international organisations of public law are exempt from criminal liability. The criminal sanctions available for legal persons convicted of ML are too low to be considered dissuasive.

Recommendation 3 is rated largely compliant.

Recommendation 4 – Confiscation and provisional measures

In its 3rd MER, Portugal was rated largely compliant with these requirements (para. 191 – 206). The deficiency was related to the effectiveness of the system, which is not considered as part of the

technical compliance assessment under the updated *2013 Methodology.* Since then, Portugal has implemented new legislation aimed at strengthening its framework of confiscation.

Criterion 4.1 – Confiscation is possible in relation to the property and proceeds of illicit origin foreseen in c. 4.1(a-d): art. 109-111 Criminal Code, art. 178-186 Code of Criminal Procedure and the special confiscation regime of art. 7-12 Law 5/2002. Furthermore, in instances where authorities are unable to confiscate 'benefits' derived from the property or proceeds of illicit origin, the offender is subject to the payment of the equivalent to the respective value of the benefits: art. 111(4) Criminal Code. Regarding third parties, the legislation applies without prejudice to their rights for acting in good faith.

Criterion 4.2 – Portugal has implemented the following measures, which include legislative measures:

a) The identification and tracing of illicit property and proceeds of crime are conducted in the course of a criminal investigation by the Asset Recovery Office (ARO/GRA) of the Criminal Police, created by Law 45/2011, which has the mission of identifying, tracing and seizing crime-related property, especially property related to ML and predicate offences. Whenever the Public Prosecution Service decides that the ARO/GRA should intervene - whether in a judicial inquiry or by means of a letter of request - the ARO/GRA conducts a parallel financial and asset investigation to that of the public prosecutor.

b) Provisional measures are provided for in the Criminal Code and are authorised, ordered or validated by the judicial authority: art. 178 Code of Criminal Procedure. Regarding financial and banking operations, after an analysis is carried out or when a report is made pursuant to art.17 of the AML/CFT Law and the suspicion is confirmed, proposals are made for the suspension of the amounts involved in the suspicious transaction. The proposal is referred to the Prosecutor-General's Office and, when so decided, to the examining magistrate for seizure within two business days.

c) Competent authorities can take steps that will prevent or void actions that prejudice the country's ability to freeze, seize or recover property that is subject to confiscation[128].

d) Competent authorities can take any appropriate investigative measures: art. 262 (2) of the Code of Criminal Procedure.

Criterion 4.3 – The rights of *bona fide* third parties are protected: art. 111(2) Criminal Code and art. 60 AML/CFT Law.

Criterion 4.4 – The Property Management Office (GAB) has the mission of managing property that is seized, recovered or confiscated during the course of national proceedings, or in response to international cooperation, and the power to dispose of any seized, recovered or confiscated assets: Law 45/2011 and Ministerial Order 391/2912.

Weighting and conclusion

Recommendation 4 is rated compliant.

[128] For example, property may be preserved by means of a seizure or attachment carried out by the criminal police bodies or the ARO.

Recommendation 5 – Terrorist financing offence

In its 3rd MER, Portugal was rated largely compliant with these requirements (para. 182 – 190). The sole technical deficiency was that the TF offence did not extend to the provision or collection of funds for the benefit of a single terrorist.

Criterion 5.1 – The TF offences cover the terrorist acts described in Article 2(1)(a) and 2(1)(b) of the TF Convention: art. 2(1) and 5-A Law 52/2003.

Criterion 5.2 – The TF offences cover any person who, by any means, directly or indirectly, provides, collects or holds funds or assets of any type, as well as products or rights liable to be transformed into funds, with the intention that they should be used or in the knowledge that they may be used, in full or in part, for the planning, preparation or commission of terrorist acts: art. 5-A Law 52/2003. Articles 2, 3 and 5 set out offences for participating in a 'terrorist organisation,' 'other terrorist organisation' or 'international terrorism,' respectively.

There is no express reference to the financing of an individual terrorist for purposes unrelated to the commission of terrorist acts, but Portuguese authorities contend that 'planning and preparation' encompasses "preparatory acts" (not just executed acts), which in this context includes a broad range of activity that may be carried out before the terrorism crime is committed (e.g. travel, food purchase, rent, etc.) and is sufficient to meet the FATF Standards to criminalise the funding of individual terrorists, even in the absence of a link to a specific terrorist act(s). Examples where the aforementioned preparatory acts were investigated as TF offences were provided by Portuguese authorities. There is currently no jurisprudence to confirm that the financing of an individual terrorist for purposes unrelated to the commission of a terrorist act is punishable as part of "planning and preparation," where the person who provides the assistance has knowledge of the terrorist aspirations of the group. However, there is jurisprudence confirming the legal nature of preparatory acts, even in the absence of a link to a specific crime.

Criterion 5.2bis – Portuguese law generally addresses financing of travel by persons to a different territory (other than their State of residence or nationality) for the purposes of committing, organising or preparing the commission of terrorist acts, or participation in terrorist acts or for terrorist training purposes. In cases when such travel is related to a terrorist organisation, financing of such travel constitutes indirect support that is also criminalised: art. 2(2) Law 52/2003.

Criterion 5.3 – There are no restrictions in the legislation which would prevent TF offences from covering funds or other assets from either legitimate or illegitimate sources.

Criterion 5.4 – The TF offence links TF to the planning, preparation or commission of terrorist acts (see 5.2). Attempt to commit a TF offence is covered: art. 7 Law 52/2003 and art. 22 Criminal Code. However, the minor shortcoming in 5.2 impacts this sub-criterion.

Criterion 5.5 – The intent and knowledge required to prove the offence can be inferred from objective factual circumstances (see also c. 3.8). Unless the law states otherwise, evidence is assessed according to the 'experience and conviction' of the competent authority: art. 127 Code of Criminal Procedure (see also c. 3.8).

Criterion 5.6 – Natural persons convicted of TF are punished by eight to fifteen years imprisonment, as are individuals who 'adhere [to] or support' (including by supplying material resources), a terrorist group, organisation or association (of two or more people): art. 5-A Law 52/2003 and art. 2(2) Law 52/2003, respectively. In cases where a person organises, finances or facilitates the travel

or attempt to travel to a different territory to provide training, logistical support or instruction, or to join a terrorist organisation or for the commission of a terrorist act, a penalty of up to 4 years' imprisonment can be assessed: art. 4(12) Law 52/2003. The applicable sanctions appear proportionate and dissuasive in line with Portugal's policy that a five-year imprisonment penalty reflects a serious crime. As for whether these sanctions are dissuasive, the sanctions available in Portugal broadly fall within the range of sanctions available in other FATF members for TF offences; although, sanctions for financing travel for the purposes of training and/or logistical support (including logistics to join a terrorist organisation, commit a terrorist act or facilitate travel for such purposes) appear to be relatively low.

Criterion 5.7 – Legal persons and entities with legal person status[129] are criminally liable for terrorist financing: art. 6 Law 52/2003 and art. 11 Criminal Code. Parallel civil or administrative proceedings are not precluded, nor do these measures hinder criminal liability.

Criterion 5.8 – A range of ancillary offences are provided for, including: participation, association, attempt, conspiracy, complicity and illicitude: art. 22-23, 26-28 Criminal Code and art. 7 Law 52/2003. Principals to the offence include: anyone who commits a crime of TF either directly or through a third party; anyone who attempts to commit a crime of TF; and anyone who assists with *dolus* in any way, including 'materially or morally,' another person in carrying out a TF offence.

Criterion 5.9 – TF offences are predicate offences for ML (see c. 3.2 and 3.3).

Criterion 5.10 – TF offences apply, regardless of whether the TF offence(s) was committed within or outside Portuguese national territory: art. 8 Law 52/2003; although, Portugal asserts its criminal jurisdiction over extra-territorial TF offences only where the offender is found in Portugal and cannot be extradited or surrendered in execution of a European Arrest Warrant or an extradition request.

Weighting and conclusion

Portugal has criminalised terrorist financing in accordance with the TF Convention, and has a range of ancillary offences. However, concerns remain, in particular, about the financing of an individual terrorist, without a link to a terrorist act.

Recommendation 5 is rated largely compliant.

Recommendation 6 – Targeted financial sanctions related to terrorism and terrorist financing

In its 3rd MER, Portugal was rated partially compliant with these requirements (para. 207 – 232). The key technical deficiencies were: the limited ability to freeze funds in accordance with UNSCR 1373 (2001) of designated terrorists outside the EU listing system; the limited nature of communication mechanisms to all DNFBPs; and the inadequate monitoring of DNFBPs for compliance with the relevant laws for freezing terrorist funds.

Criterion 6.1 – In relation to designations under UNSCRs 1267/1989 and 1988:

[129] Noted in Art. 6 of Law No. 52/2003, the term "equivalent entities" is understood to mean, *inter alia*, corporations and associations.

a) The competent authorities for proposing designations are the Minister of Foreign Affairs and the member of Government responsible for the sector, depending on the type of restrictive measure (e.g. Minister of Finance for freezing measures, Minister of Interior for travel bans, etc.), based on proposals from the law enforcement and intelligence agencies.

b) Portugal implements UNSCRs 1267/1989 and 1988 directly (art. 8(3) of the Constitution of the Portuguese Republic), as well as through two European Council Regulations (753/2011 on Afghanistan and 881/2002 (amended by 754/2011) on Al Qaida), in conjunction with art. 25 of the Charter of the United Nations and art. 288 of the Treaty on the Functioning of the European Union (TFEU). Furthermore, Law 11/2002 enforces the immediate freezing of funds and economic resources by establishing a criminal penalty for non-compliance with the immediate application of financial or commercial restrictive measures set forward by resolutions of the UN Security Council or EU Regulations. This is not dependent on any notification, judicial validation or existence of criminal proceedings. Portugal also benefits from European legal acts that execute UN Resolutions, which harmonise application throughout the EU. It should be noted that under the European system, a significant delay arises between the date of a designation by the UN and the date of its transposition into European law, but the direct applicability of UNSCRs 1267/1989 and 1988 is achieved by national measures (described above).

c) Designations may be based on information from law enforcement and intelligence agencies as well as foreign states and international bodies. Proposals for designation are not conditional upon the existence of a criminal proceeding.

d) Portugal has a process for submitting designations to the UN (as described in subparagraphs a) to c) above), whereby, in theory, sufficient information would be provided. In practice, this mechanism has not yet been used.

e) Portugal has not used this mechanism (as noted in d), above) but authorities note that as much relevant information as possible would be made available.

Criterion 6.2 – For UNSCR 1373, EU and national measures also apply.

a) Portugal implements designations pursuant to UNSCR 1373 through a European mechanism: Council Regulation 2580/2001, on the application of restrictive measures, and Council Common Position 2001/931/CFSP on the criteria for listing as well as through the relevant national mechanisms listed above. At the EU level, the Council of the EU is the competent authority for making designations: Council Regulation 2580/2001 and CP 931/2001/CFSP. The competent authorities at a national level for making designations or considering foreign requests would be the Ministry of Foreign Affairs in coordination with the Ministry of Finance. The Public Prosecutor's office could also consider requests for provisional freezing measures received through MLA requests. It should be noted that EU internals (people not connected to foreign terrorist situations) are not subject to the freezing measures set forth in Regulation 2580/2001 under the EU TFS system. Since the entry into force of the Treaty of Lisbon (2009), art. 75 of the Treaty on the Functioning of the European Union (TFEU) allows for the freezing of assets of designated EU internals, but the European Commission has not yet put forward a proposal for a regulation as stipulated in art. 75, para.1. Thus, currently no EU internals can be added to the existing EU list by the Council of the EU. This only affects countries with internal terrorism situations that rely on the EU mechanism, which is not the case of Portugal.

b) The mechanisms described in criterion 6.1 apply to identifying targets for UNSCR 1373 designations.

c) At an EU level, requests are received and examined by the Working Party on restrictive measures to combat terrorism (COMET). All Council working parties consist of representatives of the governments of the Member States. At a national level, Portugal has not received any foreign requests for domestic listing.

d) A 'reasonable basis' evidentiary standard of proof applies, and the decision is not conditional on the existence of criminal proceedings: art. 1(2) & (4) CP 2001/931/CFSP (also see 6.1c).

e) At the EU level, requests to third countries are not addressed in CP 2001/931/CFSP or Regulation 2580/2001, thus any Member State may address requests for listing to third countries based either on European listings, or national listings when available. Portugal has not requested another country to give effect to the actions initiated under its national freezing mechanism since no national designations have been made to date; however, authorities note that as much identifying information and specific information supporting the designation would be made available.

Criterion 6.3 –

a) At the European level, all EU Member States are required to share with one another all the pertinent information in their possession in application of the European regulation on the freezing of assets. EU Member States must work together to achieve the most extensive level of assistance possible to prevent and combat terrorist acts: art. 8 Regulation 881/2002, art. 8 Regulation 2580/2001 and art. 4 CP 2001/931/CFSP. Portuguese competent authorities have the necessary legal authority, procedures and mechanisms to collect or solicit information to identify persons and entities for the purpose of designation; although, no designation has been proposed by Portugal to date. The Minister of Foreign Affairs is empowered to make designations domestically pursuant to his general competence for formulating, conducting, implementing and evaluating the country's foreign and European policy: art. 12(1) Government Organic Law (Decree-Law) 251-A/2015.

b) The designation must take place "without prior notice" (*ex parte*) being given to the person or entity identified: art. 7a(1) Regulation 881/2002, and Preamble Para. 5 of Regulation 1286/2009. The Court of Justice of the European Union confirmed the exception to the general rule of prior notice of decision so as to avoid compromising the effectiveness of the freezing measure. Portuguese authorities are empowered to conduct proceedings *ex parte*: art. 124 Portuguese Administrative Procedure Code (Decree-Law 4/2015).

Criterion 6.4. – Implementation of targeted financial sanctions (TFS) pursuant to UNSCRs 1267/1989 and 1988 occur "without delay": art. 8(3) of the Constitution of the Portuguese Republic in conjunction with art. 25 of the Charter of the United Nations and art. 2 of Law 11/2002 (see c 6.1). Portugal also benefits from European legal acts that execute UN resolutions, which harmonise TFS application throughout the EU; although, there is often a delay between when the designation and freezing decision is issued by the UN and when it is transposed into EU law under Regulation 881/2002 (as noted above). Since UNSCRs 1267/1989 and 1988 are directly applicable in Portugal, this EU delay does not affect the legal applicability of TFS in Portugal. For UNSCR 1373, TFS are implemented without delay once a designation has been made at a national or supranational level. In practice, this has not yet occurred at a national level.

Criterion 6.5 – Portugal has the following legal authorities and procedures for implementing and enforcing TFS:

a) Pursuant to UNSCRs 1988 and 1989, Portugal requires all natural and legal persons within the country to freeze, without delay and without prior notice, the funds and economic resources of designated persons and entities. This occurs through the combined reading of both constitutional and statutory obligations (see above), which make UNSCRs directly applicable and establishes sanctions for non-compliance with UN and EU TFS. Furthermore, European regulations establish the obligation to freeze all funds and economic resources belonging to a person or entity designated on the European list: art. 2 (1) Regulation 881/2002 and art 3 Regulation 753/2011. As Portugal implements TFS immediately through a national mechanism, the problem of delay existing at EU level (c. 6.4) does not impact on Portugal's ability to implement TFS without delay. For UNSCR 1373, Portugal relies on the same national mechanism. It should also be noted that the EU Regulations are self-executing in all Member States and that no prior notice is to be given to the designated persons or entities: art. 2 (1) (a) Regulation 2580/2001. Along with the direct applicability of the aforementioned UN Security Council Resolutions and EC Regulations, art. 2 of Law 11/2002 provides that anyone who does not comply with the economic and financial sanctions decided by the UN Security Council Resolutions or EC Regulations, can be punished with a penalty from 3 to 5 years imprisonment.

b) Pursuant to UNSCRs 1988 and 1989, the freezing obligation extends to all funds or other assets defined in R.6, namely funds owned by designated persons (natural or legal) as well as funds controlled by them or by persons acting on their behalf or on their order. These aspects are covered by the notion of 'control' in art. 2 Regulation 881/2002, and art. 3 Regulation 753/2011. With regard to UNSCR 1373, the freezing obligation under art. 2(1)(a) Regulation 2580/2001 is not extensive enough (see c.6.2).

c) Portugal prohibits all persons from making funds or other economic resources available to designated persons or entities pursuant to the UNSCRs and European Regulations (see c 6.1).

d) Portugal has implemented an automated-rule information dissemination mechanism to ensure the quick dissemination of designations to FIs and DNFBPs. Through the use of this mechanism, Portugal ensures that an email notification from the UN Security Council Sanctions Committee with the consolidated list is immediately forwarded (within minutes) to all relevant supervisors and regulators (FIs and DNFBPs). Although designations have not yet been made at a national level, this would occur, in theory, within minutes, as well. The email list is kept updated with both institutional and individual contact points. Designations decided at the European level are published in the Official Journal of the EU (OJEU). The Ministry of Foreign Affairs notifies a predetermined roll of officials and entities by email. This list is inclusive of all ministries and relevant supervisors and regulators (both financial and non-financial), which then pass on that information to their supervised entities (FIs and DNFBPs) via email and public posting on their respective websites.

e) The natural and legal persons targeted by the European regulations must immediately provide all information to the competent authorities of the Member State in which they reside or are present, as well as to the European Commission, either directly or through these competent authorities: art. 5.1 Regulation 881/2002, and art. 4 Regulation 2580/2001. UN and EU rules and procedures are directly applicable in Portugal.

f) The rights of *bona fide* third parties are protected at European and national levels: art. 60 AML/CFT Law, art. 6 Regulation 881/2002, art 7 Regulation 753/2011 and art. 4 Regulation 2580/2001.

Criterion 6.6 – There are mechanisms for de-listing and unfreezing the funds and other assets of persons and entities which do not, or no longer, meet the criteria for designation.

a) The Portuguese Permanent Mission in New York is responsible for the presentation of de-listing proposals according to decisions of the Government.

b) Pursuant to UNSCR 1373, the Council revises the list at regular intervals (art. 6 CFSP). Modifications to the list under Regulation 2580/2001 are immediately in effect in all EU Member States.

c) Designated persons or entities individually affected may institute proceedings according to art. 263, para 4 and art. 275, para 2 TFEU before the Court of Justice of the European Union in order to challenge the relevant EU measures (decisions and regulations), whether they are autonomously adopted by the EU in line with UNSCR 1373, or based on listings pursuant to UNSCR 1267.

d) For designations pursuant to UNSCRs 1988 and 1989, designated persons and entities are notified of their designation and the reasons, as well as its legal consequences. They have the right to request a review of the designation in court. At the European level, there are procedures that provide for de-listing names, unfreezing funds and reviewing designation decisions by the Council of the EU. At the UN level, the review can be brought before the Ombudsperson (established pursuant to UNSCR 1904 (2009)) for the examination of de-listing requests, in compliance with UNSCRs 1989 and 2255, or, where applicable, before the UN Focal Point Mechanism (established pursuant to UNSCR 1730 (2006)) for UNSCR 1988.

e) See d) above.

f) There are publicly known procedures for obtaining assistance in verifying whether persons or entities having the same or similar name as designated persons or entities (i.e. a false positive) are inadvertently affected by a freezing mechanism.

g) De-listing and unfreezing decisions taken in accordance with European regulations are published in the Official Journal of the EU. The guidance provided is as stated in c. 6.5(d) above.

Criterion 6.7 – At the European level, there are procedures in place to authorise access to frozen funds or other assets which have been determined to be necessary for basic expenses, for the payment of certain types of expenses, or for extraordinary expenses: art. 2a Regulation 881/2001, art. 5 Regulation 753/2011, and art. 5-6 Regulation 2580/2001. UN and EU rules and procedures to authorise access to frozen funds or other assets are directly applicable in Portugal.

Weighting and conclusion

Portugal utilises both supranational and national mechanisms to implement TFS. Designations at the UN level apply directly in Portugal without the need for EU transposition, and Portugal has the ability to designate terrorists at a national level pursuant to UNSCR 1373; although, this mechanism has not yet been used in practice.

Recommendation 6 is rated compliant.

Recommendation 7 – Targeted financial sanctions related to proliferation

These requirements were added to the FATF Recommendations when they were last revised in 2012 and, therefore, were not assessed during Portugal's 3rd mutual evaluation which occurred in 2006.

Criterion 7.1 – Portugal implements targeted financial sanctions (TFS) relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing directly "without delay" at a national level, as well as through the relevant EU framework[130]: art. 8(3) of the Constitution of the Portuguese Republic in conjunction with art. 25 of the Charter of the United Nations. Art. 2 Law 11/2002 enforces the immediate freezing of funds and economic resources by establishing a criminal penalty for non-compliance with the immediate application of financial or commercial restrictive measures set forward by resolutions of the UN Security Council or EU Regulations.

