



UNODC

United Nations Office on Drugs and Crime

Country Review Report of Portugal

Review by the Kingdom of Morocco and the Kingdom of Spain of the implementation by Portugal of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2011 - 2012

I. Introduction

The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.

In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.

The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.

The review process is based on the terms of reference of the Review Mechanism.

II. Process

The following review of the implementation by Portugal of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Portugal, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Spain and Morocco, by means of telephone conferences, email exchanges as well as the country visit organized by Portugal. The experts involved in this review were Mr. António Folgado from Portugal, Mr. Badr Abdelhafid Afif, Mr. Aziz Alouane, Mr. Mohamed Benalilou, Ms. Khadija Chakir, Mr. Abdelaziz El Houari, Mr. Abdesselam El Imani, Mr. Hakim Firadi and Ms. Mouna Moutaouakil (coordinator) from Morocco, as well as Mr. Juan Bautista Delgado Canovas and Mr. Íñigo Ortiz de Urbina from Spain. The staff members from the Secretariat were Mr. Badr El Banna, Mr. Stefano Betti and Mr. Arnaud Chaltin.

III. Executive summary

1. Introduction

1.1 Overview of the legal and institutional framework of Portugal in the context of implementation of the United Nations Convention against Corruption

According to paragraph 2 of Article 8 of the Constitution of the Portuguese Republic, international conventions duly ratified become immediately and automatically part of the Portuguese legal order. Once they are published in the Official Gazette, they are enforced in exactly the same manner as all other laws. However, when a provision of a convention is not self-executing, its application requires the adoption of domestic law.

As the United Nations Convention against Corruption has already been ratified, it became part of the Portuguese legal order. However, according to the constitutional system, the obligations contained therein as regards to criminalization cannot be considered as self-executing and therefore imply a concretization by means of the adoption of domestic law, which must be approved by Parliament.

All mandatory offences referred to in the Convention against Corruption were foreseen in criminal legislation. These were implemented mainly through the Criminal Code, Law No. 20/2008 with regard to both corruption in the private sector and corruption in international transactions, and Law No. 93/99 with regard to the protection of witnesses. International cooperation for the purpose of the Convention is foreseen in Law No. 144/99 on International Judicial Cooperation in Criminal Matters.

The main institutions involved in the fight against corruption are the following:

The Public Prosecutors are responsible for the criminal investigation and prosecution of all crimes. However, the criminal investigation could be delegated to the Criminal Police and other police forces (for minor offences) which perform their tasks under the direction and supervision of the Public Prosecutor in charge with the criminal file.

According to Statute of the Public Prosecution Service, it is incumbent to the Central Department for Criminal Investigation and Prosecution (Departamento Central de Investigação e Ação Penal (DCIAP)) to direct the inquiry and carry out the prosecution of corruption offences, whenever the criminal activity occurs in regions (comarcas) pertaining to different judicial districts. The DCIAP is also competent when the Attorney General considers that a centralized direction of the investigation is required, taking into consideration the seriousness of the crime, the particular complexity or the extent of the criminal activity throughout the national territory or extraterritorially.

The Criminal Police (Polícia Judiciária), which is the law enforcement competent body for the investigation of corruption offences in Portugal, has within its structure a special unit devoted to the fight against corruption and other economic and financial crimes — the National Unit Against Corruption (Unidade Nacional contra a Corrupção (UNCC)).

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (articles 15, 16, 18, 21)

Article 386 of the Criminal Code defines Public Official in a comprehensive manner, that includes the employees, assistants, temporary staff and volunteers working at the public administration, including the temporary staff and volunteers. The concept includes therefore actors who de facto are in a position to commit any type of a corruption offence.

The Portuguese Criminal Law deals with active and passive corruption in Articles 372, 373 and 374 of the Criminal Code regarding the public sector and Articles 8 and 9 of Law No. 20/2008 regarding the private sector. The criminalization of the trading in influence was foreseen in Article 335 of the Criminal Code. Those categories of offenses include to give, promise, demand or accept an undue advantage, whether of economic nature or not, directly or indirectly for oneself or a third party. The criminalization of corruption in the private sector is foreseen in Articles 8 and 9 of Law No. 20/2008, of 21 April. Article 7 of this Law also criminalizes the active corruption of foreign public officials and officials of

international public organizations; however, the passive form of this latter form of corruption, which criminalization is not mandatory under the Convention, is not criminalized in Portugal.

Money-laundering, concealment (articles 23, 24)

Money-laundering has been criminalized by means of Article 368-A of the Criminal Code which adequately covers the conversion or transfer of property, as well as concealment or disguise; however, it does not seem to cover the acquisition, possession or use of property as considered in Article 23 subparagraph 1 (b)(i).

Attempt and related ancillary offences were provided for, except for conspiracy, which does not exist as such in the Portuguese legal order.

Portuguese criminal law covers “self-laundering” and foresees a wide range of offences (by adopting a combination of list and threshold approaches) as predicate offences to money-laundering; however, certain non-mandatory offenses (article 16 paragraph 2, articles 20 and 22) were not criminalized under Portuguese Criminal Law and were, therefore, not considered as predicate offences for money-laundering.

Concealment and continued retention of property has been criminalized as elements of the offences of laundering and receiving; however, the offence of “receiving” was expressly limited to property “attained by another by means of a typical unlawful act against the property”. Thus, it fell short of Article 24 of the Convention requirement, since most offences established according to the Convention are not property crimes.

Embezzlement, abuse of functions and illicit enrichment (articles 17, 19, 20, 22)

Embezzlement, misappropriation or other diversion of property by a public official was covered by the Criminal Code. Article 376 complemented in this regards Article 375 in the absence of appropriation of the benefits by the public official. Yet, the offence only extends to movable values. The criminalization of the abuse of function or position is foreseen in Article 382 of the Criminal Code. The offence of embezzlement in the private sector is not foreseen in the Portuguese criminal legislation, yet Article 205 of the Criminal Code contemplates the abuse of trust with regards to movable property.

The possibility of criminalizing illicit enrichment has been considered, and reviewers have been informed by the Portuguese Government that it was currently considering reviewing its legislation in this regards. The experts, therefore, support the current efforts to seek a way to ensure the criminalization of illicit enrichment within the framework of Portugal’s Constitution.

Obstruction of justice (article 25)

There is no so-called “obstruction of justice” offence in the Portuguese Criminal Law. However, the goal of Article 25 of the Convention against Corruption can be reached through the application of Articles 143, 144, 153, 154, 155, 363, 359 and 360 of the Criminal Code.