Criterion 7.2 – The Ministry of Foreign Affairs and the Ministry of Finance are the competent national authorities in charge of implementing and enforcing TFS:

a) Portugal requires all natural and legal persons within the country to freeze without delay and without prior notice the funds and economic resources of designated persons and entities: art. 8 Constitution of the Portuguese Republic, art. 25 of the Charter of the United Nations and art. 2 of Law 11/2002, providing sanctions for non-compliance. Furthermore, the EU regulations require all natural and legal persons within the EU to freeze the funds/other assets of designated persons/entities. This obligation is triggered as soon as the regulation is approved and the designation published in the OJEU.

b) The freezing obligation extends to the full range of funds or other assets required by R.7.

c) Portugal prohibits all persons from making funds or other economic resources available to designated persons or entities pursuant to the UNSCRs and European Regulations (see c 7.1). The EU Regulations also prohibit funds and other assets from being made available, directly or indirectly, to or for the benefit of designated persons and entities, unless otherwise licensed, authorised or notified in accordance with the relevant UN resolutions: art 6.4 Regulation 329/2007 and art. 23.3 Regulation 267/2012.

d) The mechanisms described in criterion 6.5(d) apply for communicating designations to FIs and DNFBPs.

e) Natural and legal persons are required to immediately provide any information about accounts and amounts frozen: art. 10 of Regulation 329/2007 and art. 40 of Regulation 267/2012. UN and EU rules and procedures are directly applicable in Portugal.

f) The rights of *bona fide* third parties are protected: art. 11 Regulation 329/2007 and art. 42 Regulation 267/2012.

Criterion 7.3 – EU Member States are required to take all measures necessary to ensure that the EU regulations in this area are implemented, and have effective, proportionate and dissuasive sanctions available for failure to comply with these requirements. Failure to comply with these requirements is punishable by imprisonment for three to five years in the case of natural persons. Negligence is

[130] UNSCR 1718 concerning the DPRK is transposed into European law by Regulation 329/2007 and Council Decisions 2013/183/CFSP and 2010/413. UNSCR 1737 concerning the Islamic Republic of Iran is transposed into European law by Regulation 267/2012.

punishable by a fine of up to 600 days (which can range from EUR 3 000 to EUR 300 000: art. 47(2) Criminal Code). Administrative fines can also be levied against legal entities, corporations and associations for any breach. These fines may be no less than the sum of the transaction, and not higher than twice the amount. In cases where the breach is not a pecuniary transaction, fines can be levied between EUR 5 000 and EUR 2 500 000 or EUR 2 500 and EUR 1 000 000, respectively, for financial entities or natural or legal persons of any other nature: art. 2 – 4 Law 11/2002. Sectoral supervisors are responsible for ensuring compliance by their supervised entities.

Criterion 7.4 – The EU Regulations contain procedures for submitting delisting requests to the UN Security Council for designated persons and entities that, in the view of the EU, no longer meet the criteria for designation:

a) The Council of the EU communicates its designation decisions and the grounds for listing, to designated persons and entities which have rights of due process. The Council of the EU shall promptly review its decision upon request, and inform the designated person and/or entity. Such a request can be made, irrespective of whether a de-listing request is made at the UN level (for example, through the Focal Point mechanism). Where the UN de-lists a person or entity, the EU amends the relevant EU Regulations accordingly: art. 13.1(d) & (e) Regulation 329/2007, art. 46 Regulation 267/2012 and art. 6 CP 2006/795/CFSP.

b) Publicly known procedures to unfreeze the funds or other assets of persons or entities with the same or similar name as designated persons or entities are provided for at an EU level.

c) There are specific provisions for authorising access to funds or other assets, where the competent authorities of Member States have determined that the exemption conditions set out in UNSCRs 1718 and 1737 are met, and in accordance with the procedures set out in those resolutions: art. 7 and art. 8 Regulation 329/2007 and arts. 24, 26 and 27 Regulation 267/2012. These include a web-platform where entities can request online authorisation to transfer funds to or from an Iranian person, entity or body above the threshold (according to the more restrictive legislation enacted by the EU). UN and EU rules and procedures to authorise access to frozen funds or other assets are directly applicable in Portugal.

d) At the EU level, there are legal authorities and procedures for de-listing and unfreezing. The designation can also be reviewed using the UN mechanisms of the UN Focal Point established pursuant to UNSCR 1730. At the national level, the Ministry of Foreign Affairs notifies FIs and DNFBPs of de-listing and unfreezing decisions taken by the UN and EU through the use of automated email notifications to relevant ministries, supervisors and regulators, tasked with communicating decisions to their respective obliged entities.

Criterion 7.5 – With regard to contracts, agreements or obligations that arise prior to the date on which accounts became subject to TFS:

a) The addition to frozen accounts of interest, other earnings, or payments due is permitted, provided that such amounts also become subject to the freeze: art. 9 Regulation 329/2007 and art. 29 Regulation 267/2012.

b) Payment of amounts due under contracts entered into prior to designation may be authorised, provided it has been determined that the contract and payment are not related to any of the items or activities prohibited under UNSCR 1737 (on Iran), and upon prior notification to the UN 1737 Sanctions Committee: art. 24 & 25 EU Regulation 267/2012.

Weighting and conclusion

Portugal implements TFS related to proliferation in accordance with the UN as well as the EU regimes. Designations at the UN level apply directly in Portugal without the need for EU transposition.

Recommendation 7 is rated compliant.

Recommendation 8 – Non-profit organisations

In its 3rd Round MER, Portugal was rated largely compliant with these requirements (para. 637 – 654). However, that assessment pre-dated the adoption, in 2006, of an Interpretive Note, as well as the 2016 adoption of changes to Recommendation 8 and its Interpretive Note, which means that, on this Recommendation, Portugal has not previously been assessed against the detailed requirements of R.8.

Criterion 8.1 – Regarding the requirement to take a risk-based approach:

a) Portugal has not undertaken a comprehensive review to identify which subset of NPOs fall within the FATF definition. However, based on profiling of the NPO sector by the General Inspectorate of Finance within the Ministry of Finance, done in 2012, Portugal has identified the 'social economic sector NPOs' as potentially being at a higher risk of being abused for TF or other forms of terrorist support. This appears to be on the basis that poor financial management and non-compliance with financial procedures and tax obligations raises their vulnerability to TF abuse.

b) Portugal has not identified the nature of threats posed by terrorist entities to the NPOs which are at risk, as well as how terrorist actors abuse those NPOs.

c) Portugal has not reviewed the adequacy of its measures that relate to the subset of the NPO sector that may be abused for TF support.

d) Portugal does not periodically reassess its NPO sector.

Criterion 8.2 – In relation to sustained outreach concerning TF issues:

a) Portugal has implemented duties and reporting requirements for NPOs, which promote accountability, integrity and public confidence in their administration and management: Decree Law 36-A/2011.

b) Portugal has not undertaken outreach and educational programmes to raise and deepen awareness amongst NPOs, as well as the donor community, about the potential vulnerabilities of NPOs to TF abuse and TF risks, and the measures that NPOs can take to protect themselves against such abuse.

c) Portuguese authorities do not work with NPOs to develop and refine best practices to address TF risks and vulnerabilities.

d) No measures have been taken to encourage NPOs to conduct transactions via regulated financial channels, whenever feasible.

Criterion 8.3 – All legal entities in Portugal, including NPOs, are required to be registered and have general reporting obligations, established by the Corporate Income Tax Code (CIRC). Foundations

are subject to ancillary filing obligations under the CIRC, regardless of whether or not they are exempt from paying tax. The tax inspection procedures on NPOs mirror the AT's competences in respect to tax law. If indicators on possible TF are identified during the tax inspection procedure, they are reported to the competent authority (i.e. Public Prosecutor), as determined by the Code of Criminal Procedure: art. 242 (general requirement to report crimes).

Criterion 8.4 –

a) General reporting obligations aside, authorities do not monitor the compliance of NPOs with the requirements of R.8, including the risk-based measures applied to them (see c.8.3).

b) NPOs are subject to the tax infractions law (Law 15/2001), which establishes criminal and administrative sanctions for wilful violations.

Criterion 8.5 – In relation to information gathering and the investigation of NPOs of concern, there are some mechanisms in place:

a) General reporting duties of NPOs are in place, and Portugal has established a Permanent Liaison Group (PLG), which facilitates the sharing of information between the AT and the FIU, including in matters related to the abuse of NPOs for CFT purposes. Authorities are also able to gather pertinent information held by the CNES[131], information that is published publicly on NPO websites and information that is held by the AT acquired through the exercise of its duties in relation to tax obligations.

b) The Criminal Police is competent to carry out investigations whenever there is a suspicion of illegal activities, including in relation to ML/TF. This includes TF suspicions raised by or about NPOs.

c) Full information on the administration and management of particular NPOs is accessible in a timely manner, given that relevant information is stored publicly and is easily accessible. This includes access to a register of ownership, composition of the board and financial statements. Furthermore, competent authorities can gather information held by the CNES (the nature of which is not clearly determined), or through the PLG.

d) Portugal has in place a framework at the domestic level to ensure that information is shared between authorities (see 8.5 a-c); however, it does not specifically target situations when there is a suspicion or reasonable grounds to suspect that a particular NPO is involved in TF-related activities.

Criterion 8.6 – Requests for information regarding specific NPOs suspected of TF or other forms of terrorist support are dealt with in the same way as any other request for information. The central contact point for international cooperation in criminal matters is the Public Prosecution Service: art. 21 Decree Law 144/99, notwithstanding the provisions of international treaties, conventions and agreements (such as MoUs between Portuguese authorities and foreign counterparts) that are binding on Portugal. This regime is applicable to cooperation in matters pertaining to offences of a criminal nature, during the stage of the procedure that is conducted before an administrative authority, and to offences of a regulatory nature that give rise to proceedings that are subject to review before a court of law.

[131] CNES' competence is only in relation to the compilation of the identification information of donors and beneficiaries, the filing of documents, as well as ensuring the suitability of the managers of NPOs. It is the AT that plays an important role in the oversight of the income and expenditure of NPOs through its enforcement of the requirements under the IRC Code.

Weighting and conclusion

Portuguese authorities have not undertaken a comprehensive review of the NPO sector to appropriately understand TF risks, and have not taken steps to promote targeted risk-based supervision or monitoring of NPOs.

Recommendation 8 is rated partially compliant.

Recommendation 9 – Financial institution secrecy laws

Portugal was rated *Compliant* with these requirements during the third evaluation (para. 380ff).

Criterion 9.1 –

Access to information of competent authorities

There are no statutory laws or other financial secrecy or confidentiality laws that inhibit the implementation of FATF Recommendations. Obliged entities have a general duty to cooperate with competent authorities by granting them direct access to information or presenting the relevant documents and records: art. 18 AML/CFT Law. Professional secrecy does not prevent the disclosure of facts and data to financial supervisors, judicial authorities and tax authorities: art. 78 (2) 79 (2) (banks, payment institutions and e-money institutions by virtue of art. 37(1) of RJSPME) and art. 195 RGISCF (financial companies). In particular, this includes the names of customers, deposit accounts (or funds movements) as well as other bank operations. CMVM also has access to information, and supervised entities cannot invoke professional confidentiality to refuse to cooperate: art. 361 (2) (a) CVM, and similar provisions exist for insurance companies (art. 27 (1) (b) and (3) RJASR), pension funds (art. 93 (1) (b) and (6)) and insurance intermediaries (art. 58 (c) RJM).

For ML and TF investigations, including the fact finding and trial phases, members of the governing bodies of credit institutions and financial companies, the respective employees and service providers are no longer bound by professional secrecy if there is reason to believe that information they hold is important for the discovery of truth: art. 2 Law 5/2002.

Sharing of information between competent authorities, domestically and internationally

Some protocols have been signed between competent authorities (BdP/ASF in 2005, BdP/CMVM and ASF/CMVM in 2008, BdP/Criminal Police in 2009 and AGO/BdP in 2010 – this last protocol was also signed by CMVM and ASF), which enable them to exchange information. The National Council of Financial Supervisors, created in 2000, provides a platform for cooperation and exchange of information at an institutional level between financial supervisors: Decree-Law 228/2000. It is unclear if operational cooperation with/between other competent authorities that enables them to share information on individual FIs is organised by specific agreements, nor the basis for their cooperation clear. Regarding international cooperation, competent authorities have the ability to cooperate with most of their counterparts, under the condition of reciprocity (see R. 40).

Sharing of information between financial institutions (R. 13, 16 and 17)

Information may be exchanged between FIs which belong to the same group: art. 19(3) AML/CFT Law. In addition, FIs, irrespective of whether they belong to (or not) the same financial group can exchange information (subject to secrecy) on a common business relationship, regarding the same customer: art. 19 (4) AML/CFT Law.

Weighting and conclusion

There are some gaps in the sharing of operational information concerning individual financial institutions between competent authorities.

Recommendation 9 is rated largely compliant.

Recommendation 10 – Customer Due Diligence

Portugal was rated *Largely compliant* with these requirements during the third evaluation (para. 315ff), mainly due to the absence of explicit CDD requirements for occasional wire transfers under EUR 12 500; the inclusion of identification requirements for beneficial owners in supervision instructions and not in law; and some deficiencies noted in the securities sector. Since then, the FATF Recommendations have been strengthened to impose more detailed requirements, particularly regarding the identification of legal persons and legal arrangements.

Criterion 10.1 – Anonymous bank accounts or passbooks are prohibited: art. 23 (2) AML/CFT Law. There is no legal provision covering the prohibition of accounts in obviously fictitious names; although, the general identification requirements of the AML/CFT Law may be interpreted as precluding contracts under obviously fictitious names.

Criterion 10.2 – FIs are required to undertake CDD when: establishing business relations; carrying out occasional transactions above the applicable designated threshold, including those which are wire transfers in the circumstances covered by R.16/INR.16; there is a suspicion of ML/TF; and when there are doubts about the veracity or adequacy of previously obtained customer identification data: art. 7 (1a), (1b), (1c) and (1d) AML/CFT Law and art. 27 (1) (a) and (b) and (2) BdP Notice 5/2013 for the detailed application of CDD for occasional transactions which are wire transfers.

Criterion 10.3 – FIs are required to identify their customers and verify their identities with a "valid original document," which includes a photo, and specific identification information in the case of natural persons: art. 7 (1) and (3) AML/CFT Law. A valid identification document issued by a "competent public authority" must be presented as supporting evidence for the establishment of all business relationships[132] by natural persons: art. 14 (1) of BdP Notice 5/2013 (this is applicable to credit institutions, financial companies, payment institutions and e-money institutions). However, there is no similar provision that applies to FIs under the sole regulatory/supervisory regime of CMVM or ASF. The identity of legal persons must be verified through a "legal person ID card or commercial registration certificate" (art. 7(3) AML/CFT Law), which amounts to a "reliable, independent" source document.

Criterion 10.4 – The identification of the customer or of his/her representative is required: art. 7 (1), 8 (1), 13 (1) a) AML/CFT Law. There is no explicit requirement to verify his/her authorisation to act on behalf of the customer but this may be implicitly included as part of the general identification requirements. The verification of powers of representatives is required as part of a specific duty of care for FIs under the supervision of BdP: art. 13 (a) BdP Notice 5/2013. There is no similar provision applicable to FIs under the sole regulatory/supervisory regime of CMVM or ASF.

[132] Art. 13 to 22 of BdP Notice 5/2013 specifically govern customer identification obligations in the context of opening bank accounts. However, art. 23 of BdP Notice 5/2013 states that most of the provisions governing the opening of bank accounts are also applicable in the context of other business relationships.

Criterion 10.5 – The definition of beneficial ownership (BO) provided in art. 2(5) of the AML/CFT Law is aligned with the definition of the FATF Glossary. The identification and verification of BO is required where the customer is a legal person or arrangement, or when the customer is not acting on his/her behalf. or if there is some doubt as to the customer's identity: art. 7 (4) AML/CFT Law. FIs under the supervision of BdP are required to identify BO every time a business relationship is established: art. 13 (b) BdP Notice 5/2013. BO information should be "adequately verified," according to the risk of ML/TF: art. 7 (4) AML/CFT Law and art. 19 (1) BdP Notice 5/2013. However, there is no explicit requirement to verify the identity of BO using information or data obtained from a reliable source in all cases. When there is an increased risk, FIs must request original documentation or certified copies for the purpose of verification.

Criterion 10.6 – FIs are required to obtain information on the purpose and intended nature of the business relationship: art. 9(1)(b) AML/CFT Law.

Criterion 10.7 – FIs are required to:

a) conduct ongoing monitoring of their business relationships, and obtain information relevant to the risk profile of the customer or the characteristics of the operation, including the source of funds when necessary: art. 9(1)(c) and (d) AML/CFT Law, and

b) keep the elements gathered in the course of the relationship up-to-date: art. 9(1)(e) AML/CFT Law. This information also needs to be kept relevant: art. 33 BdP Notice 5/2013 and accurate: para. 2.6 ASF Regulation 10/2005. There is no similar provision applicable to FIs under the sole regulatory/supervisory regime of CMVM or ASF, but the interpretation of the general identification requirements of the AML/CFT law is considered relevant.

Criterion 10.8 – For both legal persons and arrangements, FIs should take appropriate measures to understand the ownership and control structure, and obtain information on the intended nature of the business relationship: art. 9 (1) (a) and (b) AML/CFT Law.

Criterion 10.9 – For customers that are legal persons or arrangements, FIs are required to identify the customer and verify its identity through the following information:

a) its identification card, commercial registration certificate or equivalent document for foreign entities should be used to verify its identity: art. 7(1)(b) and (3) AML/CFT Law. Customers of credit institutions, financial companies, payment and e-money institutions are required to provide the company name and its object, as well as an excerpt from the commercial registry: art. 17 (1) (b) and art. 18 (2) (a) (i) BdP Notice 5/2013. For customers of securities/investment companies, the register of clients must contain information on their identity and its verification, including when appropriate a copy of the registration with the National Registry of Legal Persons: art. 12 (1) and (2) (b) CMVM Regulation 2/2007. For customers of insurance companies and intermediaries, the name, object and corporate identification number have to be provided, including when the customer is a legal arrangement: art. 3.1.2. and 3.1.2.2 ASF Regulation 10/2005.

b) the identity of the members of the management board or equivalent body (art. 17(1)(b)(v) BdP Notice 5/2013), and the names of the members of governing bodies (art. 3.1.2 f ASF Regulation 10/2005), which is more limited than individuals holding a senior management position. There is no general or sectoral provision requiring the verification of powers to regulate and bind the legal person/arrangement.

c) the address of the head office: art. 17 (1) (b) (iii) BdP Notice 5/2013, 12.1. c) CMVM Regulation 2/2007 and 3.1.2. c) ASF Regulation 10/2005, but not of the principal place of business when it is different. In addition, there is a requirement to collect, where applicable, the full address of the fixed/permanent establishment which could correspond to the main place of business: art. 17 (1) (b) (iii) BdP Notice 5/2013. There are no such requirements for FIs under the sole regulatory/supervisory regime of CMVM or ASF.

Criterion 10.10 – For customers that are legal persons, the identity of the beneficial owner needs to be "adequately verified": art. 7(4) AML/CFT Law (see c. 10.5 and the reservation expressed regarding the associated requirement of using a reliable source). The definition of the beneficial owner of corporate entities (art. 2 (5) (a) AML/CFT Law) covers the three steps defined in c. 10.10.

Criterion 10.11 – For the definition of legal arrangements and the recognition of trusts under foreign law in Portugal, see c. 25.1. The definition of the beneficial owner of legal arrangements (art. 2 (5) (b) and (c) AML/CFT Law) encompasses the categories of people defined in c. 10.11. FIs are required to obtain sufficient information on beneficiaries of trust under foreign law capable of determining their identity, but only at the moment of payment or when such beneficiaries intend to exercise acquired rights: art. 19(6)(b) BdP Notice 5/2013. The secrecy and confidentiality on the names of the settlor and the beneficiaries of trusts under foreign law (art. 11 Decree-Law 352-A/88) do not apply vis-à-vis FIs as it would represent a breach of applicable AML/CFT obligations.

Criterion 10.12 – In the context of life insurance and other investment related insurance policies:

a) There are no requirements to take the name of the beneficiary of a life insurance contract as soon as the beneficiary is identified or designated.

b) There are no requirements to obtain sufficient information concerning the beneficiary of a life insurance contract to satisfy the FI that it will be able to identify the beneficiary at the time of payout.

c) FIs are required to identify the beneficiary, at the latest, at the time of the payout: art. 8(4) AML/CFT Law.

Criterion 10.13 – FIs are required to apply the RBA: art. 10 (1) AML/CFT Law. However, there is no specific reference to include beneficiaries of life insurance contracts as a relevant risk factor when determining whether EDD is required (at the time of payout).

Criterion 10.14 – FIs are required to verify the identity of the customer and beneficial owner when the business relationship is established or before an occasional transaction is carried out: art. 8 (1) AML/CFT Law.

a) Verification can nevertheless be completed as soon as possible after the establishment of a business relation: art. 8(2) AML/CFT Law.

b) Verification can be postponed as indicated in a) if this is considered indispensable for the completion of the transactions: art. 8(2) AML/CFT Law.

c) In case of bank account opening, no credit/debit movements to the account after the initial deposit, nor payment instruments made available or ownership change shall be allowed, until full CDD compliance is established: art. 8(3) AML/CFT Law. These measures can be considered as effective risk management measures for the purpose of c. 10.14.c) but only apply to business

relationships established by FIs under the supervision of BdP. There are no such requirements for FIs under the sole regulatory/supervisory regime of CMVM or ASF.

Criterion 10.15 – FIs must apply the RBA, which requires that verification procedures are adapted to risks: art. 10(1) AML/CFT Law. However, there is no specific reference to measures that must be taken to manage risk prior to the verification of the customer/beneficial owner information.

Criterion 10.16 – FIs are required to apply CDD measures both to new and existing customers on a regular basis and according to the risk level: art. 9(2) and 60(3) AML/CFT Law.

Criterion 10.17 – FIs are required to apply EDD measures in higher risk situations: art. 12 AML/CFT Law.

Criterion 10.18 – FIs are allowed to apply SDD, and remain subject to obligation to monitor transactions: art. 11 and 11(3) AML/CFT Law. A specific duty of SDD is applicable to a closed list of situations (art. 25 AML/CFT Law), and in these situations, FIs should maintain ongoing monitoring of the business relationship (art. 34 (2) BdP Notice 5/2013). SDD may not be applied where there is a suspicion of ML/TF. However, the application of SDD is not restricted to situations where lower risks have been identified through an adequate risk analysis by the country or the FI. In the particular case of art. 11, the application of an EU-wide assessment for specified customers does not seem to meet the test of being "adequate" in terms of the FATF Recommendations.

Criterion 10.19 – Where an FI is unable to comply with relevant CDD measures, it is required to:

a) refuse to carry out a transaction through a bank account or an occasional transaction, refuse to establish a business relation, or put an end to a business relationship: art. 13(1) and (2) and art. 8(3) AML/CFT Law, and

b) consider filing an STR (as outlined in art. 16 AML/CFT Law) when it refuses the transaction or the business relationship because it cannot carry out CDD procedures: art. 13(2) AML/CFT Law.

Criterion 10.20 – Credit institutions, financial companies, payment institutions and e-money institutions are required not to pursue the CDD process but instead, file an STR when they believe that performing the CDD process will tip off the client: art. 29(3) BdP Notice 5/2013. However, there is no similar provision applicable to FIs that are not under the AML/CFT supervision of BdP.

Weighting and conclusion

Recommendation 10 is rated largely compliant.

Recommendation 11 – Record-keeping

Portugal was rated *Compliant* with these requirements during its third evaluation (para. 388ff).

Criterion 11.1 – FIs are required to keep records of transactions for 7 years after the execution of the transaction, even if the business relationship has already ended: art. 14(2) AML/CFT Law.

Criterion 11.2 – FIs are required to keep CDD supporting documents and transaction records for 7 years after the customer identification moment or after the end of the business relationship: art. 14(1) and (2) AML/CFT Law. They must also keep their analysis of unusual/suspicious transactions for 5 years: art. 15 (3) AML/CFT Law. All companies are required to keep books of accounts, records

and supporting documents in good order for a period of 10 years: art. 123 (4) Corporate Income Tax Code.

Criterion 11.3 – Documents admissible in court proceedings as evidence should be kept by FIs to enable the reconstruction of transactions: art. 14(2) AML/CFT Law.

Criterion 11.4 – FIs are under a general duty to cooperate and to provide assistance "promptly" to authorities: art. 18 AML/CFT Law. They are also required to have in place systems and instruments to enable them to respond fully and appropriately to domestic competent authorities (including the AG, FIU, and competent judicial authorities, but not the supervisory authorities) as to whether they have maintained, during the previous 5 years, a business relationship with a specified person: art. 28 AML/CFT Law. On the basis of their general supervisory powers, financial supervisors have a right to obtain information from obliged institutions under their responsibility: art. 5 BdP Notice 5/2013, 361 (2) (a) CVM, 27 (1) (b) and (3) RJASR, 58 (c) and 93 (1) (b) and (6) RJM.

Weighting and conclusion

Recommendation 11 is rated compliant.

Recommendation 12 – Politically Exposed Persons (PEP)

Portugal was rated *Non-compliant* with these requirements during the third evaluation (para. 353ff), as there was no requirement for appropriate risk management systems to identify PEPs, and no specific diligence requirement applicable to those customers. In 2012, FATF introduced new requirements for domestic PEPs and PEPs from international organisations.

Criterion 12.1 – The PEP regime provided in the AML/CFT Law has limitations, insofar as it lays down a condition of territoriality. Individuals are only considered PEPs, both domestic and foreign, when they are, or have been, entrusted with prominent public or political functions and they reside abroad (art. 12 (2) and (4) AML/CFT Law). Important political party officials are not included in the definition of PEPs provided in art. 2 (6) of the AML/CFT Law. Furthermore, the EDD measures prescribed in art. 12 of the AML/CFT Law do not extend to the beneficial owner(s) of customers who are PEPs. Nevertheless, BdP Notice 5/2013 extends the range of PEPs to cover important political party officials (as part of the definition of *Holders of other political or public positions*, targeted in art. 2 (20) and 4 of Law 4/83) and beneficial owners who are PEPs (art. 37 (8)). There is no equivalent provision for FIs or services which are under the sole regulatory/supervisory regime of ASF or of CMVM. As far as foreign PEPs are concerned, the regime remains applicable 12 months after they have ceased their official functions and may be extended to after this period if these individuals still present higher risks: art. 12 (5) of AML/CFT Law. FIs are required to:

a) have risk-based procedure to determine if the customer is a foreign PEP: art. 12(4)(a) AML/CFT Law and art. 37 (1)(b) and (8) of BdP Notice 5/2013. For FIs under the supervision of BdP, this applies to beneficial owner(s) of customers, as well: art. 37 (8) of BdP Notice 5/2013. However, there are no requirements to determine if the beneficial owner of the client is a foreign PEP for FIs which are under the sole regulatory/supervisory regime of ASF or of CMVM.

b) obtain the approval of the senior management for the establishment of relationships with PEPs: art. 12(4)(b) AML/CFT Law & art. 37 (1)(c) and (8) of BdP Notice 5/2013.

c) take reasonable steps to identify the customer's source of wealth and funds: art. 12(4)(c) AML/CFT Law & art. 37 (1)(d) and (8) of BdP Notice 5/2013.

d) conduct enhanced ongoing monitoring of the relationship: art. 12(4) AML/CFT Law & art. 37 (1)(e) BdP Notice 5/2013.

Criterion 12.2 – a) In the case of domestic PEPs (residing abroad) and PEPs from international organisations, the measures of c. 12.1 a) apply to determine if a customer is such a PEP. FIs under the supervision of BdP are also required to take reasonable measures to determine if a customer, or his/her beneficial owner, is a domestic PEP residing in Portugal: art. 37 (5) and (8) BdP Notice 5/2013. There is no equivalent provision for FIs which are under the sole regulatory/supervisory regime of ASF or CMVM. b) The measures described in c. 12.1 b) to d) are applicable to all domestic PEPs (residing abroad) and international PEPs. As a general rule, all FIs have to apply EDD measures when higher risks are identified: art. 12 (1) AML/CFT Law (c. 10.17), and FIs under the supervision of BdP are also required to apply EDD when domestic PEPs residing in Portugal or beneficial owners present higher risks: art. 37 (7) and (8) BdP Notice 5/2013.

Criterion 12.3 – The regime described in c. 12.1 and 12.2 applies to immediate family members and person known to have a close company or business relationship with foreign PEPs: art. 2(6)(b) and (c) AML/CFT Law, with the same reservations noted with regards to measures applicable to the beneficial owners of family members and associates who are PEPs.

Criterion 12.4 – There are no requirements to determine whether the beneficiaries of life insurance policies, and their beneficial owner(s), are PEPs.

Weighting and conclusion

There are minor shortcomings with regards to the definition of PEPs and the application scope of the rules mentioned in c.12.1-c.12.2. The gap in relation to the beneficiaries of life insurance policies is considered a minor shortcoming given the risk level of the insurance sector in Portugal.

Recommendation 12 is rated largely compliant.

Recommendation 13 – Correspondent Banking

Portugal was rated *Partially compliant* with these requirements during the third evaluation (para. 357ff), due to the absence of obligations to gather information on respondent institutions from EU countries or FATF members; the lack of requirement to obtain approval from senior management; and the absence of regulation with respect to payable-through accounts. The new FATF Recommendation adds a specific requirement concerning the prohibition of correspondent relationships with shell banks.

Criterion 13.1 – The application of EDD for correspondent banking (CB) relationships with institutions established in non-EEA countries is required: art. 12 (2) and 26 (1) AML/CFT Law. This approach tends to restrict the scope of relationships to which art. 12 is applicable, and is not in line with the requirements of R. 13 which target all cross-border correspondent banking relationships.

Art. 38 of BdP Notice 5/2013 details the provisions applicable to correspondent banking services (see below). Art 38 (6) states that these provisions shall apply, mutatis mutandis, to funds transfers through correspondents abroad, vis-à-vis FIs or intermediate fund settlement systems. However, such rules do not cover the whole range of correspondent banking services.

The provisions of art. 12 AML/CFT Law do extend to "other similar relationships": art. 38 (6) BdP Notice 5/2013.

a) Credit institutions are required to gather relevant information about the respondent institution and its business as well as the characteristics of its supervision (art. 26 (2) AML/CFT Law) including possible investigations or sanctions related to ML/TF (art. 38 (1) (a) ii) BdP Notice 5/2013).

b) Credit institutions are required to gather relevant information to assess the respondent institution's AML/CFT controls: art. 26 (2) AML/CFT Law.

c) Senior management of the correspondent institution is required to approve the establishment of new CB relationships: art. 26 (3) AML/CFT Law.

d) A written agreement establishing the responsibilities of, respectively, the correspondent and the respondent institution(s), is required: art. 26 (3) AML/CFT Law and 38 (1) (b) BdP Notice 5/2013.

Criterion 13.2 – With respect to *payable through accounts,* FIs are required to satisfy themselves that the respondent bank:

a) has verified the identity and performed due diligence on the customers having direct access to the accounts: art. 26 (4) AML/CFT Law and 38 (3) BdP Notice 5/2013.

b) can promptly provide CDD documents and information, upon request of the correspondent institution: art. 26 (4) of AML/CFT Law and art. 38 (3) (c) of BdP Notice 5/2013.

Although, the requirements reflect those of R.13, their scope of application is limited to respondent institutions located outside the EEA.

Criterion 13.3 – The definition of shell bank provided in art. 2 (7) of the AML/CFT Law is in line with the FATF definition. CB relationships with shell banks are prohibited and credit institutions are required to take appropriate measures to ensure that they do not enter into CB relationships with credit institutions known to allow their accounts to be used by shell banks: art. 30 (1) and (2) AML/CFT Law.

Weighting and conclusion:

Recommendation 13 is rated partially compliant, due to the fact that the EDD regime does not apply to relationships with FIs from EEA countries. This deficiency is material given the level of engagement of Portuguese banks with foreign counterparts.

Recommendation 14 – Money or value transfer services (MVTS)

Portugal was rated *Largely compliant* with these requirements during the third evaluation (para. 536ff), mainly due to effectiveness issues, particularly in relation to the lack of STRs from exchanges. This is not assessed as part of technical compliance under the *2013 Methodology*. FATF introduced new requirements concerning the identification of MVTS providers who are not authorised or registered.

Criterion 14.1 – MVTS providers (art. 7 of the RJSPME with reference to art. 4 which defines payment services) are all licensed or registered: credit institutions established in Portugal (banks, savings banks, central mutual agricultural credit banks, mutual agricultural credit banks, credit financial institutions, mortgage credit institutions – art. 3 RGICSF), which are authorised by and

registered with BdP (art. 16 (1) RGICSF and art. 65 BdP Notice 5/2013); financial companies established in Portugal, which include exchange offices (Art 6 b) viii) RGICSF) that are authorised by and registered with BdP (art. 174-A RGICSF and art. 194 (1) BdP Notice 5/2013); payment service providers and e-money institutions with their head offices in Portugal, authorised by and registered with BdP (art. 10(1) RJSPME and art. 20 BdP Notice 5/2013); credit institutions, electronic money institutions and payment institutions established outside of Portugal, if they are authorized to provide those services in their country of origin (art. 7 (2) RJSPME).

Criterion 14.2 – BdP has powers to investigate and inspect credit institutions suspected of providing services without being authorised, including financial companies and exchange offices: art. 126(1) and art. 196 (1) RGICSF. BdP has similar powers in relation to payment institutions and e-money institutions: art. 7(5) RJSPME. In its investigation of credit institutions and financial companies, BdP can receive assistance from the police (art. 127 RGICSF) and seize documents, equipment or valuables (art. 128).

The sanctions applicable in the case of unauthorised FIs includes the winding up and liquidation of the entities (art. 126 (2) RGICSF) or fines, the amount of which depends, in particular, on whether fines are applied to a legal person (EUR 10 000 to EUR 5 million) or a natural person (EUR 4 000 to EUR 5 million) (art. 211 (1) (a) and art. 211-A RGICSF), with the possibility for additional sanctions, such as the loss of the proceeds of the breach or the publication of the sanctions decision (art. 212). In the case of unauthorised payment institutions and e-money institutions, financial sanctions apply (art. 95 (a) RJSPME), as well as additional sanctions, such as the publication of the sanctions or the prohibition from conducting activities (art. 96 and 97 RJSPME). The applicable range of sanctions is proportionate (and dissuasive).

Criterion 14.3 – Credit institutions, financial companies, payment institutions and e-money institutions, as well as entities providing postal services (cf. c. 26.1 a)) are subject to the AML/CFT framework (art. 3 (1) (a), (b), (k) and (l) AML/CFT Law), and BdP is competent to monitor their compliance with AML/CFT obligations (art. 38 (a)).

Criterion 14.4 – Payment institutions and e-money institutions with head offices in Portugal shall previously inform BdP when they want to use agents (art. 18 (2) RJSPME) and register their agents (art. 20).

Criterion 14.5 – When MVTS services are offered by agents of payment service providers or e-money institutions, these institutions are responsible for ensuring full compliance with their AML/CFT obligations, whether the agents are established in Portuguese territory or not: art. 6 and 7 BdP Notice 5/2013.

Weighting and conclusion

Recommendation 14 is rated compliant.

Recommendation 15 – New technologies

Portugal was rated *Compliant* with these requirements during the third evaluation (para. 359ff). The new R. 15 focuses on assessing risks related to the use of new technologies, in general, and no longer specifically targets distance contracts.

Criterion 15.1 – Although there is no specific obligation for FIs to assess risks associated with the use of new technologies, FIs are under a general requirement to adapt the nature and extent of their CDD procedures to the risks associated with the customer, relationship, product, transactions and funds: art. 10 (1) AML/CFT Law, as well as to develop a risk identification process for all new products and activities which also require approval from the management board (this includes new delivery mechanisms and any other adjustment of the FIs' operational procedures) and risk management policies: art. 12 and 18(c) AML/CFT law. The factors to be taken into consideration by credit institutions, financial companies, payments institutions and e-money institutions when assessing these risks are part of open lists ("at least"), and FIs are invited to consider all relevant factors based on their risk profile: art. 4 (1), (3) and 18 (2) (c) BdP Notice 5/2013; art. 305-B and 314-B (1) and (2) of Securities Code. Insurance undertakings are required to develop programs and procedures aimed at safeguarding ML risks arising from the use of technologies that favour anonymity: art. 15(a) ASF Regulation 10/2015. For the securities sector, financial intermediaries need to satisfy the rules governing electronic subscriptions or transactions before making available such electronic services: art. 21 to 31 of CMVM Regulation 2/2007.

Criterion 15.2 –

a) There is a general requirement for credit institutions, financial companies, payments institutions and e-money institutions to perform a risk assessment of their activity and to review this assessment at least once a year: art. 4 (1) and (4) BdP Notice 5/2013. The management board of financial institutions is also required to approve new products and activities prior to their introduction: art. 18 (2) (c) BdP Notice 5/2008. This would apply when new products involve the use of new technologies. No similar requirement applies to FIs or services under the sole regulatory/supervisory regime of CMVM or ASF.

b) FIs are under a general requirement to adapt the nature and extent of their CDD procedures to the risks associated with the customer, relationship, product, transaction and funds: art. 10 (1) AML/CFT Law. They must also apply EDD in cases of higher risks (art. 12 (1) AML/CFT Law) and in any case when they must apply EDD in non-face-to-face transactions, in particular, in operations that favour anonymity: art. 12 (2) AML/CFT Law and art. 15 ASF Regulation 10/2005. More generally, FIs must adopt risk management policies that take into account the nature and level of their risks: art. 11 (1) and (2) BdP Notice 5/2008, 305-B (1) and (2) Securities Code and art. 15 ASF Regulation 10/2005. These general rules to take appropriate measures to mitigate the risk identified would apply in situations involving new technologies.

Weighting and conclusion:

Deficiencies are mainly due to the absence of explicit legal and/or regulatory requirements to consider the specific risks associated with the use of new technologies for the entire financial sector in Portugal.

Recommendation 15 is rated largely compliant.

Recommendation 16 – Wire transfers

During the third round, Portugal was rated *Non-compliant* with these requirements (para. 394 - 395)[133]. There were numerous key technical deficiencies related to the lack of any obligations concerning the collection and provision of originator and beneficiary information. Significant changes were made to the requirements in this area during the revision of the FATF Standards. Furthermore, following the third round evaluation, *Regulation (EC) No. 1781/2006 of the European Parliament and of the Council on Information on the payer accompanying transfers of funds* came into force across the EU in November 2006, which laid down obligations for FIs when handling wire transfers. This EU Regulation is applicable in Portugal and is assessed below.

Criterion 16.1 – EU Regulation 1781/2006 does not contain any provisions requiring that, in the case of cross-border transfers, the ordering FI should obtain information on the beneficiary. FIs are required to ensure that all cross-border wire transfers of EUR 1 000 or more are accompanied by required and accurate originator information: art. 4 and 5 EU Regulation 1781/2006. Beneficiary information for occasional transfers is also required: art. 27 (1), (2) and (5) BdP Notice 5/2013.

Criterion 16.2 – Required and accurate originator information must be included in batch files: art. 7.2 Regulation 1781/2006. There is no requirement to include beneficiary information in the batch file.

Criterion 16.3 – For transactions below EUR 1 000, collection (not verification) of originator information is required: art. 5.4 Regulation 1781/2006. Art. 27(3) BdP Notice 5/2013 also requires the collection of beneficiary information but only for occasional wire transfers.

Criterion 16.4 – The exemption from verifying the originator's identity does not apply if an ML/TF suspicion arises: art. 5.4. Regulation 1781/2006. The same reservation as in criterion 16.3 applies.

Criterion 16.5 – Domestic transfers[134] may be accompanied only by the account number (or unique identifier) of the originator: art. 6 Regulation 1781/2006. However, this presupposes that accurate and complete originator information can be made available to the beneficiary institution by other means and at the request of the beneficiary institution.

Criterion 16.6 – For domestic transfers within the EEA[135], the Regulation contains an exemption from the requirement to provide complete originator information: art. 6.1 Regulation 1781/2006. However, the exemption may only apply where complete information about the originator can be made available to the beneficiary's FI by other means. At the request of the beneficiary's payment service provider, the originator's payment service provider must be able to furnish complete information about the originator (art. 6.2 Regulation 1781/2006). The originator's payment service provider must be able to provide complete information on the originator, if requested by the payee within three working days.

[133] Regulation 2015/847, which comes into force in June 2017 (after the on-site), will address some of the noted deficiencies above.

[134] Inter-EU/EEA transfers are considered to be 'domestic transfers' for the purposes of Regulation 1781/2006, which is in line with R.16.

[135] The definition of a domestic transfer within the EEA-area in the Regulation (art. 6.1) is wider than that of R.16, which refers to "a chain of wire transfers that takes place entirely within the EU". The Regulation refers to the situation where the payment service provider (PSP) of the payer (i.e. originator) and the PSP of the payee (i.e. beneficiary) are situated in the EEA-area. Hypothetically, this means that, according to the Regulation, a domestic transfer could be routed via an intermediary institution situated outside the EEA-area.

Criterion 16.7 – The ordering FI is required to retain complete information on the originator for five years: art. 5.5 Regulation 1781/2006, but this does not include beneficiary information. FIs are required to retain all records (including beneficiary information when applicable) for seven years: art. 14 Law No. 25/2008.

Criterion 16.8 – Ordering FIs are required to refrain from executing wire transfers that do not comply with the requirements set out in Regulation 1781/2006: art. 5 Regulation 1781/2006, but this does not include beneficiary information.

Criterion 16.9 - Intermediary FIs are required to ensure that all originator information received and accompanying a wire transfer is kept with the transfer: art. 12 Regulation 1781/2006. There are no requirements for beneficiary information.

Criterion 16.10 – Where the intermediary FI uses a payment system with technical limitations, it must make all information on the originator available to the beneficiary FI upon request, within three working days, and must keep records of all information received for five years: art. 13 Regulation 1781/2006. There are no requirements for beneficiary information.

Criterion 16.11 – Intermediary FIs are not required to take reasonable measures to identify cross-border wire transfers that lack originator information or required beneficiary information.

Criterion 16.12 – Intermediary FIs are not required to have risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking originator or beneficiary information, and when to take appropriate action.

Criterion 16.13 – Beneficiary FIs are required to detect whether the fields containing required information on the originator have been completed, and to have effective procedures to detect whether the required originator information is missing: art. 8 Regulation 1781/2006. There are no requirements to detect whether the required beneficiary information is missing.

Criterion 16.14 – The FI of the beneficiary is required to verify information about the beneficiary's identity, if it has not already been done, and to keep such information: art. 27(1)(b) and 27(2)(b) of BdP Notice 5/2013 (applicable to occasional transfers only).

Criterion 16.15 – Where the required originator information is missing or incomplete, beneficiary FIs are required to either reject the transfer or ask for complete information, and take appropriate follow-up action in cases where this is repeated: art, 9 Regulation 1781/2006. There are no requirements relating to cases where the required beneficiary information is missing or incomplete.

Criterion 16.16 – By virtue of the relevant EU regulations and national legislation (art. 6 and 7 of BdP Notice 5/2013), MVTS providers are required to comply with the relevant requirements of Recommendation 16 in the countries in which they operate, directly or through their agents.

Criterion 16.17 – The Regulation does not contain any specific requirements relating to measures to be taken when the payment service provider acts both as the originating entity and beneficiary of the transfer. Where a payment service provider holds information concerning both the originator and the beneficiary, it must take all of this information into account as part of its due diligence process, with a view to determining whether the transaction should be considered 'unusual' and suspicious, and therefore reported to the FIU.