Liability of legal persons (article 26)

Criminal liability of legal persons, foreseen in Article 11 of the Criminal Code, covers a large list of offences including the laundering of proceeds of crime and different types of active and passive corruption. Legal persons could also be subject to civil and administrative liability (through the application of “coimas”, which are monetary sanctions). Moreover, the liability of legal persons and equivalent entities did not exclude the individual liability of the respective actors nor depended upon their liability.

However, the criminal liability of legal persons did not extend to embezzlement offences, nor could the civil or administrative liability of legal persons be established for this offence.

Participation and attempt (article 27)

The general part of the Criminal Code establishes as a criminal offence the participation in any capacity, such as perpetrator, accomplice, assistant or public instigator in offences, which encompasses those established in accordance with the Convention against Corruption. As for the preparatory acts, those were not punishable unless stated otherwise.

Unless a specific provision otherwise states, attempt in Portugal was criminalized for offences punishable with a maximal penalty of over three years, therefore not encompassing various offences under the convention such as threats or bribery to render false testimony, trading in influence for the purpose of obtaining a favourable decision, or acts of corruption in the private sector (except in a specific circumstances).

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)

The sanctions foreseen in the legislation of Portugal for Convention against Corruption offences seem to be adequate; however, no detailed statistics were provided to assess their effective implementation.

Portuguese law provides for immunity of the holders of certain political and high public offices in the government hierarchy; however, the existence of special procedures ensures that immunities or jurisdictional privileges will not impede the investigation, prosecution and sentencing of offences established in accordance with the Convention.

Portugal's provisions on legal powers related to prosecution, conditions of release pending trial or appeal, parole, removal, suspension or reassignment of an accused public official, disqualification of convicted persons (except for disqualification from holding office in an enterprise owned in whole or in part by the State) and reintegration of convicted persons comply with the provisions under review.

The possibility of mitigating punishment of an accused person who cooperates in the investigation or prosecution of an offence is foreseen for some Convention offences (bribery and money-laundering). Immunity is not provided for in such cases.

Protection of witnesses and reporting persons (articles 32, 33)

Law No. 93/99 governs the enforcement of measures on the protection of witnesses in criminal proceedings whenever their lives, physical or mental integrity, freedom or property of a considerably high value are in danger. This protection is extended to victims insofar as they are witnesses.

This Law also takes into consideration the views and concerns of victims. These can be presented and considered at appropriate stages of criminal proceedings, in a manner not prejudicial to the rights of defence. Moreover, Portugal has initiated negotiations for a bilateral agreement on witness protection which includes the possibility for the relocation of the person.

Of the 59 people who benefited from this protection, in the nine year period ranging from 2003 to 2010, two were witnesses in cases linked to offences under the Convention.

Portugal's legal framework seems to provide adequate protection against any unjustified treatment to employees of the public administration and of State owned

companies, though such protection does not explicitly extend to private sectors' employees.

Freezing, seizing and confiscation; bank secrecy (articles 31, 40)

Portugal has an adequate legal framework for the identification, tracing, freezing, seizure and confiscation of proceeds of crime derived from offences, including Convention against Corruption offences, and property of corresponding value, in addition to equipment or other instrumentalities used in or destined for use in such offences. Portugal has also enacted adequate legislation to regulate the administration of such property.

Banking or any other professional secrecy did not seem to constitute an impediment to the investigation and prosecution of corruption-related offences and other offences. Rights of bona fide third parties seem also to be adequately protected.

Statute of limitations; criminal record (articles 29, 41)

The length of the statute of limitation depends on the maximum penalty foreseen for the offence at stake. Regardless of their length, it was however a concern, due to the discrete nature of Convention offences, that the time of the commission, and not the time of the discovery of the offence by law enforcement authorities, is considered as the starting point for the statute of limitation.

Portugal does not take into consideration previous foreign convictions for the purpose of using such information in criminal proceedings relating to an offence covered by the Convention. It does, however, use that information to inform the sentencing process once liability is affirmed.

Jurisdiction (article 42)

Jurisdiction principles, including rules of territoriality, as well as passive and active personal jurisdiction, were adequately established in Articles 4 and 5 of the Criminal Code.

The principle *aut dedere aut judicare* was also foreseen in Portuguese legislation.

Consequences of acts of corruption; compensation for damage (articles 34, 35)

According to the Portuguese legislation, any person who has suffered a damage as result of an act of corruption or due to any other offence has the right to initiate legal proceedings against the offender in order to obtain compensation. That person could also submit a request for civil compensation within criminal proceedings. The Portuguese legislation allows for the possibility to annul or rescind a contract in the framework of a criminal procedure, specifically in the framework of the conviction decided by the court; however, no cases have been provided to the reviewers to establish the actual implementation.

Specialized authorities and inter-agency coordination (articles 36, 38, 39)

The Criminal Police/National Unit Against Corruption (PJ/UNCC) was the special law enforcement body competent for the investigation of corruption offences in Portugal, acting under the direction of the Public Prosecutor in charge of the case.

According to the Statute of the Public Prosecution, the Central Department for Criminal Investigation and Prosecution (DCIAP) is charged with directing inquiries and carrying out the prosecution of corruption offences whenever the criminal activity occurs in counties (*comarcas*) belonging to different judicial districts. The DCIAP is also competent when the Attorney General considers that a centralized direction of the investigation is required, taking into consideration the seriousness of the crime, the particular complexity or the extent of the criminal activity throughout the national territory or extraterritorially. In such situations, the other departments

of the Public Prosecution Service should promptly send to DCIAP files about suspicions of corruption offences. DCIAP is also competent to investigate corruption in international transactions.

According to Article 203 of the Constitution, the courts — which include judges and public prosecutors — are independent and only subject to the law. As for the Criminal Police, it cannot be subject to influences or undue pressures from the legislative or executive power, according to the principle of separation of the responsibilities.

Pursuant to the Code of Criminal Procedure, all public officials have the legal duty to report all criminal offences that come to their acknowledge in the course of or due to their duties. Moreover, the investigative and the prosecution authorities are empowered to request all the information needed in the framework of a criminal investigation, including information from public officials, public authorities and private entities.

The Portuguese authorities responsible for criminal investigation (Criminal Police) and prosecution (DCIAP), as well as the FIU, provide awareness-raising to the public sector on serious crimes, such as corruption and money-laundering. They also hold working meetings and provide training to financial entities in the field of money-laundering and predicate offences, with particular emphasis on corruption.