Criterion 16.18 – FIs that conduct wire transfers are subject to the requirements of the domestic measures and EU regulations that give effect to UN Security Council Resolutions (UNSCRs) 1267, 1373, and successor resolutions.

Weighting and conclusion

The absence of any requirements in Regulation 1781/2006 relative to the transmission of beneficiary information is the main shortcoming for most of the sub-criteria of R. 16. The lack of obligations for all transactions with the exception of occasional transfers as specified under the BdP Notice 5/2013 is another shortcoming for C. 16.1-2, C.16.9-10 and C.16.14. The lack of requirements for intermediary financial institutions affects C.16.8 and C.16.9

Recommendation 16 is rated partially compliant.

Recommendation 17 – Reliance on third parties

Since Portugal did not allow financial institutions to rely on intermediaries or third parties to perform part of the CDD process, the rating was *Not applicable* with these requirements during the third evaluation (para. 379). The FATF's new requirements emphasise the country risk related to the third party required to perform due diligence on the customer.

Criterion 17.1 – FIs (except bureaux de change, payment institutions and electronic money institutions) are allowed to rely on third parties (which must be only other FIs) to conduct CDD measures: art. 24 (1) AML/CFT Law. FIs that rely on third-party FIs retain the full responsibility to ensure compliance with CDD requirements: art. 24 (2) AML/CFT Law.

a) FIs need to have immediate access to all due diligence information related to its customers and gathered by the third party: art. 24 (2) AML/CFT Law.

b) FIs are required to ensure that the third party submits supporting evidence along with CDD information when requested (art. 12 (3) (d) BdP Notice 5/2013), which involves a degree of swiftness, but cannot amount to a requirement to provide this information "without delay." There are no similar requirements for FIs under the sole regulatory/supervisory regime of CMVM or ASF.

c) The third party can only be (a) another FI established, regulated and supervised in Portugal (with the exception of bureaux de change, payment institutions and electronic money institutions)or (b) an FI from another EU Member State or from a country that applies equivalent AML/CFT requirements (art. 24 (1) AML/CFT Law) under the presumption that they are all subject to AML/CFT regulation and supervision and have measures in place for compliance with CDD and record-keeping requirements.

Criterion 17.2 – Reliance is only permitted on third parties covered by the AML/CFT legislation of other EU Member States or equivalent third countries: art. 24 (1) (b) AML/CFT Law. Reliance on EU members is not based on the country level of ML/TF risks, but reflects the presumption that all EU Member States implement harmonised AML/CFT provisions. Inclusion on the list of equivalent third countries takes into account the compliance of domestic legislation with the core FATF requirements, and the degree of risk related to the scale of criminality to which the country is exposed. Account is therefore taken of risk-related factors, without focussing on the analysis of ML/TF risks.

Criterion 17.3 –Portuguese authorities do not pursue the option provided for in c. 17.3, as art. 24 of the AML/CFT Law applies whether or not the third party is part of the same financial group as the FI or not.

Weighting and conclusion

The level of country risk is not fully taken into account when considering whether reliance on a third party in another EU country is permitted.

Recommendation 17 is rated largely compliant.

Recommendation 18 – Internal controls, foreign branches and subsidiaries

Portugal was rated *Largely compliant* with these requirements during the third evaluation (para. 428ff). The main deficiency related to internal controls was the absence of an explicit requirement that the compliance officer should be at the management level. Regarding branches and subsidiaries, there was no explicit regulation that required institutions to pay attention to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations. Furthermore, there was no legal obligation that, where the minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries are required to apply the higher standard, to the extent that local laws and regulations permit. R. 18 introduces some new requirements for implementing independent audit functions for internal supervision and AML/CFT programmes for financial groups.

Criterion 18.1 – FIs are required to establish adequate internal policies and procedures for AML/CFT compliance: art. 21 AML/CFT Law. The need to take account of the size, nature and complexity of the business structure and activities, and of the magnitude of risks, is referred to in the definition and implementation of the internal control system by FIs supervised by BdP: art. 41 (2) BdP Notice 5/2013.

a) There are no general requirements to have a compliance management function, including a compliance officer at management level. The responsibility of the management board of credit institutions, financial companies, payment institutions and e-money institutions, or an equivalent body to promote an AML/CFT compliance culture based on an internal control system is mentioned in art. 41 (2) BdP Notice 5/2013. There are also requirements to establish an independent, permanent and effective compliance function (art. 43 BdP Notice 5/2013), and to ensure that the compliance function has sufficient authority to be objectively and independently carried out: art. 18 (2) (h) BdP Notice 5/2008. However, there is no explicit requirement that the compliance officer is appointed at the management level. For financial intermediaries active in the securities sector, there is no explicit obligation to appoint a compliance officer, but a person responsible for the compliance control system should be appointed (art. 6 (1) CMVM Regulation 2/2007 and 305-A (3) a) Securities Code). For insurance intermediaries, there is only a requirement to have a member of staff responsible for the coordination of internal control procedures: art. 10 ASF Regulation 10/2005, which is insufficient.

b) There are no general requirements for employee screening procedures. Adequate procedures for hiring staff should be in place in insurance companies to guarantee that recruitment is conducted in accordance with stringent ethical criteria: art. 15 (b) ASF Regulation 10/2005. For FIs under the responsibility of BdP, the recruitment of personnel allocated to the functional compliance area is

conducted on the basis of high ethical standards and demanding technical requirements (art. 17 (2) BdP Notice 5/2008), human resources allocated to AML/ CFT must be sufficient and eligible (art. 41 (1) (c) BdP Notice 5/2013), and recruitment and selection policies should be defined (art. 9 (f) BdP Notice 5/2008). In the securities sector, FIs should employ personnel with the required skills, knowledge and expertise: art. 305 (1) Securities Code. There are no similar requirements for the insurance sector.

c) There is a general duty of regular training for directors and employees of all FIs: art. 22 AML/CFT Law. Art 46. of the BdP Notice 5/2013 and ASF Regulation 10/2005 further strengthen this obligation.

d) FIs under the supervision of BdP have to have an internal audit function in place: art. 21 (7) and 22 BdP Notice 5/2008. For AML/CFT purposes, the internal audit function, the external auditor or other qualified entities (which act independently: art. 73, 74 (1) Law 140/2015 on statutory auditors) are required to perform regular effectiveness tests of the internal control system: art. 44 BdP Notice 5/2013. FIs under the supervision of CMVM must establish an independent internal audit service in charge of examining and assessing the internal control system: art. 305-C (1) CVM. Insurance companies must have an independent internal audit function: art. 75 (3) RJASR and 19 (3) ASF Regulation 8/2009.

Criterion 18.2 – Credit institutions, financial companies, payment institutions and e-money institutions, as well as insurance companies, are required to extend their AML/CFT principles and policies to all foreign branches and subsidiaries which are part of the same financial group (as defined in art. 2 and 3 of Decree-Law 145/2006 in the case of BdP institutions): art. 45 BdP Notice 5/2013 and 14 ASF Regulation 10/2005. There are no similar requirements for FIs from the securities sector.

a) The sharing of information related to the prevention of ML/TF between institutions belonging to the same financial group should not be prevented, and information relating to an STR or an ongoing ML/TF investigation can only be shared with group units established in an EU Member State or an equivalent third country: art. 19 (3) (a) AML/CFT Law, 45 (1) (b) BdP Notice 5/2013 and 292 (1) RJASR.

b) Although, there are no specific provisions stipulating group-level functions to have unrestricted access to information that branches or subsidiaries hold on customers, accounts and transactions when it is necessary for the prevention or management of AML/CFT risks, general provisions establishing information sharing procedures (such as proper risk management of group-wide activities by parent company for AML/CFT purposes) do exist: art. 17, 22, 24(2) (b) (c) (e) (f), 43, 45 BdP Notice 5/2013; art 134 (2) and (4) of RGICSF.

c) There are no adequate requirements expressed in law concerning safeguards on the use and confidentiality of the information exchanged, with the exception of art. 78(1) of RGICSF.

Criterion 18.3 – FIs are required to ensure that branches and subsidiaries in third countries apply identification, due diligence measures, document and record keeping and training measures equivalent to those required by Portuguese legislation, and when this is not permitted, inform their supervisory authority and take appropriate additional measures: art. 29 AML/CFT Law.

Weighting and conclusion:

Recommendation 18 is rated largely compliant.

Recommendation 19 – Higher risk countries

Portugal was rated *Largely compliant* with these requirements during the third evaluation (para. 404ff), mainly as the requirement to monitor business relationships and transactions from or in non-cooperative countries, or for countries that did not or insufficiently apply FATF Recommendations, was not clearly articulated in the law. In addition, there were no mechanisms for advising institutions about concerns relating to the weaknesses of AML/CFT systems of other countries. R.19 strengthens the requirements to be met by countries and FIs in respect to higher-risk countries.

Criterion 19.1 – FIs are required to apply EDD when there is higher ML/TF risk: art. 12 (1) AML/CFT Law. However, there is no specific reference to applying EDD to relationships and transactions from countries for which this is called for by the FATF. Annex I of the BdP Notice 5/2013 refers to a list of potentially high risk factors (points A.11, B.19 and C.20), to which FIs should pay special attention when defining situations which require the application of EDD: art. 35 (3). However, these cannot be considered as binding requirements for FIs. BdP has the power to expressly indicate business relationships to which EDD should be applied: art. 39 (1) BdP Notice 5/2013 and art. 12(2) AML/CFT law. BdP, CMVM and ASF have also issued circulars to FIs in the case of higher risk countries identified by the FATF. Insurance companies are under a general requirement to adopt EDD measures for non-EU and non-equivalent countries: art. 2.8 and the Annex ASF Regulation 10/2005. However this list under the ASF Annex is not updated in relation to FATF's publication of lists of higher risk countries.

Criterion 19.2 – Financial supervisors have the ability to bindingly and expressly indicate any business relationships, occasional transactions or general transactions to which countermeasures apply: art. 12 (2) AML/CFT law. Countermeasures have also been applied.

Criterion 19.3 – Financial supervisors have the ability to bindingly and expressly indicate any business relationships, occasional transactions or general transactions to which EDD measures apply: art. 12 (2) AML/CFT law. In addition, supervisors and the FIU are required to give warnings and disseminate updated information they have on ML/TF trends and practices: art. 42 AML/CFT Law. However, this dissemination does not specifically target concerns about weaknesses in the AML/CFT systems of other countries.

Weighting and conclusion:

Weaknesses are noted in relation to the specific application of EDD and countermeasures, especially in relation to those high risk countries that are identified by the FATF, as well as the measures that give warning and disseminate information.

Recommendation 19 is rated largely compliant.

Recommendation 20 – Reporting of suspicious transactions

In its 3rd MER, Portugal was rated largely compliant with these requirements (para. 409 – 417). The main deficiencies related to issues of effectiveness, regarding the scope of the TF offence as potentially impacting on the reporting obligation. This was not assessed as part of technical compliance under the *2013 Methodology.*

Criterion 20.1 - FIs are required to promptly report to the FIU[136] any act or transaction when an ML/TF suspicion arises: art. 16 (1) AML/CFT Law. The term *money laundering* is broadly defined to meet the requirements of R.20. However, gaps in the TF offence (cf. R. 5), specifically those related to the financing of an individual terrorist, have negative spillover effects for R20.

Criterion 20.2 – FIs are required to report all suspicious transactions, including attempted transactions, regardless of the amount of the transaction.

Weighting and conclusion: Gaps in the TF offence have spillover effects for R20. Recommendation 20 is rated largely compliant.

Recommendation 21 – Tipping-off and confidentiality

In its 3rd MER, Portugal was rated compliant with these requirements (para. 418 – 419).

Criterion 21.1 - FIs and their employees are exempt from liability when disclosing information to the competent authorities in good faith: art. 20 AML/CFT Law.

Criterion 21.2 - FIs and their directors, managers, heads of department and similar employees are prohibited by law from disclosing that they have reported suspicious actively in relation to ML or TF. Furthermore, they are also prohibited from disclosing that an ML/TF investigation is ongoing: art. 19 (1) AML/CFT Law.

Weighting and conclusion

Recommendation 21 is rated compliant.

Recommendation 22 – DNFBPs: CDD

Portugal was rated *Partially compliant* with these requirements during the third evaluation (para. 548ff). The deficiencies noted for FIs in the legal framework also applied to DNFBPs. There were also few implementation measures that clarified the specific obligations of DNFBPs (similar to regulations and circulars for FIs), and there were no explicit AML/CFT measures concerning PEPs that were applicable to DNFBPs. Furthermore, there was no requirement that DNFBPs have policies in place to deal with the misuse of new and emerging technologies.

Criterion 22.1 – The following DNFBPs are required by the AML/CFT Law to comply with the CDD requirements in the following situations:

a) Casinos are required to either identify all customers and verify their identity immediately when they enter the gambling room, or when they purchase or exchange gambling chips or other gambling-related items with a total value of EUR 2 000 or more: art. 32 (1) (a) AML/CFT Law. When casinos identify customers upon entry, they link CDD information for a particular customer to the transactions that the customer conducts in the casino.

b) Real estate agents, as well as agents buying or reselling real estate, and construction entities selling real estate property directly: art. 4 (d) AML/CFT Law;

[136] In Portugal, reporting entities are simultaneously required to report STRs to the Prosecution office, as well as the FIU, see R. 29.

c) Persons trading in goods, when they receive payments in cash in an amount of EUR 15 000 or more, whether the transaction is carried out in a single operation or in several apparently interrelated transactions: art. 4 (e) AML/CFT Law. Dealers in precious metals and stones are specifically targeted by this provision: art. 2 (2) Regulation 380/2013;

d) Notaries, registrars, lawyers, *solicitadores* and other independent legal professionals for the activities listed in this sub-criterion: art. 4 (g) AML/CFT Law;

e) Trusts and company service providers (TCSPs) are required to conduct CDD for the activities listed in this sub-criterion (art. 4 (h)) AML/CFT Law.

The requirements of the AML/CFT Law on duty of identification, due diligence, and the refusal to carry out transactions (art. 6 (a), (b) and (c) AML/CFT Law) are applicable to DNFBPs: art. 31 AML/CFT Law. The deficiencies identified in the AML/CFT Law will therefore also apply (see R.10). The application of the legal provisions has been specified in sectoral regulations for entities under the supervision of ASAE (traders who receive cash payments and external auditors, legal advisors, company and legal arrangements service providers, and other independent professionals where they are not subject to monitoring by another competent authority) and IMPIC (real estate agents, see c. 28.2). Some of the shortcomings identified in the Law are not addressed by regulatory provisions with regards to:

the verification of a customers' identity (c. 10.3), as Regulation 380/2013 of the ASAE (abbreviated as "R. ASAE") requests verification through "relevant documentation, which should contain the photograph and signature of the holder and proof of home" (art. 4 (2)) for natural persons. This does not seem to amount to a reliable, independent document. The documentation required for legal persons (art. 5 (2)) and the requirements of Regulation of IMPIC (abbreviated as "R IMPIC") are in line with c. 10.3 (art 5 (2) to (7), art 6 (2) to (7)).

the verification that the person acting on behalf of the customer is authorised to do so (c. 10.4). Lawyers are the only DNFBPs who have a general duty to verify the powers of representation conferred on representatives of clients: art. 85 (2) c) of the Statutes of the Bar Association.

the identification and verification of beneficial owners (BO) (c. 10.5): for legal persons, both R. IMPIC and R. ASAE include requirements to identify the BO of the customer: art. 5 (1) (m) R. ASAE and 6 (1) (f) R. IMPIC. However, there are some uncertainties concerning the required information (focus on the person acting on behalf of the customer but not the BO) created by the forms developed by both bodies to help reporting entities fulfil their obligations (and whose use is compulsory in the case of entities under ASAE (art. 3 (3)).

the identification and verification of legal persons and arrangements (c. 10.9), as R IMPIC and ASAE do not include requirements concerning powers that bind and regulate the legal person or arrangements. However, applicable provisions should give access to the required information on the form of the legal person and the address of its head office: art. 6 (1) c), d), e); 2) and (3) R IMPIC; art 5 (1) a), c), d), f), j), (2) R ASAE.

the identification and verification of the BO of legal persons (c. 10.10), as verification does not seem to amount to the required "reasonable measures" (art. 5 (2) R ASAE and art. 6 (4) R IMPIC); although, both regulations include basic identification requirements: art. 5 (1) (m) R ASAE and art 6 (1) (f) R IMPIC.

the identification and verification of the BO of legal arrangements (c. 10.11); although, R IMPIC requires the identification of the BO of trusts (art. 7 (b)), there are no requirements as to the verification of these elements. R ASAE and R IMPIC do not include any requirements for legal arrangements.

Criterion 22.2 – The requirements of the AML/CFT Law on the duty to keep documents and records (art. 6 (d)) are applicable to DNFBPs: art. 31.

Criterion 22.3 – The requirements of the AML/CFT Law on the duty of identification, due diligence, and the refusal to carry out transactions (art. 6 (a), (b) and (c)) are applicable to DNFBPs: art. 31. The deficiencies identified for FIs also apply to DNFBPs.

Criterion 22.4 – There are no specific regulatory provisions requiring DNFBPs to conduct a risk assessment with specific regard to the use of new technologies, and to apply EDD in this respect. Only the general provisions to apply EDD in situations of higher risks apply.

Criterion 22.5 – Reliance on third parties for CDD is only allowed for financial entities: art. 24 AML/CFT Law.

Weighting and conclusion

The deficiencies identified in R.10, 12 and 15 have implications for R.22. Regarding R. 10, in particular, important gaps are identified in the regulatory measures in place for some DNFBPs, in relation to the verification and identification of CDD processes, including when the customer is a legal person or arrangement.

Recommendation 22 is rated partially compliant.

Recommendation 23 – DNFBPs: Other measures

Portugal was rated *Partially compliant* with these requirements during the third evaluation (para. 571ff). No cooperation procedures have been established between DNFBP supervisors and judicial authorities and the FIU so far. There was no obligation to give special attention to business relationships and transactions with persons (including legal persons) from or in countries which do not or insufficiently apply the FATF Recommendations. There were also effectiveness issues linked to the lack of sanctions, unsatisfactory training and low number of STRs filed, but this is not assessed as part of technical compliance under the *2013 Methodology*.

Criterion 23.1 – The requirements of the AML/CFT Law on the duty to report and on refraining from carrying out transactions (art. 6 (f) and (g)) are applicable to DNFBPs: art. 31. The shortcoming identified in R.20 is also relevant for DNFBPs.

a) Lawyers and *solicitadores* are required to report suspicious transactions to the President of the Bar Association and to the Chairman of the Chamber of *Solicitadores*, respectively: art. 35 (1) AML/CFT Law. These authorities must forward this information, promptly and unfiltered to the relevant authorities, except when the information is obtained as part of legal proceedings or advice (art. 35 (2)).

b) and c) Dealers in precious metals and stones and TCSPs are required to report suspicious transactions in accordance with the conditions defined by art. 16 AML/CFT Law.

Criterion 23.2 – The requirements of the AML/CFT Law on the duty to control and to train (art. 6 (j) and (l)) are applicable to DNFBPs: art. 31. The deficiencies identified in relation to internal controls in R.18 are also applicable to DNFBPs, in particular, in regards to the need to have independent controls in place to test the AML/CFT system. A duty of regular training is imposed on directors and employees of DNFBPs (art. 22 AML/CFT Law), which is further strengthened by art. 10 and 18 (1) of R IMPIC.

Criterion 23.3 – The deficiencies identified in relation to higher risk countries in R.19 are also applicable to DNFBPs.

Criterion 23.4 – The requirements of the AML/CFT Law on the duty of confidentiality (art. 6 (i)) are applicable to DNFBPs: art 31 (see R.21).

Weighting and conclusion

Deficiencies identified in R. 18, 19 and 20 are relevant to DNFBPs.

Recommendation 23 is rated largely compliant.

Recommendation 24 – Transparency and beneficial ownership of legal persons

Portugal was rated *Partially compliant* with these requirements during the third evaluation (para. 621ff). The main deficiencies were the absence of beneficial ownership information and information on the persons who control a legal person in the National Register of Legal Persons, and the absence of full transparency of the shareholders of companies that have issued bearer shares. New FATF R.24 and its Interpretive Note contain more detailed requirements, particularly concerning the information to be collected on beneficial owners (BO).

Criterion 24.1 – Information about the types, forms and basic features of companies in Portugal is available to the public from websites: http://www.iapmei.pt/PRODUTOS-E-SERVICOS/Empreendedorismo-Inovacao/Empreendedorismo/Guia-pratico-do-Empreendedor.aspx or http://www.portaldocidadao.pt/ajuda. Basic information about entities included in commercial and legal person registries is also available from http://www.irn.mj.pt/sections/empresas and http://www.portaldocidadao.pt/pt/web/instituto-dos-registos-e-do-notariado/registos-online-por-deposito. Basic information in relation to foundations is available at the website of the IRN (http://www.irn.mj.pt/IRN/sections/irn/a_registral/rnpc/novidades-lista-de/) and associations at the Central Legal Entities File or the website of the "On the Spot Association" (http://www.associacaonahora.mj.pt). There are no mechanisms with publicly available information on how to obtain beneficial ownership data. Certain information is available free-of-charge at the website of Portal da Justica (http://publicacoes.mj.pt/pesquisa.aspx).