In recent years, Portugal promoted several actions in order to raise awareness about crime prevention and to encourage its citizens and other persons with a habitual residence in the national territory to report the commission of crimes, including the crimes established in accordance with the Convention against Corruption. An electronic tool was created to facilitate the reporting of corruption by any person to prosecuting authorities.

2.2.Successes and good practices

Overall, the following successes and good practices in implementing Chapter III of the Convention were highlighted:

- The Integration of the Criminal Data System within the Criminal Police, allowing criminal information to be accessed by the DCIAP and public prosecutors.*
- The retention of a central database at the Central Bank of Portugal, accessible to all prosecutors and judges, which centralizes information from all banks, such as information on financial transactions, names of persons with access to the account, and the history of the account.*
- The existence of a hotline, as well as an online reporting form, allowing the public to anonymously denounce acts of corruption. At the time of the on-site visit, eight investigations had already been launched on the basis of information received through these channels.*
- The close cooperation between State and NGOs, such as the project of case law analysis launched between DIAP and the NGO Transparency and Integrity, or the project on monitoring campaign cost of political parties during election campaigns.*
- In the framework of the protection awarded to witnesses, the non-retention by the Court of the name of the witness, ensuring anonymity during all stages of proceedings.*
- The direct entry by the Courts of figures on criminal cases in an electronic database maintained by the statistics department of the Ministry of Justice, allowing users to receive immediate updates on statistics. Most data is fully and freely accessible by the public, whereas others are password-protected.*

2.3.Challenges in implementation

The following steps could further strengthen existing anti-corruption measures:

While noting the considerable and continuous efforts of the authorities in Portugal to achieve full compliance of the national legal system with the Convention against Corruption provisions in the criminalization and law enforcement area, the reviewers identified some grounds for further improvement and made the following recommendations for action or consideration by the competent national authorities (taking into account the mandatory or optional nature of the relevant Convention requirements):

- *Consider criminalizing passive corruption for foreign public officials.*
- *Consider extending articles 375 and 376 of the Criminal Code to embezzlement, misappropriation or other diversion of immovable values.*
- *Continue the current efforts to seek a way for criminalizing illicit enrichment within the constitutional framework.*
- *Adapt the current legislation to establish liability of legal persons for embezzlement offences.*
- *Consider criminalizing the conspiracy to commit the offence of laundering the proceeds of crime.*
- *Consider extending the scope of the existing legislation to criminalize the attempt to commit any Convention against Corruption offences.*
- *Consider extending the scope of the existing legislation to criminalize the concealment or continued retention of any property derived from any Convention against Corruption offences.*
- *Consider providing or granting immunity from prosecution to a person who cooperates in the investigation or prosecution of Convention against Corruption offences in order to encourage those persons to supply information useful to the authorities.*
- *Consider a legislative amendment which will take into consideration the time of discovery of Convention against Corruption offences, instead of the time of commission, as starting point for the limitation period.*
- *Competent authorities are encouraged to further continue to explore the possibility to institute, within the judicial power, specialized judges in the field of corruption/economic and financial crimes, as is already the case with the office of the Attorney General or the Criminal Police. Portuguese authorities are also encouraged to consider the possibility of elaborating a risk management plan on corruption within the public sector.*
- *Competent authorities are encouraged to continue developing joint projects between State authorities in charge of the prevention and fight against corruption and civil society, including NGOs, universities, etc.*

2.4.Technical assistance needs identified to improve implementation of the Convention

None

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (articles 44, 45, 47)

Articles 31 to 78 of the Law No. 144/99, of 31 August, on International Judicial Cooperation in Criminal Matters regulates extradition. Passive extradition was regulated by Article 31, while active extradition was addressed in Article 69, and a simplified procedure of limited scope of application was provided for by Article 74. Portugal has finalized a number of bilateral agreements on extradition and the negotiations of some other agreements are ongoing. One multilateral agreement on extradition within the Portuguese Speaking Countries Community was signed. Another agreement on simplified extradition was signed with Argentina, Brazil and Spain. It is worth mentioning that provisions of Law No. 144/99 establishing limits do not preclude extradition where conventions, treaties or agreements to which Portugal is a party establish lower limits. Law No. 144/99 applies where the provisions of the international treaties, conventions and agreements that bind the Portuguese State are non-existent or do not suffice (Article 3).

Portugal requires dual criminality. Portuguese law incriminates all the mandatory offenses established under the Convention. Yet, Law No. 144/99 makes it possible to extradite an individual based on the Convention against Corruption, in the case where the act is not incriminated by domestic legislation.

Offences punishable with sanctions or measures involving deprivation of liberty for a maximum period of at least one year are extraditable. This covers most of the offences established by Portugal in accordance with the Convention; however, passive trading of influence to obtain a licit favourable decision (as referred to in Article 335 (1) (b) of the Criminal Code) would not be an extraditable offence. The principle *aut dedere aut judicare*, as applied in accordance with Article 10 and Article 32 of Law No. 144/99, requires Portugal to open a case when refusing extradition.

In a limited number of cases, Portugal allows the extradition of its nationals, under the condition that the extradited person would be returned to Portugal to serve the sanction eventually imposed upon him/her.

Portugal did not make extradition conditional on the existence of a treaty. Moreover, the Convention can be used as legal basis by force of Article 8 of the Portuguese Constitution. Article 3 of Law No. 144/99 could also apply in the absence of sufficient treaty provisions.

The law allowed for the provisional arrest of persons in cases of urgency. Article 95 of Law No. 144/99 allowed the enforcement of foreign criminal judgements. When the judgement involves deprivation of liberty, the consent of the sentenced person must be given.

Article 46 of Law No. 144/99 states that all procedures of extradition should be treated as an urgent matter.

The transfer of sentenced persons is foreseen in Articles 114 to 125 of Law No. 144/99. Portugal has concluded a number of bilateral agreements on the transfer of sentenced persons.

The transfer of criminal proceedings to Portugal is foreseen in Articles 79 to 94 of Law No. 144/99.

Mutual legal assistance (article 46)

Mutual legal assistance provisions, which are broad in terms of application, are set forth in Law No. 144/99, Articles 145 to 164. Portugal provides legal assistance to the broadest extent possible for both legal and natural persons.