Criterion 24.2 – The NRA, or other type of information brought to the attention of assessors, does not assess the ML/TF risks associated with all types of legal persons created in Portugal. The NRA mentions some vulnerabilities and risks to which some obliged entities (e.g. notaries and registrars, *solicitadores*) are exposed, due to their activities relating to the creation and management of legal persons, in particular the lack of BO information or the existence of bearer shares. However, this does not amount to a comprehensive assessment of the ML/TF risks of all types of legal persons created in Portugal.

Criterion 24.3 – All legal persons (associations, foundations, civil or commercial companies, cooperative, state-owned companies, cooperative undertakings, European economic interest groupings and other personalised collective bodies) are required to be registered in the National Register of Legal Persons[137] : art. 4 (1) (a) of Decree-Law 129/98. In addition, commercial entities are registered in the Commercial Register[138] , where the information required by the criterion has to be registered (art 2 to 8 Commercial Register Code, CRC). Information contained in the registries is publicly available, and requires the acquisition of certified or non-certified information.

Criterion 24.4 – There is no general obligation for all companies, foundations and associations to maintain a register of all their shareholders and members. A list of the shareholders holding at least 10% of the company's capital at the end of each calendar year has to be published as an annex to the annual report of the board of directors: art. 448 (4) Companies Code. In addition, members of the board of directors and supervisory boards of public companies, as well as their close family members, are required to notify the company that they hold shares: art. 447 Companies Code. This information is made public by the company in an annex to its annual report: art. 447 (5) Companies Code. The same obligation applies to holders of bearer shares above certain thresholds (cf. c. 24.11 c))[139], and to any shareholder of non-registered bearer shares holding at least 10% of the capital of any joint-stock company: art. 448 Companies Code. This notification has to be done within 30 days following the acquisition of shares.

Criterion 24.5 – Available information is updated on a timely basis. Changes to the information contained in the Commercial Register, including information about directors and shareholders, has to be communicated within two months: art. 15 CRC. Changes communicated to the National Register of Legal Persons which effect commercial entities are registered immediately. For other entities, registration is due within one month: art. 11 Decree-Law 129/98. Changes to the board membership of foundations are required to be reported within 30 days: art. 9 (1)(a) Law 94/2012. The provision of false statements to the registrar constitutes a crime under the Land Register Code, which is also applicable to the Commercial Register: art. 153 Land Register Code, art 115 CRC.

Criterion 24.6 – Determining who the beneficial owner(s) (BO) of a company domiciled in Portugal is/are requires the use of existing information (option c) of c. 24.6). This includes information collected by FIs and DNFBPs when this is required (see c. 10.5 and 22.1), as well as information on shareholders from companies and information on members from foundations, but it seems that updated information is not available on an ongoing basis (see c. 24.4 and 5).

Criterion 24.7 – BO information collected by FIs and DNFBPs has to be kept updated (see c. 10.7), but shareholders' information held by companies is not updated on an ongoing basis (see c. 24.4).

Criterion 24.8 – Financial supervisors can request the cooperation of FIs to obtain information on the BOs of their corporate customers: art. 5 (2) (g) BdP Notice 5/2013, art. 120 (8) RGICSF, art. 359 and 361 CVM, art. 27 RJASR, and art. 48 ASF Statutes. However, Portugal does not have general measures to ensure that companies cooperate with competent authorities to the fullest extent possible in determining the BO.

Criterion 24.9 – Companies' liquidators are required to keep company documents for five years after the dissolution of the company: art. 157 Companies Code. The accounting records of

137 www.irn.mj.pt/IRN/sections/irn/a_registral/rnpc/
138 www.irn.mj.pt/IRN/sections/irn/a_registral/registo-comercial
139 Law 15/2017 enacted after the on-site will terminate the use of bearer shares in Portugal by November 2017, see Chapter 1 and IO 5.

foundations and associations (if their main business is not commercial, industrial or agricultural) are required to be kept for a period of ten years: art. 123 (4) and 124 (5) of CIRC.

Criterion 24.10 – Obliged entities are under a general duty to cooperate and to provide prompt assistance to authorities: art. 18 AML/CFT Law. FIs and DNFBPs that hold basic and BO information on legal person customers should therefore provide this information. However, the list of authorities of art. 18 does not include all law enforcement authorities (e.g. criminal police), but only the judicial authorities (e.g. judges and prosecutors) in charge of investigations.

Criterion 24.11 – Bearer shares may be issued by joint stock companies, partnerships limited by shares and European companies in Portugal. Ownership and identity information on the subscribers of bearer shares above certain thresholds (10%, 33.3%, 50%) has to be made available with the issuer of the shares: art. 448 Companies Code (c. 24.11 d), and any subsequent transfer of bearer shares is an event subject to a mandatory tax filing with the AT. Notification has to be made within 30 days of the acquisition of bearer shares: art. 448 (3) Companies Code.

Criterion 24.12 – Nominee shares and nominee directors are not recognised in the Portuguese legal system. Strict disclosure requirements apply to qualifying holdings. Specifically, CMVM may notify the interested company where there is a substantiated doubt about full compliance with the notification duty, including in regards to the identity of the person(s) to whom the voting rights on a qualifying holding may be ascribed: art. 16-B Securities Code. In addition, the legal holder of shares must identify himself/herself to participate in general meetings, including when attending through a representative: art. 23-C (3) and (4) Securities Code; and attendance lists of shareholders and representatives must be organised for all companies' general assemblies: art. 382 Companies Code.

Criterion 24.13 – The applicable sanction for failure to communicate acquisitions of shares or bearer shares, as outlined in c. 24.4, is a fine between EUR 25 and EUR 1 000, and between EUR 50 and EUR 1 500 if the shareholder is a member of the company's board: art. 528 (5) Companies Code. Failure to comply with the communication duties, regarding qualifying holdings in public companies, is subject to administrative offences. This follows a progressive scale based on the seriousness of the offence (between EUR 2 500 and EUR 5 000 000), and can also lead to the suspension of voting rights: art. 388 and 390 (1) Securities Code. Non-compliance with registration requirements under the RNPC is subject to pecuniary fines for natural persons (ranging from EUR 249.40 to EUR 2 493.99) and legal persons (ranging from EUR 1 496.39 and EUR 14 963.94): art. 75 RNPC. Companies' acts or changes to the initial acts which have not been communicated to the Commercial Register will not produce their effects vis-à-vis third parties: art. 14 CRC. The range of applicable sanctions is limited to fines ("administrative fees") in cases of failing to register with the Commercial Register, not providing accounting documents or not complying with other registration or communication requirements (ranging from EUR 160 to EUR 720), as well as for failure to notify the tax administration of the acquisition of shares by both the transferor and the transferee (ranging from EUR 375 to EUR 37 500): art. 17 CRC, art. 138 CIRS, art. 116(1) and 125-B RGIT. There are no civil or administrative sanctions for company representatives who fail to communicate relevant changes to the Commercial Registry. Although, there are no similar express sanctions requirements in law in relation to foundations, the Foundation Framework Law provides civil sanctions for failing to comply with transparency requirements of the Law, namely the prevention of access to financial support during the year following the sanction (art. 9 (8) Law 24/2012). The pecuniary sanctions applicable are generally not dissuasive, especially given the low minimum sanction.

Criterion 24.14 – Competent authorities, including the Tax and Customs Authority, use their general powers to cooperate at an international level in order to exchange information on BO. However, there is no indication requiring them to act rapidly (see also R.37 and R.40).

Criterion 24.15 – There are no mechanisms in place to monitor the quality of assistance received from other countries regarding BO information.

Weighting and conclusion

The absence of a comprehensive ML/TF risk assessment that covers all types of legal persons is an important shortcoming. A number of other deficiencies are noted, such as the absence of a general obligation for all companies to maintain a register of their shareholders, which impacts on the overall transparency of legal persons.

Recommendation 24 is rated partially compliant.

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

Portugal was rated *Partially compliant* with these requirements during the third evaluation (para. 632ff). The main deficiency was the limited powers available to competent authorities to have timely access to BO information and information on the control of trusts. The revised Recommendation (R. 25) is applicable to all countries, including those that do not recognise trusts.

Criterion 25.1 –

The law in Portugal does not recognise the legal concept of a trust. However, foreign trusts can be established in the Madeira Free Trade Zone. Trusts that have been legally constituted under foreign legal regimes, with terms exceeding one year, and whose settlor and beneficiaries are non-residents in Portugal, can be recognised and authorised to perform business activities exclusively in that zone, under the provisions of Decree-Law 352-A/88.

a) The trust deed must include information on the settlor, trustee, and beneficiaries: art. 7 (b) Decree-Law 352-A/88. No reference is made to the protector, when it exists, or to any other natural person exercising ultimate effective control over the trust.

b) There is no indication in Decree-Law 352-A/88 that the trustee is under an obligation to hold basic information on regulated agents of, and service providers to, the trust.

c) Trustees are, in general, professionals (i.e. lawyers and *solicitadores*[140]), who fall under the provisions of the AML/CFT Law and, in particular, art. 14, which requires that necessary CDD documents and transaction records must be kept for 7 years (see c. 11.4 and 22.2). However, the applicable requirements are insufficient regarding records unrelated to CDD.

The AML/CFT Law defines "legal arrangements" as unspecific, autonomous property without legal identity: art. 2 (4).

Criterion 25.2 – Trusts must be registered in the Private Commercial Registry Service of Zona Franca da Madeira (Decree-Law 234/88, art. 3(10) Decree-Law 352-A/88). Any modification to the information contained in the trust deed is only required to be reported within 90 days from the date when this occurred (as opposed to 30 days for other similar cases under the Companies Code): art.

[140] See MER 2006, footnote 37 – information still accurate.

2(1)(b) Decree-Law 149/94. A breach of this modification requirement is subject to a relatively low fine (between EUR 49.880 to EUR 498.80): art. 4(1) Decree-Law 149/94.

Criterion 25.3 – There are no specific obligations for trustees to disclose their status to FIs or DNFBPs. However, FIs and DNFBPs are required to identify the customer or his/her representative when establishing a business relationship: art. 7 (1), 8 (1), 13 (1) a) AML/CFT Law (see c. 10.4).

Criterion 25.4 – When the trustee is a professional under the scope of the provisions of the AML/CFT Law, (s)he is under a general duty to cooperate and provide assistance to authorities: art. 18 AML/CFT Law (although law enforcement authorities are not included within the scope of this provision); and financial supervisors have the power to request information: art. 5 (2) (g) BdP Notice 5/2013, art. 120 (8) RGICSF, art. 48 ASF Statutes, and art. 361 (2) Securities Code. However, the names of the settlor and the beneficiaries are subject to secrecy and may only be disclosed by way of a court decision (registration obligations relate to the Madeira Free Trade Zone only): art. 11 Decree-Law 352-A/88.

Criterion 25.5 – Obliged entities are under a general duty to cooperate and to provide prompt assistance to authorities: art. 18 AML/CFT Law. FIs and DNFBPs that hold information related to a), b) and c) should therefore provide this information. However, the list of authorities of art. 18 does not include all law enforcement authorities, but only the judicial authorities in charge of investigations. Information on the residence of the trustee is part of the indications mentioned in the Commercial Register, and is therefore publicly available. Art. 28 of the AML/CFT Law does not apply to legal arrangements (see c. 11.4).

Criterion 25.6 – Competent authorities use their general powers to cooperate at an international level to exchange information on the beneficial ownership of trusts and other legal arrangements. However, there is no requirement for them to act rapidly (see also R.37 and R.40).

Criterion 25.7 – a) Trustees are in general professionals (see c. 25.1 c), i.e. lawyers and *solicitadores*, who according to art. 46 (1) (b) of the AML/CFT Law, cannot be held liable for breaches of the obligations set out in the AML/CFT Law. However, they might be formally subject to disciplinary sanctions (see c. 35.1), which are considered proportionate and dissuasive: art. 58 and 59 AML/CFT Law.

Criterion 25.8 – The failure of obliged entities to comply with the duty to cooperate with competent authorities (which do not include all law enforcement authorities, see c. 25.5) imposed by art. 18 of the AML/CFT Law constitutes a breach of the Law and is therefore subject to sanctions outlined in R.35: art. 53 (q) AML/CFT Law. This would apply to failures by professional trustees (lawyers and *solicitadores*) to comply with their AML/CFT obligations. However, lawyers and *solicitadores* cannot be liable for the breach of their AML/CFT obligations and might only be subject to disciplinary sanctions.

Weighting and conclusion

There are no specific provisions requiring trustees to keep updated and accurate information, or requiring trustees to cooperate rapidly with all law enforcement authorities. These shortcomings are important, especially in the context of the Madeira Free Trade Zone.

Recommendation 25 is considered partially compliant.

Recommendation 26 – Regulation and supervision of financial institutions

Portugal was rated *Largely compliant* with these requirements during the third evaluation (para. 458ff), mainly for effectiveness reasons (there were a low number of AML/CFT supervisory and regulatory visits). This is not assessed as part of technical compliance under the *2013 Methodology*. The new R. 26 strengthens the principle of supervision and controls, in accordance with a risk-based approach.

Criterion 26.1 – The following institutions are required to regulate and supervise the AML/CFT compliance of the obliged financial entities covered by the AML/CFT legislation (art. 3, 38 (a) and 39 (1) and (2) AML/CFT Law):

a. Banco de Portugal for credit institutions, financial companies, payment institutions and electronic money institutions: art. 17, 20, 30-B to D, 66, 102, 103, 108, 174-A, 194, 196 and 199-C RGICSF and art 11, 12, 14 33-G to I of RJSPME. BdP is also the competent AML/CFT supervisor for entities providing postal services, which also provide financial services. Under the Single Supervisory Mechanism (SSM), in force since November 2014, the European Central Bank (ECB) is responsible for the supervision of significant banks, which (in effect) are the 4 largest banking groups in Portugal. BdP is responsible for the prudential supervision of the remaining banks and the AML/CFT supervision of all banks;

b. CMVM for entities managing or marketing venture capital funds, collective investment undertakings marketing their units, credit securitisation companies, venture capital companies and investors, investment consulting companies, companies pursuing activities dealing with contracts related to investment in tangible assets: art. 359 CVM Code;

c. ASF for insurance companies, brokers and pension fund management companies: art. 7 (1) (a) ASF Statute, approved by Decree Law 1/2015, L 57, art. 20 RJASR, L58 and art. 6 RJM, L60.

Criterion 26.2 – All Core principles institutions are required to be licensed. Since the entry into force of the SSM, the ECB has assumed responsibility for the authorisation of significant banks in Portugal. Other banks are authorised by BdP: art. 3, 14, 16 RGICSF. Portuguese laws do not allow for the operation of shell banks in the territory of Portugal: art. 14(1)(e) RGISCF. Financial companies (which include investment companies) are also authorised by BdP: art. 4A, 6, 174-A, 199-A (6) and (7), 199-C RGICSF. Insurance companies are authorised by ASF: art. 3 (1) RJASR.

Other institutions are all licensed or registered: collective investment schemes are authorised by CMVM (art. 19, 51 (7), 99 (1) (e), 128 (4) (a) (b) (c), 234 (3) (b), 236 (2) (b), 237 (2) (c), 237 (4), 237 (5) (c) Law 16/2005); securitisation funds are authorised by CMVM (art. 27, 41 (1), (2) and (3) (a) Decree-Law No. 453/99*)*; pension funds management companies are authorised by ASF (art. 39 (1) RJFP); and insurance intermediaries are registered with ASF (art. 7 RJM). Payment services providers and e-money institutions are authorised by and registered with BdP (art. 7, 7-A, 10(1), 20 RJSPME).

Criterion 26.3 – Properness and suitability assessments apply to the management and supervisory boards, as well as people holding a qualified shareholding, including when changes occur to credit institutions (art. 17 (1) g) and (4), 20 (1), 30-B, 30-C, 30-D, 31, 33, 102, 103 and 108 RGICSF),

financial companies (which includes investment companies) (art. 30-B, 102, 103, 108, 174-A, 194, 196, 199-C RGICSF), payment services providers and e-money institutions (art. 11 (1) (d), 12, 14, 33-G, 33-H, 33-I RJSPME), insurance companies and pension funds management companies (art. 43, 45, 65, 67, 162, 164 and 172 (e) RJASR and art. 38 (2) (a), (b) and (c) RJFP), and collective investment schemes (art. 51 (6) and (7) Law 16/2015, which refers to art. 30-D of RGICSF).

Under the SSM, the ECB has responsibility for assessing the suitability of members of the management body and key function holders of significant banks, based on criteria including reputation and the existence of conflicts of interest: art. 93 and 94 EU Regulation 468/2014. The ECB also authorises the acquisition of qualifying shareholding in Portuguese significant banks. The criteria include looking at whether the transaction involves, or increases the risk of, money laundering or the financing of terrorism: art. 85 to 87 EU Regulation 468/2014.

Criterion 26.4 –

a) *Core principles institutions* – BdP, CMVM and ASF's regulation and prudential supervision of Core principles institutions (banks, investment firms and management companies, as well as insurance companies) are centred on the Basel, International Organisation of Securities Commission (IOSCO) and International Association of Insurance Supervisors (IAIS) core principles[141]. BdP is required to conduct group-wide supervision of institutions under its responsibility: art. 130 to 138 RGICSF. For insurance intermediaries, there is a requirement to extend supervision to activities carried on in other EU Member States: art. 6 RJM. There is no equivalent provision for FIs that are solely under the supervision of CMVM.

b) *Other institutions* – Non-core FIs under the supervision of BdP, CMVM and ASF are under the same regime as core institutions. For providers of MVTS, see c. 26.1.

Criterion 26.5 –

a) BdP has to take into consideration a number of factors when conducting its supervision, listed by the BdP Notice 5/2013: art. 5 (2) (a) (i), including a reference to taking into account the risk level of institutions in deciding the frequency and intensity of both on-site and offsite assessments. CMVM requires financial intermediaries to submit, on an annual basis, a compliance assessment report on the basis of which it will establish the risk profile of the institution (art. 11 and 11-A CMVM Regulation 2/2007) but does not indicate how this influences its supervisory approach. ASF requires supervision to be based on a prospective and risk-based approach: art. 25(1) of RJASR and art. 97 DL 12/2006.

b) There is no specific requirement to take account of the ML/TF risks present in the country.

c) BdP has to take into account the characteristics of the FI (size, nature, level and complexity of the activities) to determine its monitoring approach: art. 5 (2) (a) (iii) BdP Notice 5/2013. ASF determines the frequency and intensity of the supervision of insurance undertakings or similar groups, based on relevant characteristics (nature, scale and complexity of the activities): art. 25 (3) of RJASR. There is no similar requirement for CMVM.

Criterion 26.6 – BdP has the possibility to establish periodic reporting by FIs (art. 5 (2) (b) BdP Notice 5/2013), but there is no specific requirement to review the risk-based approach by the supervisor periodically and/or on an ad hoc basis. CMVM has to be provided with an annual

[141] The last FSAP for Portugal was conducted in 2006, and the results were therefore not taken into consideration by assessors.

compliance report by financial intermediaries (cf. c. 26.5 a)), but there is no information on the way in which the supervisor conducts risk-based supervision.

Weighting and conclusion

Deficiencies are noted regarding the application of a risk-based approach for conducting supervision, especially in relation to the non-bank financial sectors.

Recommendation 26 is rated largely compliant.

Recommendation 27 – Power of supervisors

Portugal was rated *Largely compliant* with these requirements during the third evaluation (para. 479ff), mainly for effectiveness reasons (few sanctions imposed by supervisory authorities). This is not assessed as part of technical compliance under the *2013 Methodology*. The new R. 27 extends the range of disciplinary and financial sanctions powers which the supervisors should have, including the power to withdraw the licenses of FIs.

Criterion 27.1 – Supervisors are granted general powers, including powers to access information and apply sanctions: art. 18, 38 a) i) and 39 (c) AML/CFT Law. The powers of BdP are defined in art. 5 (2) of the BdP Notice 5/2013. For CMVM and ASF, there is no explicit reference to the supervision of AML/CFT requirements, but the powers granted for general prudential and integrity requirements supervision apply: art. 361 CVM Regulations and art. 27 RJASR, 93 RJFP in particular.

Criterion 27.2 – Financial supervisors have powers to conduct inspections: art. 5 (2) (c) BdP Notice 5/2013, art. 364 CVM Regulation, art. 27 (3) RJASR for insurance companies, art. 93 (1) (b) RJFP for pension funds, art. 58 (c) RJM for insurance intermediaries and art. 16 (4) (i) ASF Statutes.

Criterion 27.3 – FIs are required to provide direct access to information and documents to supervisors: art. 18 AML/CFT Law.

Criterion 27.4 – Supervisors have the possibility to take sanction decisions and apply sanctions for failure to comply with AML/CFT requirements: art. 39 (1) (c) and 56 AML/CFT Law. Fines can be imposed (art. 54, 54-A), as well as additional penalties including the prohibition from exercising the profession or activity, or holding a management position (art. 55), or the publication of the decision (art. 55-B). BdP has the specific power to withdraw licenses (art. 22 (1) (k) and 174-A RGICSF and art. 16 (3) RJSPME) and to restrict the business activities (art. 116-C). CMVM can also impose fines on collective investment schemes and revoke licenses (art. 261 (1) (e) CMVM Regulations) as well as those of securitisation funds (art. 57 Decree-Law 453/99) for "any offence". ASF has the specific power to withdraw licenses (art. 175(1)(c) RJASR) and restrict business activities (art. 373(1)(b), (c) and (d) RJASR).

Weighting and conclusion

Recommendation 27 is rated compliant.

Recommendation 28 – Regulation and supervision of DNFBPs

Portugal was rated *Partially compliant* with these requirements during the third evaluation (para. 599ff), due to the lack of monitoring activities carried out by a large majority of competent

authorities and the lack of self-regulatory bodies' (SRB) resources for sufficient oversight. The new FATF requirements strengthen the risk-based approach to regulation and supervision of DNFBPs.