Judicial authorities are able to cooperate directly with counterparts on the basis of the multilateral and bilateral treaties or the previously mentioned Law No. 144/99. The existing judicial networks — European Judicial Network (EJN), Ibero-American Judicial Network (IBERRed) and Portuguese Speaking Countries Judicial Network (RJCPLP) — can also be used to facilitate cooperation.

United Nations instruments have previously been used as a basis for international cooperation. At the same time, a number of bilateral agreements have been signed in areas such as extradition, mutual legal assistance and the transfer of sentenced persons. In the absence of mutual legal assistance treaties (multilateral or bilateral), Law No. 144/99 is applicable. Dual criminality is a condition to provide such assistance; however, article 4 of the Law states that Portugal could provide international cooperation in criminal matters on the basis of reciprocity.

Law No. 144/99 allows for the transfer of persons in detention for providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by the Convention. The domestic legal provisions establishing a safe conduct guarantee that a person will not be prosecuted, detained, punished or subjected to any other restriction in accordance with paragraph 12 of Article 46 of the Convention.

The Attorney-General's Office (Procuradoria-Geral da República) is the Portuguese central authority for international judicial cooperation in criminal matters. Confidentiality of mutual assistance requests can be ensured on the basis of Article 149 of Law No. 144/99.

Law enforcement cooperation; joint investigations; special investigative techniques (articles 48, 49, 50)

Regarding law enforcement cooperation, such cooperation is directly possible with counterparts on the basis of multilateral and bilateral treaties or the previously mentioned Law No. 144/99, of 31 August. At the police level, Portugal cooperates bilaterally with other countries and through EUROPOL and INTERPOL. In the absence of such legal instruments, Law No. 144/99 could be applicable and Portugal could provide international cooperation in criminal matters on the basis of reciprocity.

These provisions allow for very close international cooperation, in accordance with the Convention against Corruption. It is also interesting to note that INTERPOL red notices have in Portugal the value of requests for provisional arrest, and are directly enforceable.

Law No. 144/99 provides that “joint investigation teams shall be set up by mutual agreement between the Portuguese State and a foreign State, in particular where: (a) in the framework of a foreign State's criminal investigation, especially complex investigations having links with Portugal or with another State, are required”. This provision allows for the possibility of creating joint investigation teams on a case by case basis. Portugal has participated in joint investigation teams on various occasions.

Law No. 144/99 includes provisions related to the use of special investigative techniques in Articles 160-A, 160-B and 160-C. Law No. 101/2001 of 25 August established the legal regime for the use of undercover operations. Concerning the interception of communications, apart from reference to Article 160-C of Law No. 144/99, Articles 187-189 of the Code of Criminal Procedure regulate telephonic interceptions within the framework of criminal proceedings and Articles 11-19 of the

Law No. 109/2009, of 15 September, on Cybercrime, establishes the legal framework for the interception of telephone and e-mail communications, traffic data, computer systems and computed data, as well as undercover actions.

Portugal has concluded a number of bilateral agreements on the fight against crime and on law enforcement cooperation, where the use of special investigative techniques is foreseen; however, due to their nature, the use of a special investigative technique, even in a situation of international cooperation where an offence of transnational nature has been committed or there is a suspicion that one has been committed, is to be decided on a case-by-case basis and where necessary.

3.2.Successes and good practices

Overall, the following points are regarded as successes and good practices in the framework of implementing Chapter IV of the Convention:

- *INTERPOL red notices have the value of requests for provisional arrest and are directly enforceable.*
- *The use of a United Nations instrument as a basis for international cooperation.*
- *The obligation in Portugal to open a case when the request of extradition is not legally possible, regardless of whether or not this is asked for by the requesting State.*

3.3.Challenges in implementation

The following points could serve as a framework to strengthen and consolidate the actions taken by Portugal to combat corruption:

- *Consider a legislative amendment to make passive trading of influence to obtain a licit favourable decision (as referred to in Article 335 (1) (b) of the Criminal Code) an extraditable offence. As is it currently punished with six months of imprisonment, it is not an extraditable offence.*
- *Continue seeking the negotiation of international agreements on extradition and mutual legal assistance in the framework of the Convention against Corruption both at bilateral and multilateral level.*

3.4.Technical assistance needs identified to improve implementation of the Convention

None

IV. Implementation of the Convention

A. Ratification of the Convention

Portugal signed the Convention on 21 September 2007 and its Parliament ratified it on 19 July 2007 (Official Gazette no. 183, I Series, of 21 September 2007).

B. Legal system of Portugal

According to paragraph 2 of Article 8 of the Constitution of the Portuguese Republic, international conventions regularly ratified become part of ordinary domestic law. As the UN Convention against Corruption has been already ratified, it is now part of the Portuguese domestic law.

However, according to the domestic constitutional system all provisions related to criminalization should be approved by the Parliament through domestic legislation. The criminalization of the offences referred to in the UN Convention against Corruption is foreseen in criminal legislation. These were implemented mainly through the Criminal Code, Code of Criminal Procedure, Law no. 20/2008 with regards to the private sector, Law no. 93/99 with regards to the protection of witnesses, and Law no. 144/99 on International Judicial Cooperation in Criminal Matters¹.

The main institutions involved in the fight against corruption are the following:

The Public Prosecutors are responsible for the criminal investigation and prosecution of all crimes. However, the criminal investigation could be delegated in the Criminal Police and other police forces (for minor offences) which perform its tasks under the direction and supervision of the Public prosecutor in charge with the criminal file.

According to Statute of the Public Prosecution Service, it is incumbent to the Central Department for Criminal Investigation and Prosecution (DCIAP) to direct the inquiry and to carry out the prosecution of corruption offences whenever the criminal activity occurs in counties (comarcas) appertaining to different judicial districts or following an order of the Attorney General whenever, considering the especially serious crimes, the particular complexity or the extent of the criminal activity throughout the national territory or extraterritorially justify a centralized direction of the investigations².

The Criminal Police has, within its structure, a special body devoted to corruption and other economic and financial crimes - the National Unit against Corruption (UNCC) - which is the law enforcement competent body for the investigation of corruption offences in Portugal.

¹ The Portuguese framework against corruption includes as well Law no. 34/87, of 16 July (Law on the liability of political officeholders) and Law no. 50/2007, of 31 August (establishing the criminal responsibility for conducts affecting the truth, loyalty and fairness of sports matches and its results).

² There are four DIAPs – Department for Criminal Investigation and Prosecution - Lisboa, Porto, Coimbra and Évora - which are competent for the investigation and prosecution of cases of corruption that occur in the respective area of territorial jurisdiction.

C. Implementation of selected articles

Chapter III. Criminalization and law enforcement

Article 15 Bribery of national public officials

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

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

The Portuguese Criminal Law (Article 386) defines the Public Official in a comprehensive manner, which may include the employees and assistants at the public administration, including the temporary staff and volunteers as well as all who perform similar duties in international organizations, judges, prosecutors and officials of international courts or foreign jurors and referees. The managers, the members of the supervision bodies and the employees of public companies, nationalized, State-owned or of which the majority of the share capital is public as well as of concessionaires of public services are considered as equivalent to public officials. «Public official» is a broad concept in the Portuguese criminal framework in order to include all actors who de facto are in a position to commit any type of a corruption offence. In addition, it should be borne in mind that the Portuguese criminal law takes into account not only UNCAC but other international legal instruments as the OECD Convention, the Council of Europe Conventions on Corruption, EU Framework Decisions and Directives and UN Conventions.

In the Criminal Code of 1886, the offence of corruption was considered a “bilateral crime”, meaning that it was only considered committed depending on the conducts of the two actors, the active corrupter and the passive corrupter.

Instead, the Criminal Code of 1982 (the current Code, although several times amended) distinguishes the offence of active corruption and the offence of passive corruption as autonomous types of offence.

The offence of corruption is an offence of power, as it requires as an element of the offence that one of the actors detains or acts as detaining a situation of power.

Active corruption is considered to take place with the simple offering or promise of an “advantage” (in *lato sensu*) by the actor, regardless of the other actor taking or receiving that advantage.

The wording used in both the Portuguese Criminal Code and the Law no. 20/2008 is “der ou prometer” which means “to give or to promise”.

The wording was translated to the English language by “to give or to promise” regarding the Criminal Code and by “to offer or to promise” in the case of Law no. 20/2008. In the Portuguese language the verbs “give” and “offer” are considered *synonymous*.

As recognized and accepted by GRECO and in the EU framework, the verb to give (dar) encompasses both the concept offering and giving in the English language, meaning that the Portuguese legislation is compliant with the UNCAC requirements.

In fact, Portuguese Criminal Law deals separately with active and passive corruption - Articles 372, 373 e 374 of the Criminal Code (CC) regarding the public sector and articles 8 and 9 of Law no. 20/2008 regarding the private sector.

Criminal Code (as amended by Law no. 32/2010, of 2 September)

Article 374

Active corruption

- 1 - Whoever by himself, or through another person, with his consent or ratification, gives or promises to a public official, or to a third party with the public official's knowledge, any undue advantage whether of economic nature or not, with the purpose mentioned in Article 373 (1), is punished with imprisonment from one to five years.
- 2 - If the purpose is the one mentioned in Article 373 (2), the agent is punished with imprisonment of up to three years or with a fine penalty of up to 360 days.

Article 372

Undue accepting of advantage

- 1 - The public official who, in the course of his duties or because of them, by himself or through another person, with his consent or ratification, either demands or accepts, for himself or a third party, any undue advantage, whether of economic nature or not, is punished with imprisonment up to five years or with a fine up to 600 days.
- 2 - Whoever, by himself or through another person, with his consent or ratification, either gives or promises to a public official or to a third party with the public official's knowledge any undue advantage, whether of economic nature or not which the public official is not entitled to in the performance of his duties or because of them, is punished with imprisonment up to three years or with a fine up to 360 days.
- 3 - The behaviours socially appropriate and which are in accordance with the praxis and customary behaviours are excluded from the preceding paragraphs.

Article 373

Passive corruption

- 1 - The public official who by himself, or through another person, with his consent or ratification, demands or accepts, for himself or a third party, any undue advantage whether of economic nature or not, or its promise, for any act or omission contrary to the duties of his position, even if prior to such demand or acceptance, is punished with imprisonment from one to eight years.
- 2 - If the act or omission is not contrary to the duties of his position and if the advantage is

undue the offender is punished with imprisonment from one to five years.

Before 2007, the collection of statistical data was different and not allowing for detailed information about the existing types of corruption offences.

Corruption statistics

	1997	1998	1999	2000	2001	2002	2003	2004
Criminal Proceedings	52	40	32	46	46	45	53	48
Defendants	67	50	43	62	68	82	63	69
Convicted	46	33	24	43	38	57	55	49

	2007	2008	2009
Defendants	53	68	55
Convictions	32	30	32
Acquittals	12	33	25

Source:

http://www.siej.dgpj.mj.pt/webeis/index.jsp?username=Publico&pgmWindowName=pgmWindow_634419235864531250

Statistical information is collected and analyzed within the Ministry of Justice - Directorate General for Justice Policy which is charged to prepare and publish the so-called «Statistics of Justice», the official statistical information in the field of justice in Portugal. All these statistics are available on-line on the website of Directorate General for Justice Policy.

The legislator uses only the word «giving / dar» and the wording used in the sentences of the courts both words are used indistinctly. This is illustrated by the following case law:

Court of Almada – Case nr. 29/96 - 06 May 1998

II - The crime of active bribery under Article 374 (1) of the Criminal Code (CC), is consummated by the mere **offer** of money or valuables to the employee, this being bribed, even if the employee refuses such offer. The typical result consists precisely in the knowledge on the part of the employee, of the promise of money or material or intangible advantage that it is made by the agent.

III – Therefore, once being proved, moreover, that the defendant **knowingly and voluntarily** "offered the agent the amount of 20000 Escudos³ so his driving license would not be seized

³ Escudo was the Portuguese official currency before the Euro.

and that the case be silenced," he committed the aforementioned consummated crime of active corruption, although the agent of GNR 8 National republican Guard) has refused the proposal.

Court of Appeal of Lisbon (Tribunal da Relação de Lisboa) – Case 1238/02 – 27 November 2012

III - The indictment of the crime of accepting bribes to the practice of a lawful act, pursuant to Article 373 (1) of the Criminal Code, requires evidentiary proof of the existence of a cause-effect relation between the benefit received and the act practiced by corrupt person.

IV - This requirement is satisfied in this case, since the order of indictment includes such element, whether by saying that "as an incentive of the interest of the defendant in the prescription and / or counselling the prescription of certain products, given her professional position and as counterpart to her activity, the laboratories F, F1 and F2 **offered** the defendant, on several occasions from 1995 to 1997, money to support her participation and travels to medical conferences", whether by saying that "the defendant accepted and used those amounts in order to obtain for herself and for a third party a patrimonial benefit that she knew to be illegitimate since it constitutes undue consideration for the practice of acts included in the duties related to the conduct of her clinical activity as an official of that public health centre."