Criterion 28.1 – Casinos are subject to the AML/CFT Law (art. 4 (a)). The AML/CFT Law also covers "operators awarding betting or lottery prizes" and "operators of gambling or games of chance, including online gambling and bets": art. 4 (b) and (c).

a) Casinos act under a concession granted by the State: art. 9 (1) and (2) Decree-Law 422/89 and art. 4 (1) (a) and 32 (1) AML/CFT Law. Unlike the concession regime for land-based casinos, online gambling operators are subject to administrative authorisation (art. 8 Decree-Law 66/2015).

b) There is a general requirement on the professional integrity of management and online gambling operators (art. 14 Decree-Law 66/2015), but not for "brick and mortar" casinos. However, individuals who have been sentenced to more than 6 months imprisonment for a crime; or been convicted for exploiting a casino without authorisation; or illegally exploited gaming activities; or used or traded unauthorised gambling equipment are prohibited from holding a management position in, or to operate, a casino: art. 60, 70, 108 and 115 Decree-Law 422/89. There are measures in place regarding the holding and acquisition of significant or controlling interests in casinos: art .17 Decree-Law 422/89 and para 602 MER 2006. Nevertheless, these measures apply only to the minimum of 60% of shares that operators need to have represented by nominative or registered bearer shares, which leaves the operators the possibility of not knowing who the shareholders of the rest of the capital are.

c) The Gambling Regulation and Inspection Service of Tourism of Portugal (the central public authority responsible for tourism policy and activities in the country) is in charge of monitoring and regulating casinos and online gambling and bets: art. 38 (b) (i) AML/CFT Law. The Ministry of Labour, Solidarity and Social Security (MTSSS) is in charge of monitoring and regulating betting and lottery prizes: art. 38 (b) (ii) AML/CFT Law.

Criterion 28.2 – The following institutions are responsible for the regulation and supervision of the AML/CFT compliance of the obliged DNFBPs covered by the AML/CFT legislation (art. 4 (d) to (h) and 38 (b) (iii) to (iv) AML/CFT Law):

a) *The Institute for Public Procurement, Real Estate and Construction (IMPIC)* for real estate agents (i.e. brokerage firms and construction companies that purchase and sell real estate, purchase for resell, as well as directly sell their buildings);

b) *The Economic and Food Safety Authority (ASAE)* for external auditors, legal advisors, company and legal arrangement service providers, and other independent professionals (where they are not subject to monitoring by another competent authority). ASAE is also responsible for traders who receive cash payments beyond EUR 15 000, including in particular, traders who engage in sales of gold and precious metals, antiques, works of art, aircraft, boats or motor vehicles (art. 2 (2) Regulation 380/2013);

c) *Order of Statutory Auditors (OROC)*, with regard to statutory auditors and auditing firms. Since the entry into force of Law 140/2015 on 1 January 2016, the AML/CFT work of OROC in relation to statutory auditors and auditing firms, and statutory auditors of public interest entities (PIEs) are directly supervised by CMVM;

d) Chamber of Certified/Chartered Accountants (CTOC), with regard to certified accountants;

e) *Institute for Registries and Notary (IRN*), with regard to notaries and registrars;

f) *Bar Association (OA)*, with regard to lawyers; and

g) *Order of solicitadores (OSAE)*, with regard to solicitadores.

Criterion 28.3 – All DNFBPs are subject to the AML/CFT Law and the monitoring/supervisory regime imposed by this Law (art. 4), and are under the authority of their supervisor/SRBs for AML/CFT compliance (art. 38 and 39).

Criterion 28.4 –

a) IMPIC and ASAE have specific powers to conduct supervisory/monitoring functions, including in the AML/CFT field: respectively, art. 15 Decree-Law 232/2015 and art. 4 and 16_Decree-Law 276/2007. IRN uses disciplinary powers over registrars, who are public officers: art. 76 Law 35/2014. SRBs (e.g. OROC) exercise the powers foreseen in the respective Statutes: art. 73, 74 and 78(1) of OROC's Statute.

b) Measures to ensure the professional good reputation of managers/directors of DNFBPs and/or holders of qualifying shareholdings or controlling interests in DNFBPs apply to:

real estate brokers and construction companies – art. 9 law 41/2015 and art. 6 Law 15/2013;

dealers in precious metals and stones - these activities may only be carried out by economic operators, whose directors, officers and managers are considered to be reputable. This includes those who have not been declared insolvent by a court decision in the last 5 years, or those convicted of crimes punishable by imprisonment of more than 6 months (drug trafficking, ML, forgery, tax crimes, etc.): art. 7 and 30 Law 5/2015 on activities of import and export of rough diamonds, ASAE being the responsible authority; and art. 30 Law 98/2015 for jewellery activities, *Imprensa Nacional Casa da Moeda* being the responsible authority (art. 41 on the definition of precious metals includes gold, silver, platinum and palladium). However, there are no measures regarding qualifying stakeholders;

notaries -art. 70 (2) (A) Statutes of the Order of Notary (Law 155/2015) and art. 25 Statute of Notary (Law 26/2004);

solicitadores – the concept of unworthiness applies to refuse the registration of a *solicitador* : art. 106 Statutes *Chamber Solicitadores.* Members of the administrative bodies must be registered solicitadores and respect ethical principles and rules: art. 95 (1) and (3) and 105 Statutes *Chamber Solicitadores*.

statutory auditors - *statutory auditors of public interest entities* (PIE) : art. 78 (1) (c) Law 140/2015 and art. 73, 74, 78(1) OROC's Statute.

c) DNFBP supervisors are responsible for applying sanctions for the failure to comply with AML/CFT requirements, within the scope and in accordance with their functions: art. 56 (2) AML/CFT Law. Fines can be imposed, as well as additional penalties that include the prohibition from exercising the profession or activity, or holding a management position, or the publication of the decision: art. 54, 54-A, 55, 55-B AML/CFT Law. For lawyers and *solicitadores*, depending on their activities, disciplinary actions or administrative sanctions apply: art. 58 and 59 AML/CFT Law (see also c.35.1 for other deficiencies).

Criterion 28.5 – Some DNFBP supervisors, such as the CMVM for statutory auditors, have taken steps to perform AML/CFT supervision on a risk basis.

Weighting and conclusion

The gaps related to the regulatory and sanctions powers of SRBs mentioned under c.28.4, and to the limited application of risk-based AML/CFT supervision mentioned under c.28.5 have a minor impact on the rating.

Recommendation 28 is considered largely compliant.

Recommendation 29 – Financial intelligence units

In its 3rd MER, Portugal was rated largely compliant with these requirements (para. 233 -267). The main technical deficiency was that the FIU was not recognised as a competent authority to receive and analyse STRs in relation to TF. Since Portugal's last mutual evaluation, the FATF Standards have been significantly strengthened in this area by imposing new requirements which focus on the FIU's strategic and operational analysis functions, and the FIU's powers to disseminate information upon request and request additional information from reporting entities.

Criterion 29.1 – Portugal has established an FIU, the Unidade de Informação Financeira, with competency to receive, analyse and disseminate information related to suspicious ML/TF activity and related predicates: Decree-Law 304/2002.

Criterion 29.2 – The FIU is the central authority that receives STRs filed by reporting entities: art. 16(1) AML/CFT Law, but not the only authority. DCIAP also receives STRs as part of the dual reporting system for investigative purposes. The FIU also receives cash transaction reports (CTRs), based on the carrying of cash amounting to EUR 10 000 or more: art. 3 of Decree-Law 61/2007.

Criterion 29.3 – The FIU is legally empowered to obtain and use information or further documentation from reporting entities needed to perform its functions: art. 18 AML/CFT Law. Furthermore, the FIU has direct access to the Criminal Police databases, as well as timely access to customs and tax information through the PLG.

Criterion 29.4 - The FIU conducts:

a) operational analysis, which takes into account information collected in relevant databases, according to the needs of the analysis; and

b) the 2010 Permanent Service Instruction requires the FIU to conduct analysis on "known practices and trends;" although, the legal standing of this document as it relates to the FIU is not clear.

Criterion 29.5 – There are specific channels, which are safe and protected, to exchange information, depending on the degree of confidentiality of such information. Furthermore, the FIU can disseminate any information, as well as the results of the analysis, upon request or spontaneously, and in the way it deems most appropriate.

Criterion 29.6. – Rules are in place to safeguard the security and confidentiality of the FIU's information. This includes having procedures in place for handling, storing, disseminating, protecting and accessing information. All FIU staff are subject to professional secrecy and are considered to be part of the Criminal Police staff. Access to the FIU facilities is restricted to FIU staff (art. 13 Law 37/2008), and all access is digitally recorded.

Criterion 29.7 –

a) The FIU is a National Directorate Service of the Criminal Police, under the National Director. The Director of the FIU is, *inter alia*, in charge of representing, directing, leading and coordinating the activities of the FIU at a national level in the scope of his/her competences: art. 34 Law 37/2008. The competence of the FIU is "to collect, centralize, process and disseminate, at national level, information concerning the prevention and investigation of offences involving the laundering of criminal proceeds, terrorist financing and tax-related offences by ensuring both internal cooperation and liaison with the judicial or prosecuting authorities, the supervisory and inspection authorities and the financial and non-financial entities…[and] at the international level, cooperation with the financial intelligence units or counterparts": art. 5 Decree-Law 42/2009.

b) The FIU can make independent arrangements with other domestic and international competent authorities.

c) The FIU has its own core functions, separate from those of the 'parent authority' (i.e. the PJ).

d) The FIU does not have its own budget, as it is completely dependent on the budget of the entity it belongs to. Instead, tranches are negotiated on a case-by-case basis. Human and material resources are also subject to the same conditions, which creates difficulties in obtaining necessary resources to fulfil its assigned duties.

Criterion 29.8 – The FIU has been a member of the Egmont Group since its creation in 2002.

Weighting and conclusion

Recommendation 29 is rated largely compliant.

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

Portugal was rated *Largely compliant* with these requirements during the third evaluation (para. 268ff), mainly due to the limited number of ML prosecutions initiated. This raised effectiveness issues, which are not assessed in this section under the 2013 Methodology. The new R. 30 contains more detailed requirements.

Criterion 30.1 – Under the coordination and direction of the Prosecution Service (art. 48 CCP and art 2 (4) and 3 (4) (a) of Law 49/2008), the Criminal Investigation Police has exclusive competence to investigate ML, predicate offences and TF crimes (art. 7 (2) (i) and (l) and 8 Law 49/2008).

Criterion 30.2 – Financial investigations can take place in the framework of criminal investigations for ML and predicate offences. According to the Code of Criminal Procedure, the Public Prosecutor can directly ask law enforcement authorities to investigate or delegate to the Criminal Police. The Asset Recovery Office (ARO/GRA) can be also be authorised by the Public Prosecution to pursue an autonomous financial investigation for the purpose of asset recovery: art. 40 (2) Law 15/2001.

Criterion 30.3 – ARO/GRA is given the mission of identifying, tracing and seizing crime-related property: art. 2 and 3 ARO/GRA Law. Under the direction of the Public Prosecution, the Criminal Police may also carry out seizures which are subject to validation from the judicial authority: art. 178 CCP. Public administration institutions, which encompass the Criminal Police and, thus, ARO/GRA, must be guided by several criteria, including efficiency and celerity: art. 5 (1) Administrative Code.

Criterion 30.4 – The Tax and Customs Authority has powers to investigate tax offences: art. 40 (2) and 41 Law 15/2001. The Economic and Food Safety Authority (ASAE) is considered a criminal police authority (art. 13 (3) and 15 Decree-Law 194/2012) and cooperates with judicial authorities for the investigation of counterfeiting offences: art. 321 to 327 Decree-Law 36/2003.

Criterion 30.5 – The National Anti-Corruption Unit (UNCC) of the Judicial Police is responsible for the prevention, detection, criminal investigation and assistance to the judicial and prosecuting authorities, regarding corruption: art. 2 1) (ii) and 8 (2) (g) Decree Law 42/2009. Being a division of the Criminal Investigating Police, the UNCC also has the power to seize assets according to the general rule of art. 178 of the CCP (cf. c. 30.3).

Weighting and conclusion:

Recommendation 30 is rated compliant.

Recommendation 31 – Powers of law enforcement and investigative authorities

Portugal was rated *Compliant* with these requirements during the third evaluation (para. 280ff). The new Recommendation (R. 31) was expanded and now requires countries to have, among other provisions, mechanisms for determining, in a timely manner, whether natural or legal persons hold or manage accounts.

Criterion 31.1 – Competent authorities conducting investigations of ML, associated predicate offences and TF have the powers to use compulsory measures for:

a) the production of records held by FIs and DNFBPs: art. 18 AML/CFT Law and art. 3 of Law 5/2002. FIs and DNFBPs are under the obligation to collaborate with criminal investigations and must produce records that they hold when requested by the PGR and FIU within either 5 or 30 days depending on whether the documents are available (or not) in electronic form. If not provided within the framework established, the judicial authority or, by delegation, the criminal police has the power to obtain and seized the documents following a reasoned order by a judicial authority. The Tax and Customs Authority and ASAE have similar powers when they investigate, as the criminal police: art. 40 (2) and 41 (3) Law 15/2001 and art. 1(3) and 15 Decree-Law 194/2012

b) the search of persons and premises, which needs to be authorised or ordered by a judicial authority: art. 174 and 177 CC;

c) taking witness statements: art. 128 to 139 CCP;

d) seizing and obtaining evidence: art. 124 to 127 CCP, as well as art. 178 to 181.

Criterion 31.2 – Competent authorities that conduct investigations are able to use the following investigative techniques:

a) undercover operations for ML and TF investigations: art. 2 (f) and (m) Law 101/2001;

b) communications interceptions: art. 187 (a) CCP allows telephone conversations and communications interception and recording for enquiries in relation to criminal offences to which a custodial sentence with a maximum limit over 3 years applies, following a reasoned order issued by the relevant judicial authority. ML and most predicate offences, including TF, results in custodial sentences higher than 3 years. The interception can extend to any conversation or communication transmitted through any technical means, other than a telephone device, in particular by e-mail or

other forms of telematics data transmission, even if kept under a digital medium, and to the interception of the communications between persons present (art. 189 (1) CCP), or by means of a computer (art. 18 Law 109/2009);

c) accessing computer systems: Law 109/2009 provides a wide range of measures. This includes submitting or providing access to data (art. 14), searching computer data (art. 15), and seizing computer data (art. 16);

d) controlled and surveyed deliveries for cases involving cooperation with foreign countries: art. 160-A of Law 144/99 and art. 125 CCP.

Criterion 31.3 –

a) A centralised bank-account database, which includes information on the account holders, has been set up and is managed by BdP: art. 81-A RGISCF. The information in the database can be communicated to the Prosecutor General's Office and bodies conducting criminal investigations. BdP has to communicate the available information to the FIU "as soon as possible" (art. 3a Protocol BdP/FIU) as well as to other authorities.

b) The provisions organising the centralised bank-account database and the asset recovery office procedures (RGICSF and ARO/GRA Law, respectively) do not require prior notification of the owner when identifying bank accounts or assets.

Criterion 31.4 – The competent authorities that conduct ML investigations and investigations of associated predicate offences, including TF, the Public Prosecution and the Criminal Police, are able to request all relevant information held by the FIU: art. 5 (1) Decree Law 42/2009. The Tax and Customs Authority can also request relevant information from the FIU: art. 3, 4 and 7 Decree-Law 93/2003.

Weighting and conclusion

Recommendation 31 is rated compliant.

Recommendation 32 – Cash couriers

Portugal was rated *Largely compliant* with these requirements during the third evaluation (para. 293ff), mainly due to the insufficient statistics in place. Effectiveness issues are not assessed in this section under the 2013 Methodology. The new Recommendation (R. 32) contains new requirements regarding the declaration system and the safeguards in place to ensure the secured use of information collected.

Criterion 32.1 – EU Regulation 1889/2005 lays down a regime of cash controls for cash entering or leaving the EU. Decree-Law 61/2007 establishes the national regime for the control of cash movements that enter or exit the national territory from or to territories outside the EU and/or other Member States of the EU. Portugal implements a mixed system of control: a declaration system for amounts of cash and BNIs (defined in art. 2 of Decree Law 61/2007 in line with the FATF definition of BNIs, and including gold) entering or leaving the EU (art. 3 (1) Decree Law 61/2007) and a disclosure system on request for cash movements within Member States of the EU (art. 3 (2)). The remittance of cash, as cargo or by post, is subject to a customs declaration under the Union Customs Code: EU Regulation 952/2013.

Criterion 32.2 – The designated authority responsible to centralise, collect, register and process the information contained in the declarations is the Tax and Customs Authority (AT): art. 4 (1) Decree/Law 61/2007 and Decree Law 118/2011. All persons are required to submit a truthful declaration concerning the amounts of cash and BNIs equal to or higher than EUR 10 000, entering or leaving the EU: art. 108 (7) Law 15/2001. The Single European Cash Declaration form is used for this declaration.

Criterion 32.3 – A disclosure system on request is applied for cash movements equal to or higher than EUR 10 000 within Member States of the EU: art. 3 (2) Decree Law 61/2007. Travelers must, when requested, make a declaration using the form mentioned in c. 32.2. Incorrect and incomplete declarations constitute a customs offence: art. 108 (6) and (7) Law 15/2001.

Criterion 32.4 – EU Regulation 952/2013 laying down the Union Customs Code (art. 46) and Decree-Law 176/85 grants the AT the power to inquire and search natural persons, their luggage and means of transportation. The AT is required to register personal information about the traveller whenever there is circumstantial evidence that the cash movements may be connected to illicit activities: art. 4 Decree Law 61/2007. Information on the origin of the currency or its intended use can be obtained by the AT when voluntarily provided in the declaration form of c. 32.2 and 3, or by customs officers who, under Decree-Law 176/85, have the power to investigate and interrogate carriers.

Criterion 32.5 – A false declaration or disclosure constitutes a customs infraction under art. 108 (6) and (7) of the legal regime on tax and customs adopted by Law 15/2001 (sanctioned with fines from EUR 50 to EUR 165 000 when the cash amount is more than EUR 10 000 and less than EUR 165 000). Factors upon which the amount of the fine can be based include the gravity of the fact, the degree of fault or negligence, and the economic situation of the agent: art. 27 (1) Law 15/2001. To the extent possible, the sanction should exceed the benefit the agent would have gained with the violation. If the offence was committed with deceit and the amount exceeds EUR 10 000, an additional penalty is applied amounting to the loss of the value that exceeds the EUR 10 000 limit: art. 28 (2) Law 15/2001. Cash smuggling is also punished as a customs criminal offence when cash amounts exceed EUR 300 000 and the traveller does not justify the origin and destination of the cash, sanctioned with imprisonment of up to 3 years or a fine. This framework includes a sufficient range of sanctions which can be proportionally applied.

Criterion 32.6 – The Customs Anti-Fraud Department (DSAFA), which is part of the AT, is in charge of centralising and processing information obtained through the declaration or disclosure process, which is stored in a national database: art. 20 (2) Ministerial Ordinance 320-A/2011. The electronic report, which is produced, must be sent to the Criminal Police/FIU and other competent authorities by email: art. 5 (1) and (2) Decree Law 61/2007.

Criterion 32.7 – At a domestic level, the Tax and Customs Authority communicates the declarations/disclosure statements to the FIU, which is part of the Criminal Police (see c. 32.6). Information may also be transmitted to the Central Bank upon request, mainly for statistical purposes. There was no coordination organised with immigration services at the time of the on-site visit.[142]

[142] Coordination between AT and Immigration Service (SEF) was organised under a Protocol signed on 18 April 2017 (i.e. after the end of the on-site visit). The Protocol specifically states that "…whereas, according to the methodology for assessing compliance with Financial Action Task Force Recommendation 32 (FATF) on cash couriers, there is a call for coordination between customs, foreign services and other relevant authorities, and it is based on a formal document."

Criterion 32.8 – Competent authorities are able to stop or restrain currency or BNIs, until the judge who authorized the seizure deems it relevant for an investigation:

a) when there is a suspicion of an ML/TF offence or predicate offence, the suspected cash can be seized: art. 178 CCP (see c. 30.3). The criminal police and the customs authorities also have the power to take preventive measures to secure evidence in urgent situations: art. 37 Law 15/2001 and 249 CCP.

(b) regarding false declarations/disclosure, which are customs infractions, the cash entering or leaving the country in violation of EU and national legislation can be seized for investigative purposes: art. 73 (5) Law 15/2001.

Criterion 32.9 – The exchange of information with other EU authorities is organised by EU Regulation 515/97, which calls for the implementation of a rapid and effective system to share information between custom authorities: art. 6 Decree Law 61/2007. Exchange of information with third countries takes place within the framework of mutual administrative assistance, upon request by the respective competent authorities. The information collected through the declaration/disclosure system is kept for a period of 5 years from the time of collection: art. 4 Decree Law 61/2007.

Criterion 32.10 – Exchange of information with third countries must be made in full respect of national and EU legislation regarding the protection of personal data: art. 6 Decree Law 61/2007. Personal data collected is protected through relevant data protection provisions: art. 7 Decree Law 61/2007. The data collected and their consultation is subject to professional secrecy: art. 8 Decree Law 61/2007. The Preamble of EU Regulation 1889/2005 reiterates that the EU endeavours to create a space without internal borders in which the free movement of capital, goods, services and persons is ensured.

Criterion 32.11 – The information gathered in the declaration/disclosure process is sent to the criminal police by the FIU. If there is a suspicion that the cash/BNIs transported relate to ML/TF, a criminal investigation will be initiated and respective ML/TF sanctions are applicable. Confiscation is also applicable according to the Criminal Code (art. 109-111), Code of Criminal Procedure (art. 178) and Law 5/2002 (see c. 4.1).

Weighting and conclusion

Recommendation 32 is rated largely compliant.

Recommendation 33 – Statistics

In its 3rd MER, Portugal was rated *Partially compliant* with these requirements (para. 738). The main technical deficiencies were that: Portugal had not conducted a full and comprehensive review of its AML/CFT regime; there were no comprehensive statistics on ML and TF investigations, prosecutions and convictions; and there were very limited statistics on the number of cases and the amounts of property frozen, seized and confiscated relating to ML, TF and criminal proceeds. Since its last evaluation, Portugal has enacted new legislation empowering the FIU to keep statistical data along with the General Directorate for Justice Policies.

Criterion 33.1 – The FIU draws up and keeps relevant statistical data regarding the number of suspicious transactions that were reported, as well as the follow-up and results of such reports: art.

44 (1) AML/CFT Law. Relevant statistical data is also kept for ML/TF investigations, as well as for property frozen, seized and confiscated: art. 44 (2) AML/CFT Law. There are no legal provisions requiring statistics on MLA or other international requests for cooperation made and received to be maintained.

Weighting and conclusion

Portugal has legal provisions mandating the collection of some relevant statistical information.

Recommendation 33 is rated largely compliant.

Recommendation 34 – Guidance and feedback

In its 3rd MER, Portugal was rated *Partially compliant* with these requirements (para. 530 – 532 and 612 - 616). The main deficiency was that there was very little guidance under Law 11/2004 by competent authorities, except for IGAE/ASAE and casinos.

Criterion 34.1 – Feedback on the results and corresponding follow-up from STRs filed is given on a quarterly basis by the FIU to obliged entities. Banco de Portugal's Notices provide guidelines for FIs when applying national AML/CFT measures: Notices 5/2013 and 46/2012 (which contain a self-assessment questionnaire to help FIs assess the adequacy of their AML/CFT practices, point 2 b). ASF provides some guidelines on potentially suspicious operations: Annex II Regulation 10/2005. IMPIC provides guidance[143] but only in relation to the reporting requirements of art. 34 AML/CFT Law, and has taken recent action (March 2017) to publish further information online relevant to Portugal's AML/CFT legal framework[144]. ASAE also published guidance on its publicly available website for high-value goods dealers, which includes information on reporting obligations and a model spreadsheet for reporting suspicious transactions[145]. IRN has also published information concerning AML/CFT course of action and potentially suspicious operations[146]. There are no similar guidelines from public authorities for other FIs or DNFBPs which rely on internal self-regulation.

Weighting and conclusion

Guidance that is made available is largely in the form of published guidelines on the respective websites of industry regulators and supervisors. A lack of concrete guidance and feedback by Portuguese authorities on a regular basis to some categories of DNFBPs exists.

Recommendation 34 is rated largely compliant.

Recommendation 35 – Sanctions

Portugal was rated *Largely compliant* with these requirements during the third evaluation (para. 495ff), as no sanctions had been imposed by supervisors since the 2004 AML Law came into effect;

143 www.impic.pt/impic/pt-pt/comunicacoes-obrigatorias/comunicacoes-obrigatorias-de-transacoes-imobiliarias-lei-no-252008-de-5-de-junho
144 www.impic.pt/impic/pt-pt/iniciativas-estrategicas/prevencao-e-combate-ao-branqueamento-de-capitais-e-ao-financiamento-do-terrorismo
145 www.asae.pt/
146 www.irn.mj.pt/sections/irn/bc-ft

although, some proceedings were pending. This is an effectiveness issue, not assessed as part of technical compliance under the *2013 Methodology*.

Criterion 35.1 – The AML/CFT Law sets out a misdemeanour regime for FIs and some DNFBPs, with administrative law offences and sanctions when AML/CFT obligations are breached: Chapter V AML/CFT Law. Additionally, for notaries and registrars, disciplinary sanctions can apply, and for lawyers and *solicitadores,* disciplinary sanctions or administrative sanctions apply, depending on the type of activities performed (see below). Persons who do not abide by the freezing measures set forth in the European regulations are subject to sanctions at the national level.

Regarding administrative sanctions, the AML/CFT Law lists 30 different types of failures which constitute breaches. This includes all preventive measures of the FATF Recommendations (except R.21, see below): art. 53 AML/CFT Law. There is a range of sanctions applicable to FIs and DNFBPs (see also c. 27.4 and 28.4 c): fines (from EUR 2 500, if the offender is a natural person working for a non-financial entity, to EUR 5 million, if the breach is committed by a credit institution or an investment firm - upper limits to these sanctions can be increased, based on benefits derived from the AML/CFT breaches), potentially complemented by additional penalties depending on the seriousness of the offence, including suspension from activities or publicity of the decision: art. 54, 54-A, 55-A, 55-B AML/CFT Law. These sanctions can be applied proportionately depending on the importance of the breach. The amount of the fine is defined extensively and can be tailored to the particular offence and the offender, as several factors are considered to determine the amount, in particular the legal stature of the person or entity fined (i.e. natural or legal personality).

In addition to the sanctions of the AML/CFT Law, notaries and registrars can also be subject to disciplinary sanctions as public officials. These sanctions include written reprimands, fines, temporary suspension or definitive prohibition to exercise activity: art. 180 Law 35/2014 and art. 70 of the Statutes of Notaries Decree Law 26/2004.

Lawyers and *solicitadores* are subject to the administrative sanctions of the AML/CFT Law when they act as "company service providers" that do not perform any of the activities foreseen in art. 4 (g) (i) (ii) (iii) and (iv) AML/CFT Law. When they perform the activities of art. 4 (g) (i) (ii) (iii) and (iv) AML/CFT Law, they cannot be held liable for breaches of their AML/CFT obligations. Those breaches do constitute a disciplinary offence, and are subject to disciplinary sanctions (art. 46 (1) (2), 58 and 59 AML/CFT Law). Those sanctions include fines (between EUR 2 500 and EUR 250 000), suspension from activity (up to 10 years) and expulsion. This constitutes a limited range of sanctions, but it seems to be dissuasive and proportionate when compared to the administrative sanctioning of other natural persons who have a reporting obligation.

A criminal offence regime is also applicable for tipping-off: art. 40 (3) and 20 AML/CFT Law.

For R.6, the breach of the TFS regime can lead to an imprisonment penalty of three to five years. In case of negligence, the penalty is a fine of up to 600 days (between EUR 3 000 and EUR 300 000, see c. 7.3): art. 2 Law 11/2002. NPOs that breach R.8 requirements are subject to criminal and administrative sanctions under the tax infractions law: Law 15/2001(see c. 8.4 b).

Criterion 35.2 – Both legal persons as well as people acting on their behalf and in their name, in particular the members of their organs and representatives, are liable for breaches of AML/CFT obligations, and are jointly liable for the payment of fines imposed on their directors or representatives: art. 46 (2) and (3) and 51 (1) AML/CFT Law.

Weighting and conclusion

Recommendation 35 is rated largely compliant.

Recommendation 36 – International instruments

In its 3rd MER, Portugal was rated *Compliant* and *Partially compliant* with these requirements (para. 666-675). The main technical deficiency was that S/RES/1371 (2001) had not yet been comprehensively implemented - an aspect which is no longer assessed under this Recommendation.

Criterion 36.1 – Portugal has signed and ratified the Vienna Convention in 1991, the Palermo Convention in 2004, the International Convention for the Suppression of Terrorism Financing in 2002 and the Merida Convention in 2007.

Criterion 36.2 – Portugal has fully implemented the Vienna, Palermo, Merida and TF Conventions.

Weighting and conclusion

Recommendation 36 is rated compliant.

Recommendation 37 – Mutual legal assistance

In its 3rd MER, Portugal was rated *Compliant* and *Largely compliant* with these requirements (para. 676 – 690 and 696). The main technical deficiency was that, since dual criminality may be required for international cooperation, it was not clear how Portugal would execute requests for MLA or extradition involving the collection and/or provision of funds and assets to be used by an individual terrorist.

Criterion 37.1 – Law No. 144/99 regulates international judicial cooperation in criminal matters, including ML and its predicate offences (including TF). This legislation enables Portugal to rapidly provide broad cooperation concerning investigations in criminal proceedings and related procedures. In particular, legal assistance includes the provision of information, procedural acts and other public acts under Portuguese law, as well as grants any necessary steps to arrest suspects or recover objects, instruments or proceeds of crime. Furthermore, the notification of acts and delivery of documents; obtaining evidence; seizures; tests and expert reports; the notification and hearing of suspects, defendants, witnesses or experts; and the transit of people are also covered.

Criterion 37.2 – The central authority for the purpose of MLA in criminal matters is the Prosecutor General's Office: art. 21 Law 144/99. Within the European Union, all legal instruments related to international judicial cooperation are based on the principle of mutual recognition (reciprocity). The requirements for the timely prioritisation and execution of requests are clearly defined: art. 23 and 29 Law 144/99. In urgent cases, foreign judicial authorities can communicate directly with Portuguese judicial authorities, or through INTERPOL or other relevant agencies for international police cooperation designated for that purpose, to request the adoption of urgent interim measures (including precautionary measures, or the undertaking of an act which does not cause undue delay): art. 29 Law 144/99. Moreover, requests for MLA in the form of letters rogatory may also be transmitted directly between competent judicial authorities, providing more timely cooperation: Law 144/99. However, no case management system exists to monitor progress on requests.

Criterion 37.3 – Portugal does not impose unreasonable or unduly restrictive conditions on MLA. In specific instances[147], requests for cooperation may be refused: art. 6-8 Law No. 144/99. Some restrictions may also be provided for in treaties and conventions.

Criterion 37.4 –

a) Fiscal matters are not an obstacle to provide assistant in response to a request for MLA.

b) Portugal does not refuse requests for MLA on the grounds of secrecy or confidentiality requirements, except when the relevant information that is sought is held in circumstances where legal professional privilege or legal professional secrecy applies: art. 11 Law 144/99 and art. 2 Law 5/2002. In instances when there is reason to believe that information may be important 'for the discovery of truth,' legal professional secrecy may be breached by members of the governing bodies of credit institutions and financial companies, as well as employees (including tax officials): art. 2(1) Law 5/2002.

Criterion 37.5 – The confidentiality of requests for cooperation is provided for: art. 149 Law 144/99.

Criterion 37.6 – When the request for MLA entails recourse to coercive measures, this can only be undertaken if the facts set out in the request also constitute an offence in Portuguese law and are performed 'in accordance with it': art. 147 Law 144/99. Due to this, it is not clear how Portugal would execute requests for MLA that involve the collection or provision of funds or assets to be used by an individual terrorist, without a specific link to a terrorist act (see c.5.2). Otherwise, the provision of legal aid is not subject to verification of the double criminality condition.

Criterion 37.7 – In Portugal, it is sufficient for both countries to criminalise the underlying illicit conduct as an offence, regardless of whether both countries place the offence within the same category of offence, or denominate the offence by the same terminology.

Criterion 37.8 – Powers and investigative techniques, including a broad range of other powers such as special investigative techniques (e.g. wiretaps, covert operations, etc.), that are required under R.31, or otherwise available to domestic competent authorities, are also available for use in response to requests for MLA, and in response to a direct request from foreign judicial or law enforcement authorities to domestic counterparts. Relevant deficiencies apply (see c.31.1a) and 31.4).

Weighting and conclusion

Portugal has no case management system to monitor progress on requests, and it is not clear whether Portugal would be able to execute requests for MLA that involve the collection or provision of funds or assets used by an individual terrorists, without a link to a specific terrorist act.

Recommendation 37 is rated largely compliant.

Recommendation 38 – Mutual legal assistance: freezing and confiscation

In its 3rd MER, Portugal was rated compliant with these requirements (para. 676-690 and 694-696); however, there have been changes to the Recommendations since Portugal's 3rd Round MER.

147 For example, a request may be refused when proceedings do not comply with the requirements laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Criterion 38.1 – Law 144/99 regulates international judicial cooperation in criminal matters (see c. 37.1). This legal assistance comprises acts necessary for the expeditious seizure or the recovery of objects, instrumentalities or proceeds of a crime (this covers ML and its predicate offences, including TF): art. 145 (1) and (2) c) Law 144/99. Furthermore, Portugal is equipped to respond to a request for MLA, in which the requesting State asks for the identification, freezing, seizure or confiscation of instrumentalities, objects or proceeds of a crime or property with a corresponding value: art. 145 Law 144/99. Article 160 further specifies that Portuguese authorities may take whatever steps are necessary to enforce any decision of a foreign court at the request of a competent foreign authority.

Criterion 38.2 – Portugal is able to provide international judicial cooperation in cases where the request is related to non-conviction based confiscation proceedings and related provisional measures. This cooperation can only be provided at the judicial level, in particular for the adoption of provisional and protective measures as requested, except in cases where a request that may be judicially considered incompatible with the principle of proportionality or other fundamental rights foreseen in the Constitution of the Portuguese Republic. Portugal is able to grant more extensive international cooperation in criminal matters. As stated in art. 3 of Law 144/99, the forms of cooperation mentioned in art. 1 (extradition, MLA, etc.) are carried out in accordance with the provisions of international treaties to which Portugal is a party, as well as conventions and agreements that are binding on the Portuguese State. Law 144/99 allows for the use of the principle of reciprocity: art. 4, meaning that when there is an absence of international treaties, conventions and/or agreements in place, Portugal can nonetheless provide cooperation. The absence of reciprocity does not prevent compliance with a request for cooperation where such cooperation: a) is seen to be advisable in view of the nature of the facts or in view of the need to combat certain serious forms of criminality; b) may contribute to the betterment of the situation of the person concerned or to his social rehabilitation; or c) may serve to shed light on facts relating to a Portuguese national: art. 4(3) of Law 144/99.

Criterion 38.3 –

a) Although Portugal does not have bilateral arrangements for coordinating seizure and confiscation actions with other countries, its MLA provisions, in conjunction with the rule of reciprocity, allows authorities sufficient room for coordinating seizure and confiscation actions with other countries.

b) Portugal has the necessary mechanisms for managing and disposing of property frozen, seized or confiscated: art. 1 and 9 of Ministerial Order 391/2012.

Criterion 38.4 – Portugal is able to share confiscated property with other countries. Portuguese law establishes different legal frameworks according to whether the State concerned is an EU Member State or a third country. In the former case, a general framework exists, whereby property over EUR 10 000 is shared between the requesting state and Portugal in accordance with the conditions specified in law: art. 18 Law 88/2009. Property and goods seized at the request of authorities from other countries, as well as the proceeds of their sale, are shared equally between Portugal and other countries, unless otherwise provided for in an international convention: art. 39 Decree-Law 15/93.

Weighting and conclusion

Recommendation 38 is rated compliant.

Recommendation 39 - Extradition

In its 3rd MER, Portugal was rated *Compliant* with these requirements (para. 697 - 715).

Criterion 39.1 – In the framework of Law 144/99 on international judicial cooperation in criminal matters, Portugal is able to execute extradition requests in relation to ML/TF without undue delay.

a) Extradition can take place for the purpose of prosecution or execution of a sentence or a security measure for a crime whose judgment is the responsibility of the requesting state courts: art. 31 Law 144/99. Extradition is available for ML as it is punishable with imprisonment from 2 to 12 years: art. 368-A(2) Criminal Code. TF is punishable with imprisonment from 8 to 15 years, and therefore is an extraditable offence. The arrest and surrender of a person sought in an EU Member State for the purposes of criminal prosecution or executing a custodial sentence, or measure of custodial security under Law 65/2003, is also valid for situations involving ML/TF.

b) The extradition procedure in Portugal is regulated by law, which expressly states the urgent nature of this procedure: art. 31 – 46 Law 144/99. Furthermore, Law 65/2003 introduces an acceleration of procedures for the surrender of persons between Member States of the European Union. The European Arrest Warrant is also considered to be 'of an urgent nature,' which means that all acts related to it should be executed, even during non-business days and beyond the working hours of legal services and legal holidays: art. 33 Law 65/2003.

c) There are no unreasonable or unduly restrictive conditions on the execution of requests, and conditions in which extradition can be denied are clearly defined: art. 6-8 and 32 Law 144/99.

Criterion 39.2 – Portugal is able to extradite its own nationals: art. 32 (2) Law 144/99. Furthermore, the European Arrest Warrant is based on the principle of mutual recognition and does not include nationality in the list of possible reasons for denial. Extradition may only take place for purposes of criminal proceedings and provided that the requesting State gives assurances that it will return the extradited person to Portugal for that person to serve, in Portugal, the sanction or measure eventually imposed on him (once the sentenced is reviewed and confirmed in accordance with Portuguese law), unless the extradited person expressly refuses to be returned.

Criterion 39.3 – Concerning extradition, dual criminality is required. The person for whom delivery is sought for the purpose of prosecution or sanctions compliance is admissible only in the case of a crime, or attempted crime, punishable under Portuguese law and the requesting state's law with imprisonment of less than one year. However, the requirement of dual criminality is considered satisfied regardless of whether both countries subsume the crime in the same category of offences or foresee the offence with the same terminology: art. 31 Law 144/99.

Criterion 39.4 – Portugal has a simplified extradition mechanism in place: art. 74 and 75 of Law 144/99. According to these provisions, the person can be extradited using simplified extradition procedures, provided that (s)he relinquishes formal extradition proceedings freely and voluntarily. Furthermore, the legal regime of European Arrest Warrant appears as a procedure that replaces extradition between Member States of the European Union by providing, in a swift manner and for a catalogue of crimes, the arrest and surrender of a person sought in another Member State for the purposes of a criminal procedure or enforcement of a sentence or security measure.

Weighting and conclusion

Recommendation 39 is rated compliant.

Recommendation 40 – Other forms of international cooperation

In its 3rd MER, Portugal was rated *Compliant* with these requirements (para. 716 - 737).

Criterion 40.1 – Formal mechanisms are in place for many authorities to provide a range of information (supervisory and operational) and international cooperation both spontaneously and upon request (see below, specifically 40.2 and 40.6). Furthermore, agencies (including the FIU) have a number of MoUs available to facilitate information exchange with international partners and make use of informal cooperation to rapidly provide a wide range of information in urgent cases (e.g. terrorist attacks abroad) to foreign counterparts.

Criterion 40.2 –

a) Most competent authorities have a legal basis for providing cooperation: Banco de Portugal (BdP) (for cooperation with authorities from EU Member States: art. 81 of RGICSF and art. 37 of RJSPME, and for cooperation with authorities from third countries on the basis of reciprocal cooperation agreements: art. 82 of RGICSF); CMVM (art. 353 (2), 355 (2) and (3), 376, 377, 377-A Decree-Law 486/99), ASF (art. 35 and 37 RJASR), FIU (art. 5 (1) Decree-Law 42/2009), ASAE (the legal basis to provide cooperation is based on Decree-law 194/2012, art. 2 (2) (c) and art. 13, specifically paragraph 4, covering ML/TF predicate offences), the AT (art. 55 (1) EU Regulation 904/2010, Council Directive 2011/16/EU, Council Regulation (EU) 389/2012, Double Taxation Conventions and Multilateral Convention on Mutual Administrative Assistance in Tax Matters). The legal framework for international police cooperation for LEAs is the Code of Criminal Procedure (art. 229), Decree Law No. 275/2000 (art. 37) and Law No. 144/1999.

b) Competent authorities are not prevented from using the most efficient means possible for providing the widest range of assistance.

c) The AT has clear and secure mechanisms to exchange information with its European counterparts through a common platform based on the Common Communication Network (CCN) and the Common Systems Interface (CSI), developed by the EU to facilitate electronic transmissions between the competent customs and tax authorities. International information requests under EU Regulation 904/2010 are recorded on the Integrated Tax Inspection and Information System, and are processed at the Central Liaison Office (CLO). The Egmont Secure Web is used by the FIU to exchange information. ASAE is also able to rapidly communicate and share information through platforms such as the Secure Information Exchange Network (SIENA) for the secure and confidential exchange of information for operational and strategic purposes between EUROPOL, its Member States, and third parties, such as INTERPOL. CMVM also makes use of secure systems to exchange information with other securities regulators. [148]

[148] The exchange of information between European Securities Authorities is managed by and centralised in the European Securities and Markets Authority (ESMA), which has developed a secure system for this purpose, ESMA Vault – Secure e-mail, which recently began operating. The exchange of sensitive information with foreign counterparts outside the EU is

d) Regarding LEAs, deadlines to send information to EU counterparts are specified in legislation (from 8 hours for urgent requests to 14 days for other requests): art. 8 of Law 74/2009, which transposes Decision 2006/960/JHA. Regarding the securities sector, CMVM makes use of ESMA and IOSCO information sharing agreements to facilitate information exchange with foreign counterparts[149]. All competent authorities noted that TF-related cases are prioritised as a matter of course; although, there appears to be no clear written process in place for competent authorities regarding the prioritisation and timely execution of TF-related requests.

e) Some competent authorities have measures applicable to safeguard information provided: BdP (art. 80 and 81 (5) and (7) RGICSF), CMVM (art. 356 (3) Decree-Law 486/99), ASF (art. 32 and 34 RJASR).

Criterion 40.3 – Competent authorities have entered into numerous MoUs or bilateral and multilateral agreements with other foreign entities to facilitate cooperation. These information sharing agreements cover a broad range of foreign counterparts from numerous jurisdictions. Furthermore, administrative assistance and cooperation in tax matters can be provided by the AT.