Supreme Court of Justice (Supremo Tribunal de Justiça) – Case 46663 – 03 May 1995

II – The crimes of active and passive corruption are completely autonomous and one can exist without the other.

III - Thus, from the moment in which the gift is offered to the agent of authority for the practice of an illegal fact, the crime of bribery is consummated.

In conclusion, Portugal considers that «**offering**» is, in practice, covered by the existing legislation, as already recognized by GRECO.

(b) Observations on the implementation of the article

Article 386 of the Criminal Code defines Public Official in a comprehensive manner, that includes the employees, assistants, temporary staff and volunteers working at the public administration, including all who perform similar duties in international organizations, judges, prosecutors and officials of international courts or foreign jurors and referees. The managers, the members of the supervision bodies and the employees of public companies, nationalized, State-owned or of which the majority of the share capital is public as well as of concessionaires of public services are considered as equivalent to public officials. The concept includes therefore actors who *de facto* are in a position to commit any type of a corruption offence.

The experts are of the opinion that article 15 (a) is implemented in an adequate manner.

Article 15 Bribery of national public officials

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

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

Criminal Code (as amended by Law no. 32/2010, of 2 September)

Article 373

Passive corruption

1 - The public official who by himself, or through another person, with his consent or ratification, demands or accepts, for himself or a third party, any undue advantage whether of economic nature or not, or its promise, for any act or omission contrary to the duties of his position, even if prior to such demand or acceptance, is punished with imprisonment from one to eight years.

2 - If the act or omission is not contrary to the duties of his position and if the advantage is undue the offender is punished with imprisonment from one to five years.

Passive corruption for illicit act

	2007	2008	2009
Defendants	5	38	47
Convictions	10	25	23
Acquittals	5	13	24

Passive corruption for licit act

	2007	2008	2009
Defendants	5	3	4
Convictions	3	3	4
Acquittals	4	0	0

Statistical information is collected and analyzed within the Ministry of Justice - Directorate General for Justice Policy which is charged to prepare and publish the so-called «Statistics of Justice», the official statistical information in the field of justice in Portugal. All these statistics are available on-line in the website of Directorate General for Justice Policy.

Portugal also indicated that a Code of Ethics for all Public Administration was about to be

approved by the Council of Ministers.

(b) Observations on the implementation of the article

The experts are of the opinion that article 15 (b) is implemented in an adequate manner by article 373 of the Portuguese Criminal Code.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

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

The criminalization of the corruption of foreign public officials and officials of public international organizations is foreseen in Law no. 20/2008 of 21 April. The rationale of Law no. 20/2008 is the prevention and fight against the corruption of public officials in international transactions, which means that for the purpose of such law the «elected persons» are excluded from the concept foreign public official or foreign employees, but are subject to this Law (Article 2 c)).

The wording used in both the Portuguese Criminal Code and Law no. 20/2008 is “der ou prometer” which means “to give or to promise” (see jurisprudence presented in the framework of article 15(a)). Active corruption is considered to take place with the simple offering or promise of an “advantage” (in a *lato sensu*) by the actor regardless of the other actor taking or receiving that advantage.

Law n° 20/2008 of 21 April

Article 7

Active corruption in international trade

Whoever, per se or, by his/her own consent or ratification, or through an intermediary, offers or promises to a national, foreign or an international organization official or to a national or international holder of a political office, or to a third party, with their consent, undue patrimonial or non-patrimonial advantage, in order to obtain or maintain a business, a contract or other undue advantage in international trade, is punished by imprisonment for a term between one to eight years.

Article 2

Definitions

For the purposes of this law:

- a) “Foreign official” means any person who, serving for a foreign country as an employee, agent or in any other capacity, even if temporarily, either for free or paid, in a voluntary or compulsory manner, is called to work or take part in the administrative or judicial public service or, in similar circumstances, is called to work or take part in national bodies, or has a management position or holds a supervisory post or is an employee in a state-owned company, nationalized company, public capital company or in a company with controlling public interest or in any public concession company;
- b) “Official of an international organization” shall be understood as any person who, working for a public international organization as an employee, agent or in any other capacity, even if temporarily, either for free or paid, in a voluntarily or compulsory manner, is called to work or take part in an activity;
- c) “Person holding a foreign political office” is any person who, working for a foreign country, holds a legislative, judicial or administrative office, at national, regional or local level, whether appointed or elected;
- d) “Employee in the private sector” means any person who works, or holding a management position or a supervisory post, under an individual working contract, or under a professional agreement or in any other capacity, even if temporarily, either for free or paid, at a private sector entity;
- e) “Private sector entity”, shall be understood as a private law legal person, a civil company and a *de facto* association.

	2009	2010
Investigations	10	6
Accusations	6	4
Convictions	5	2
Acquittals	1	1

Statistical information is collected and analyzed within the Ministry of Justice - Directorate General for Justice Policy which is charged to prepare and publish the so-called «Statistics of Justice», the official statistical information in the field of justice in Portugal. All these statistics are available on-line in the website of Directorate General for Justice Policy.

(b) Observations on the implementation of the article

The experts are of the opinion that article 16 paragraph 1 is implemented in an adequate manner.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 2

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization,

directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

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

Taking into account the aim of Law no. 20/2008 – to prevent and punish corruption in international business transactions (as provided in the original OECD Convention) and corruption in the private sector – Portugal has considered that the criminalization was not needed and could be solved by the general provisions on corruption of the Criminal Code.

(b) Observations on the implementation of the article

The experts note that there are no provisions in the Portuguese legislation on passive bribery of foreign public officials and officials of public international organizations. The experts take into account the non mandatory nature of Article 16 (b), and the fact that Portugal considers that this could be covered by general provisions on corruption in the Criminal Code.

However, noting that foreign public officials being currently only specifically covered for the offence of active corruption in international trade under Law no. 20/2008, the experts would invite Portugal to consider criminalizing passive corruption for foreign public officials.

Article 17 Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

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

The criminalization of embezzlement is set forth in Article 375 of the Criminal Code.

Article 375 of the Criminal Code

1 - The officer who illegitimately appropriates, in own benefit or for the benefit of another, of money or any movable property, public or private, which has been handed to him, is in his possession or is accessible to him by virtue of his duties, is punished with sentence of imprisonment from one to eight years, if a more serious sentence is not applicable to him by virtue of another legal provision.