Criterion 40.4 – The FIU adheres to the Egmont Principles, including Egmont Principle #19 on the provision of feedback to foreign counterparts. BdP is able to provide feedback: art. 122.º-A(5) and (7) RGICSF. The ASF may also provide timely feedback: art. 32, 33, 37, 164 and 287 of RJASR. Timely feedback is also provided by the CMVM, and BdP has legal authority to cooperate closely with other competent authorities, specifically in the context of providing information essential or relevant for the exercise of supervisory tasks such as feedback: art. 137 (c) RGICSF. The ASAE also has a sound legal basis to provide cooperation including feedback (see c. 40.2).

Criterion 40.5 –

a) In the context of administrative assistance or administrative cooperation in tax matters, the AT can exchange information with foreign authorities pursuant to an applicable agreement, or EU Directive or Regulation. This covers both the administrative context (i.e. tax audits, tax controls or tax assessments), as well as the criminal or judicial context when tax crimes that might arise are criminally pursued or prosecuted. Under specific, pre-defined circumstances, information can also be used for non-tax purposes. Regarding CMVM, as long as there is no legal impediment (and the request of information is considered to fall under the scope of the CMVM's responsibilities), information can be exchanged: art. 376 (1) and (4) of Decree-Law 486/99. BdP does not refuse requests for assistance on the grounds that a request is considered to involve fiscal matters, and indeed, information contained in its centralised database of bank accounts may be used for international cooperation with foreign counterparts.

b) Facts subject to professional secrecy may be disclosed to financial supervisors, judicial authorities and tax authorities: art. 79 (2) and 195 RGISCF. Concerning CMVM, obliged entities cannot rely on professional secrecy in order to withhold information from CMVM: art. 361 (2) (a) 376 (4) Decree-

made through secure systems accessible to the CMVM thanks to other authorities, such as the US Securities and Exchange Commission (SEC), and through registered mail or by electronic files protected by security specificities (e.g. passwords).

[149] Furthermore, specific requirements are provided in EU legislation, namely in art. 79(9), 80(4) and 81(4) of MiFID, as well as in art. 25(9) and 26(2) of the Market Abuse Regulation (MAR, Regulation 596/2014), whereby the necessary technical standards for harmonising the exchange of information between competent authorities at a European level will be drafted by ESMA for approval by the EC.

Law 486/99. Regarding the insurance sector, ASF does not refuse requests for assistance on any of the grounds listed in c. 40.5: arts. 32 – 38 RJASR.

c) The existence of an ongoing enquiry is not cause for the refusal of execution of an international cooperation request: art. 6 and 18 Law 144/99.

d) Generally, the nature or status of the requesting counterpart authority is not grounds for a refusal. However, in the case of CMVM, the requesting authority must be a supervisory authority or carry out functions which are similar to those of the entities listed in art. 355 (1) Securities Code: art. 355 (3) of Decree-Law 486/99. The CMVM is able to exchange information with the following (foreign) entities: the European Securities and Markets Authority; the European Banking Authority; and the European Insurance and Occupational Pensions Authority; the European Systemic Risk Board; the European Central Bank and the European System of Central Banks; and the supervisory authorities of the Member States of the EU or entities therein: art. 355(2) CVM. CMVM is also able to exchange information with supervisory authorities of non-EU Member States with similar functions. BdP can exchange information with a wide range of entities: art. 81 RGICSF.

Criterion 40.6 – Most competent authorities have controls and safeguards in place to ensure that information exchanged is only used for its intended purpose, and by the authorities for whom the information was sought or provided, unless prior authorisation has been given by the requested authority: BdP (art. 81 (5) (6) and (7) and 82 RGICSF and 37 RJSPME f), CMVM (art. 355 and 356 (2) and (3), 373 Decree-Law 486/99), ASF (art. 34, 36 and 37 RJASR). The ASAE also has confidentiality clauses regarding the secure exchange of information in the protocols used for cooperation (c. 40.2). Furthermore, the Council Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the EU was implemented in Portugal by Law 74/2009. Information is exchanged through channels established by EUROPOL, INTERPOL and SIRENE. Authorities are bound by case secrecy as well as data protection rules (art. 5 and 12). Information can only be used for the purpose for which it was obtained (art. 13). Information can also be exchanged between judicial authorities in the framework of EUROJUST (art. 9 A and 9 B Law 36/2003 22/08, which implemented Decision 2002/187/JAI of 28/02/2002 and 2009/426/JAI of 16/12/2008). There are no relevant provisions for LEA exchanges outside the EU. The systems in place for the FIU are general provisions in the AML/CFT Law (art. 16 (2)), and there are not clear legal provisions outlining the specific controls and safeguards that must be put in place by the FIU, others than the ones referred to in c. 40.2 c). The secure channels existing for the AT are described in c. 40.2 c).

Criterion 40.7 – Competent authorities are required to maintain professional secrecy when responding to any request for cooperation: BdP (art. 81 (5) and 82 RGICSF), CMVM (art. 355 (2) Decree-Law 486/99 when exchanging information with authorities from EU Member States), ASF (art. 35 (1) RJASR). Furthermore, all competent authorities are required to maintain confidentiality of communications and transmitted data: art. 22 of Law 144/99.

Criterion 40.8 – The Portuguese FIU adheres to the *Egmont Group Principles for Information Exchange between FIUs.* Supervisors, including the CMVM, BdP and ASF, also have broad powers to cooperate with foreign counterparts and exchange information. Likewise, LEAs can make informal inquiries and take other expeditious actions outside MLA with the aim of identifying, freezing and confiscating property laundered, as well as the proceeds from ML or its predicate offences.

Exchange of information between FIUs

Criterion 40.9 – The FIU has a legal basis for cooperating with foreign FIUs or other counterparts: art. 5(1) Law 42/2009, and exchanges information with its foreign counterparts in accordance with the Egmont Group Principles or under the terms of any relevant MoU. This is not prejudiced by the structure (i.e. administrative, law enforcement, judicial, or otherwise) of the foreign FIU.

Criterion 40.10 – As requested, the FIU informs its counterparts about how information received was used, as well as the results of the analysis carried out.

Criterion 40.11 – The FIU has the necessary powers and competencies to share relevant information with its counterparts at an international level, subject to the principles of reciprocity: art. 5 Decree Law 42/2009.

Exchange of information between financial supervisors

Criterion 40.12 – BdP, CMVM and ASF have an appropriate legal basis for providing cooperation in matters of supervision, consistent with the applicable international standards for supervision (see c. 40.2 a). All financial supervisors also have a legal basis to cooperate with European supervisory authorities: art. 40-A AML/CFT Law.

Criterion 40.13 – BdP and ASF are able to exchange information with foreign counterparts that is domestically available to them, including information held by financial institutions: art. 138 RGICSF, art. 35(1) and (5) and 37 RJSPME. CMVM can also exchange information with foreign counterparts that is domestically available to it through the use of EU and international information sharing mechanisms, such as the use of MMoUs (see c. 40.2d).

Criterion 40.14 – Financial supervisors can exchange relevant regulatory, prudential and AML/CFT information (such as internal AML/CFT procedures and policies of FIs, CDD information, etc.): art. 135, 137, 137-B, 137-C and 138 of RGICSF and art. 35 of RJSPME.

Criterion 40.15 – CMVM can conduct inquiries on behalf of foreign counterparts in order to ascertain the fact(s) that confirm an offence has been committed: art. 377 (5) Decree-Law 486/99. The conditions upon which a foreign authority can conduct inquiries in Portugal vary, depending on whether the inquiry is to be conducted by a non-EU authority or an EU authority. For a non-EU authority, art. 376 (3) Securities Code provides the legal basis. For cooperation with EU authorities: art. 377/5 of CVM and art. 5 of Decree Law 486/99. BdP is able to conduct inquiries, or to allow them to be carried out by the supervisory authority of another EU Member State, in order to check the accuracy of information gathered under art. 137(1) (2) of RGICSF: art. 137 (2) RGICSF. For the ASF, the legal basis for this can be found in: art. 205, 211, 212, 293 RJASR. This includes financial group supervision, with the reservation mentioned in c. 26.4.

Criterion 40.16 – Financial supervisors are required to have the express authorisation of the requested supervisor for any dissemination of information exchanged exclusively for the authorised purpose: art. 81 (7) RGICSF for BdP, art. 356 (2) Decree-Law 486/99 for CMVM, art. 36(4), 37 and 38(2) of RJASR for ASF.

Exchange of information between law enforcement authorities

Criterion 40.17 – LEAs are able to exchange domestically available information with foreign counterparts for intelligence or investigative purposes relating to ML, associated predicate offences or TF, including the identification and tracing of the proceeds and instrumentalities of crime. This can be done bilaterally or through channels, such as INTERPOL or EUROPOL. In the absence of formalised agreements, information can be exchanged on the basis of reciprocity.

Criterion 40.18 – LEAs can conduct inquiries and obtain information on behalf of foreign counterparts. Restrictions on use are clearly established in information sharing arrangements or laid out in law: art. 10, 12 Law 49/2008.

Criterion 40.19 – LEAs are able to form joint investigative teams, as necessary, to conduct joint-investigations. Furthermore, bilateral arrangements are in place to enable such joint investigations: art. 145 A Law 144/99.

Exchange of information between non-counterparts

Criterion 40.20 – Competent authorities are permitted to exchange information indirectly with non-counterparts, applying the relevant principles above: Decree Law 42/2009 and Law 49/2008.

Weighting and conclusion

Not all competent authorities have the required powers and safeguards in place to provide the full range of international cooperation in the conditions prescribed.

Recommendation 40 is rated largely compliant.

Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
1. Assessing risks & applying a risk-based approach	LC	• Portugal does not fully apply a RBA to allocating resources and implementing AML/CFT mitigating measures. • No analysis of lower risks is provided to support the application of the simplified due diligence regime. • Except for Banco de Portugal, there is no specific requirement for AML/CFT supervisors to ensure that obliged entities apply risk-based mitigation measures. • Except for financial institutions regulated and supervised by Banco de Portugal, obliged entities are not under an obligation to identify, assess and understand their ML/TF risks.
2. National cooperation and coordination	LC	• Portugal does not demonstrate if and how AML/CFT policies, including ML preventive measures, are informed by the ML/TF risks identified.
3. Money laundering offence	LC	• Legal persons rendering public services and international organisations of public law are exempt from criminal liability. • Criminal sanctions available for legal persons convicted of ML are too low to be considered dissuasive.
4. Confiscation and provisional measures	C	All criteria met.
5. Terrorist financing offence	LC	• Legal provisions broadly reference the financing of terrorism (i.e. terrorist acts) and terrorist organisations, without a specific provision covering the financing of an individual terrorist without a link to a specific terrorist act.
6. Targeted financial sanctions related to terrorism & TF	C	All criteria met.
7. Targeted financial sanctions related to proliferation	C	All criteria met.
8. Non-profit organisations	PC	• Portuguese authorities have not undertaken a comprehensive review of the NPO sector to appropriately understand TF risks. • Portugal has not taken steps to promote targeted risk-based supervision or monitoring of NPOs.
9. Financial institution secrecy laws	LC	• Shortcomings regarding the sharing of operational information between competent authorities concerning individual financial institutions.
10. Customer due diligence	LC	• Shortcomings concerning the verification of identification of customers, and those persons purporting to act on behalf of the customer. • Absence of explicit requirements to verify the BO using information or data obtained from a reliable source in all cases. • Additional shortcomings regarding specific CDD measures required for legal persons and legal arrangements. • Deficiencies regarding the identification of the beneficiary of life insurance contracts.
11. Record keeping	C	All criteria met.

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
12. Politically exposed persons	LC	• Shortcomings regarding the definition of PEP. The definition lays down a condition of territoriality and does not include important political party officials. • Absence of legal requirement to determine whether beneficiaries of life insurance policies and their BO are PEPs.
13. Correspondent banking	PC	• Requirements only apply to correspondent banking relationships with FIs established in non-EEA countries.
14. Money or value transfer services	C	All criteria met.
15. New technologies	LC	• Absence of specific requirement for FIs to assess risks associated with the use of new technologies.
16. Wire transfers	PC	• The EU regulation applicable in Portugal does not include provisions relating to the transmission of beneficiary information, which negatively affects most of the sub-criteria. • Additional deficiency relates to the absence of requirements for intermediary financial institutions.
17. Reliance on third parties	LC	• Shortcomings regarding incorporating level of country risks when considering whether reliance on a third party in another EU country is permitted.
18. Internal controls and foreign branches and subsidiaries	LC	• Absence of general requirement to have a compliance management function at management level, as well as employee screening procedures. • Shortcomings regarding group-wide sharing, as well as safeguards on the use and confidentiality of the information exchanged.
19. Higher-risk countries	LC	• Absence of specific requirement on the application of EDD and countermeasures for high-risk countries which are identified by FATF.
20. Reporting of suspicious transaction	LC	• Spillover effects from R.5.
21. Tipping-off and confidentiality	C	All criteria met
22. DNFBPs: Customer due diligence	PC	• Deficiencies identified in R.10, 12 and 15 are also relevant for DNFBPs. • Additional deficiencies regarding sectoral regulations on verification of a customer's identity, and the person acting on behalf of the customer, as well as for legal persons and arrangements.
23. DNFBPs: Other measures	LC	• Shortcomings identified in R.18, 19 and 20 are also applicable for DNFBPs.
24. Transparency and beneficial ownership of legal persons	PC	• Absence of a comprehensive ML/TF risk assessment covering all types of legal persons. • Additional deficiency includes an absence of general obligation for all companies to maintain a register of their shareholders. • Relevant information is not updated on an ongoing basis. • The applicable sanction regime for non-complying with the transparency obligations is not fully proportionate and dissuasive.
25. Transparency and beneficial ownership of legal arrangements	PC	• Deficiencies regarding the range of information to be held by trustees and absence of specific provisions requiring them to keep updated and accurate BO information. • Lack of specific requirement for trustees to cooperate rapidly with all law enforcement authorities.
26. Regulation and supervision of	LC	• Shortcomings regarding the application of risk-based supervision especially for non-bank financial sectors.

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
financial institutions		• There is no specific provision requiring non-bank supervisors to take into account ML/TF risks present in the country as part of their supervisory approach.
27. Powers of supervisors	C	All criteria met.
28. Regulation and supervision of DNFBPs	LC	• Uneven risk-based approach in supervision of DNFBPs. • Gaps in the regulatory and sanctions powers of SRBs.
29. Financial intelligence units	LC	• The FIU does not conduct strategic analysis, nor is there a clear legal basis for it to do so. • The FIU does not have its own budget, and is reliant on budgetary considerations from its 'parents organisation'.
30. Responsibilities of law enforcement and investigative authorities	C	All criteria met.
31. Powers of law enforcement and investigative authorities	C	All criteria met.
32. Cash couriers	LC	• At a domestic level, no coordination with immigration services existed at the time of the on-site on issues related to R.32.
33. Statistics	LC	• There are no legal provisions requiring statistics on MLA or other international requests for cooperation made and received.
34. Guidance and feedback	LC	• A lack of concrete guidance and feedback by Portuguese authorities on a regular basis to some categories of DNFBPs exists.
35. Sanctions	LC	• Limited range of sanctions available in certain cases.
36. International instruments	C	All criteria met.
37. Mutual legal assistance	LC	• Portugal has no case management system to monitor progress on requests, and it is not clear whether Portugal would be able to execute requests for MLA that involve the collection or provision of funds or assets used by an individual terrorists, without a link to a specific terrorist act.
38. Mutual legal assistance: freezing and confiscation	C	All criteria met.
39. Extradition	C	All criteria met.
40. Other forms of international cooperation	LC	• Not all competent authorities have the required powers and safeguards in place to provide the full range of international cooperation in the conditions prescribed.

GLOSSARY OF ACRONYMS[150]

AMO	Asset Management Office
ARO	Asset Recovery Office
Art.	Article/articles
ASAE	Economic and Food Safety Authority (*Autoridade de Segurança Alimentar e Económica*)
ASF	Insurance and Pension Supervisor (*Autoridade de Supervisão de Seguros e Fundos de Pensões*)
AT	Tax and Customs Authority
BdP	Banco de Portugal
BO	Beneficial Ownership
CB	Correspondent Banking
CC	AML/CFT Co-ordination Commission
CCN	Common Communication Network
CCP	Code of Public Contracts
CFSP	Common Foreign and Security Policy
CIMO	Conference of the Ministers of the Interior of the Western Mediterranean
CIRC	Corporate Income Tax Code
CLO	Central Liaison Office
CMVM	Securities Market Commission (*Comissão do Mercado de Valores Mobiliários*)
CNES	National Council of Social Economy
COMET	Working Party on restrictive measures to combat terrorism
CP	Civil Partnership
CPF	Counter Proliferation Financing
CRC	Commercial Register Code
CSI	Common Systems Interface
CT	Counter terrorism
CFT	Counter the financing of terrorism
CTOC	Chamber of Certified/Chartered Accountants
CTR	Cash Transactions Report

[150] Acronyms already defined in the FATF 40 Recommendations are not included into this Glossary.

CVM	Securities Code (Decree-Law No. 486/99 of 13 November)
DCIAP	Central Department for Criminal Investigation and Prosecution
DPRK	Democratic People's Republic of Korea
DSAFA	Customs Anti-Fraud Department
EC	European Commission
ECB	European Central Bank
EDD	Enhanced Due Diligence
EEA	European Economic Area
ESMA	European Securities and Markets Authority
EU	European Union
EUR	Euro
FI	Financial institutions
FIU	Financial Intelligence Unit
FTF	Foreign Terrorist Fighters
FTZ	Free Trade Zone
GDP	Gross domestic product
GP	General Partnership
GVA	Gross Value Added
IAS	Supervisory Attention Index
IGAE	General Inspectorate for Economic Activities
IMC	Inter-Ministerial Commission
IMF	International Monetary Fund
IMPIC	Institute of Public Procurement, Real Estate and Construction
IO	Immediate Outcome
IOSCO	International Organisation of Securities Commission
IRN	Institute of Registries and Notary
JCPOA	Joint Comprehensive Plan of Action
JHA	Justice and Home Affairs
LEA	Law Enforcement Authorities
LLC	Limited Liability Companies
LP	Limited Partnership
MENA	Middle East and North Africa

MER	Mutual Evaluation Report
ML	Money Laundering
MLA	Mutual Legal Assistance
MMoU	Multilateral Memorandum of Understanding
MoD	Ministry of Defence
MoF	Ministry of Finance
MoFA	Ministry of Foreign Affairs
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoU	Memorandum of Understanding
NCTU	National Counter-Terrorism Unit
NRA	National Risk Assessment
NPO	Non-Profit Organisation
NSCT	National Counter Terrorism Strategy
OA	Bar Association (*Ordem dos Advogados*)
OCC	Chamber of Certified/Chartered Accountants (*Ordem dos Contabilistas Certificados*)
OJEU	Official Journal of the EU
OROC	Order of Statutory Auditors (*Ordem dos Revisores Oficiais de Contas*)
OSAE	Order of Solicitadores (*Ordem dos Solicitadores e dos Agentes de Execução*)
PF	Proliferation financing
PGR	Prosecutor General's Office (*Procurador-Geral da República*)
PIE	Public Interest Entities
PJ	Criminal Police (*Polícia Judiciária*)
PLG	Permanent Liaison Group
PLS	Partnership Limited by Shares
PSP	Public Security Police
PWGT	Police Working Group on Terrorism
QAA	AML/CFT Self-assessment Questionnaire (BdP supervised entities)
RGIT	General Taxation Infringements Law (*Regime Geral das Infracções Tributárias*)
RGICSF	Legal Framework for Credit Institutions and Financial Companies
RJASR	Legal Framework on the taking-up and pursuit of the business of insurance and reinsurance

RJFP	Regulatory framework for the Constitution and Functioning of Pension Funds and Pension Funds Management Companies
RJM	Regulatory framework on the conditions on the taking-up and pursuit of the business of insurance and reinsurance intermediaries
RNPC	National Registry of Legal Persons (*Registos Nacional de Pessoas Colectivas*)
RPB	ML/TF Risk Report (BdP supervised entities)
RJSPME	Legal Framework for Payment Institutions and Electronic Money Institutions
SA	Joint Stock Company
SDD	Simplified Due Diligence
SE	European Company
SEF	Immigration and Borders Service
SIENA	Secure Information Exchange Network
SIIAF	Integrated Anti-fraud Customs Information System *(Sistema Integrado de Informação Aduaneira Anti-fraude)*
SIS	Security Intelligence Service
SRA	Sectoral Risk Assessment
SRIJ	Gambling Regulation and Inspection Service of Tourism of Portugal (*Serviço de Regulação e Inspecção de Jogos*)
SSM	Single Supervisory Mechanism
TC	Technical Compliance
TF	Terrorist Financing
TFEU	Treaty on the Functioning of the European Union
TFS	Targeted Financial Sanctions
UCAT	National Anti-Terrorism Co-ordination Unit
UNCC	National Unit Against Corruption
UNCTE	National Unit for Fighting Drug Trafficking
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolutions
WMD	Weapons of Mass Destruction

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Anti-money laundering and counter-terrorist financing measures - Portugal

Fourth Round Mutual Evaluation Report

In this report: a summary of the anti-money laundering (AML) / counter-terrorist financing (CTF) measures in place in Portugal as at the time of the on-site visit on 28 March-13 April 2017.

The report analyses the level of effectiveness of Portugal's AML/CTF system, the level of compliance with the FATF 40 Recommendations and provides recommendations on how their AML/CFT system could be strengthened.