2 - If the objects or values mentioned in the previous number are of slight value, pursuant to paragraph c) of article 202, the agent is punished with sentence of imprisonment for not more than three years or with fine penalty.

3 - If the officer grants as loan, pledges or otherwise encumbers values or objects mentioned in no. 1, is punished with sentence of imprisonment for not more than three years or with fine penalty, if a more serious sentence is not applicable to him by virtue of another legal provision.

In the Portuguese language, Article 375 of the Criminal Code states that: “*o funcionário que ilegítimamente se apropriar*”, from the *Latim* “*appropriare*”, meaning also in Portuguese “quem, tomar para si, tornar próprio, usurpar” and in the French language “attribution, saisie, usurpation, possession”.

Thus the Portuguese wording does cover embezzlement, misappropriation and other diversion. The Portuguese wording encompasses any act of unlawful (meaning non permitted/non foreseen by law) possession.

Article 375 of the Portuguese Criminal Code does cover embezzlement or other diversion by the public official for the benefit of an entity. The wording “to the benefit of another” means, to the benefit of a person, (either an individual or a legal person) other than the public official.

Article 376 of the Criminal Code

1 - An civil servant who uses or permits another person to use, for different purposes than those for which they are intended, vehicles or other movable property of significant value, whether public or private, that were entrusted to him, are in his possession, or accessible to him due to his duties, shall be punished with imprisonment up to 1 year or a fine of up to 120 days.

2 - If an civil servant, without special reasons of public interest, gives a destination to public funds different from that which is legally allocated to them, he will be punished with imprisonment of up to one year or a fine of up to 120 days.

	2007	2008	2009
Defendants	124	182	150
Convictions	73	129	100
Acquittals	38	41	40
Procedures filled	13	12	10

The information is collected by the Directorate General for Justice Policy in the criminal courts and analysed by the Statistics Department, which is responsible for the elaboration of the official "Statistics of Justice".

Please note than whenever a procedure is filed the defendant loses his/her status, therefore it is not considered for the effects of acquittal. The statistic data of acquittals includes only the persons who were subject to trial and were not convicted.

The assessment of the domestic measures adopted to comply with the provision of the UNCAC was not promoted by Portuguese authorities. Usually, the option is to use the gaps and insufficiencies identified and recommendations made in the framework of mutual evaluations - EU evaluations as well FATF and GRECO evaluations related, respectively, with money laundering / terrorism financing and corruption.

However, it is important to recall Resolution no. 71/2010 of the Council of Ministers, approved in September 2nd, which main goals are (i) to enhance the coordination means and the preparation of the implementation of the measures against corruption approved by the

Assembly of the Republic, at the plenary session of 22 July 2010, in the regulation, organic and operational scope, coordinating all the entities and intervening bodies in the implementation and management process and in the application of new legal regimes and (ii) to determine that, for such purpose and under the Ministry of Justice's coordination, the necessary measures be urgently taken, in order to: (a) prepare the regulation of the legal instruments that lack such regulation, as well as other measures required to implement the approved legislation; (b) propose the measures deemed indispensable to apply the recommendations made to Portugal by specialized international bodies, namely the Group of States against Corruption (GRECO), the Organisation for the Economic Co-operation and Development (OECD), the Financial Action Task Force (FATF) and the United Nations; and (c) Assess the measures required to comply with the recommendations made to the Government, by the Assembly of the Republic.

The tasks will be performed by representatives of different Ministries under coordination of the Ministry of Justice and cooperation of the services and bodies of direct and indirect State administration could be requested.

The approval of mentioned Resolution should be highlighted taking into consideration that is the first time in Portugal that this kind of tasks has been assigned in order to assess the measures adopted domestically, the implementation of international legal instruments and the recommendations made to Portugal in order to improve the national system in different aspects of criminal law and international cooperation.

Consequently, a working group was set under mentioned Resolution no. 71/2010, of 10th October, envisaging to evaluate and monitor the implementation of the anti-corruption legislation package approved by the Assembly of the Republic in 2010, as well as to prepare the regulation of those legal instruments that need so and to prepare the implementation measures for the full application of those laws. The areas under monitoring are among others banking secrecy, types of corruption and witness protection.

This working group was also instructed with the task of propose measures to implement the recommendations in this field addressed to Portugal by international organizations such as the United Nations, GRECO - Council of Europe, OECD and FATF.

The working group will prepare and submit a report to the Minister of Justice until the end of May 2011. This report will be based on auditions made to the entities responsible for the application of the laws comprised in the 2010 package and also on the analysis of the first outcomes of these laws.

The referred package comprises the legislation already identified in A. General Information.

It should also be mentioned that, in accordance with article 6 of Law no. 19/2008 of 21 of April, approving measures to combat corruption, Portuguese authorities should elaborate biannually an assessment report where a specific chapter on crimes is included. The report should also include, among other information, information on the number of criminal files distributed, acquittals, accusations and convictions; areas where active and passive corruption was detected; seizures and confiscations; assessment of the support provided by the investigation police qualitatively and quantitatively; reference to international cooperation with the lack of time used to answer to requests received from other countries.

Court of Almada – Case nr. 29/96 - 06 May 1998

II - The crime of active bribery under Article 374 (1) of the Criminal Code (CC), is consummated by the mere **offer** of money or valuables to the employee, this being bribed, even if the employee refuses such offer. The typical result consists precisely in the knowledge on the part of the employee, of the promise of money or material or intangible advantage that it is made by the agent.

III – Therefore, once being proved, moreover, that the defendant **knowingly and voluntarily** "offered the agent the amount of 20000 Escudos so his driving license would not be seized and that the case be silenced," he committed the aforementioned consummated crime of active corruption, although the agent of GNR 8 National republican Guard) has refused the proposal.

Court of Appeal of Lisbon (Tribunal da Relação de Lisboa) – Case 1238/02 – 27 November 2012

III - The indictment of the crime of accepting bribes to the practice of a lawful act, pursuant to Article 373 (1) of the Criminal Code, requires evidentiary proof of the existence of a cause-effect relation between the benefit received and the act practiced by corrupt person.

IV - This requirement is satisfied in this case, since the order of indictment includes such element, whether by saying that "as an incentive of the interest of the defendant in the prescription and / or counselling the prescription of certain products, given her professional position and as counterpart to her activity, the laboratories F, F1 and F2 **offered** the defendant, on several occasions from 1995 to 1997, money to support her participation and travels to medical conferences", whether by saying that "the defendant accepted and used those amounts in order to obtain for herself and for a third party a patrimonial benefit that she knew to be illegitimate since it constitutes undue consideration for the practice of acts included in the duties related to the conduct of her clinical activity as an official of that public health centre."

Supreme Court of Justice (Supremo Tribunal de Justiça) – Case 46663 – 03 May 1995

II – The crimes of active and passive corruption are completely autonomous and one can exist without the other.

III - Thus, from the moment in which the gift is offered to the agent of authority for the practice of an illegal fact, the crime of bribery is consummated.

In conclusion, Portugal considers that «**offering**» is, in practice, covered by the existing legislation, as already recognized by GRECO.

(b) Observations on the implementation of the article

With regards to embezzlement, misappropriation or other diversion, Article 376 of the Criminal Code complements article 375 of the Criminal Code in the absence of appropriation of the benefits by the civil servant. Yet, it only extends to movable values.

The experts therefore invite Portugal to consider extending articles 375 and 376 of the Criminal Code to embezzlement, misappropriation or other diversion of immovable values.

Article 18 Trading in influence

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

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

The criminalization of the trading in influence is foreseen in Article 335 of the Criminal Code.

Article 335

Trading in influence

1 - Whoever, by himself or through another, with his consent or ratification, requests or accepts, for himself or for a third party, an advantage, whether of economic nature or not, or its promise, to abuse of his influence, actual or supposed, before any public entity, is punished:

a) With imprisonment from six months to five years, if a more serious penalty is not applicable to the offender through another legal provision, and if the purpose is to obtain any unlawful favourable decision;

b) With imprisonment of up to six months, or with a fine of up to 60 days, if a more serious penalty is not applicable to the offender through another legal provision, and if the purpose is to obtain any lawful favourable decision;

2 - Whoever, by himself or through another, with his consent or ratification, gives or promises, an advantage, whether of economic nature or not, to the persons mentioned in the previous number for the purposes mentioned in paragraph a) is punished with imprisonment of up to three years or with a fine.

Article 18 of UNCAC refers to the administration or public authority, while Article 335 refers to public entity, which is a broad concept under Portuguese Administrative Law. Public entity includes all the public authorities and all the public administration bodies, services or entities.

Article 335 establishes that the purpose of the trade of influence would be to obtain a decision (lawful or unlawful). The word “*decision*” includes the omission to practice an act that was due to be practiced. As this decision regards the practice or the omission to practice acts by a public official it is important to see how the Portuguese legislation defines “*decision*”:

- According to the Portuguese Code of Administrative Proceeding, “ whenever the practice of an administrative act or the exercise of a right by a private person depend on the approval or authorization by an administrative organ, those approvals or authorizations are considered issued, except when stated otherwise, if that decision was not issued in the deadline established by law.”

- According to the Article 10 of the Portuguese Criminal Code :
 “Commission by action and by omission
 - 1 – When a legal type of a crime includes a certain result, the act comprises not only the proper action to produce it as well as the omission of the proper action to avoid it, unless the intention of the law requires otherwise.
 - 2 – The commission of a result by omission is only punishable when the person omitting the action is under a legal duty which personally obliges him to avoid such result.
 - 3 – In the case foreseen in the previous paragraph, the sentence can be specially mitigated

Therefore, the term «*decision*» includes acts and omissions (refrain to act) and undue advantage includes as well any «unlawful favourable decision»

No case law can however be provided on the interpretation by the Courts of the terms decision.

Portugal also clarified that the «offer», although not expressly mentioned in the article, as recognized and accepted by GRECO and in the EU framework, would be covered. The verb to give (*dar*) is considered to encompass both the concept offering and giving in the English language.

A draft was submitted to the Cabinet of the Minister in order to evaluate the possibility of criminalizing active and passive trade of influence for foreign and international officials.

(b) Observations on the implementation of the article

Taking into account the information provided by Portugal, and providing that the explanation given with regards to the interpretation of “decision” and “offer” corresponds to the one taken by the Courts, the experts are of the opinion that the article was adequately implemented.

Article 19 Abuse of Functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

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

The criminalization of the abuse of functions or position is foreseen in Article 382 of the Criminal Code.

Article 382

Abuse of power

The officer who, outside the cases foreseen in the previous articles, abuses of powers or breaches obligations inherent to his duties, with the intent to obtain, for himself or for a third party, an unlawful benefit or cause harm to another person, is punished with sentence of

imprisonment for not more than three years or with fine penalty, if a more serious sentence is not applicable to him by virtue of another legal provision.

	2007	2008	2009
Defendants	23	32	11
Convictions	6	9	3
Acquittals	17	23	8

The information is collected by the Directorate General for Justice Policy in the criminal courts and analysed by the Statistics Department, which is responsible for the elaboration of the official "Statistics of Justice".

(b) Observations on the implementation of the article

Article 382 of the Criminal Code implements adequately article 19 of the UNCAC.

Article 20 Illicit Enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

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

Portugal stated that illicit enrichment is not currently a criminal offence in Portugal.

Portugal has considered the possibility to criminalize illicit enrichment and 4 bills have been discussed in the Parliament. One of those bills, submitted by the political parties that support the Government has been approved (Law no. 28/82, of 15 November). However, the Constitutional Court, by its Decision 179/2012, of 4th April 2012 decided that the law was against the Constitution of the Portuguese Republic, especially due to the fact that foresees the full reversal of the burden of the proof.

The Government (Ministry of Justice) has announced that a new bill will again be submitted to the Parliament.

(b) Observations on the implementation of the article

The experts note that Portugal considers the possibility of criminalizing illicit enrichment, and therefore support the current efforts to seek a way for criminalizing illicit enrichment within the constitutional framework.

Article 21 Bribery in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

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

The criminalization of corruption in the private sector is foreseen in Articles 8 and 9 of Law no. 20/2008, of 21 April.

Law no. 20/2008, of 21 April

Article 8

Passive corruption in the private sector

1 - Whoever works for a private sector entity and who, per se or by his/her own consent or ratification, through an intermediary, requests or accepts, for itself or for a third party undue patrimonial or non-patrimonial advantage, or the promise to act or to refrain from acting in relation to the performance of official duties, is punished by imprisonment up to two years or with a fine.

2 - If the action or the omission referred to in the previous paragraph is liable to lead to a distortion of competition or to cause a patrimonial damage to third parties, the agent is punished by imprisonment up to five years or with a fine up to 600 days.

Article 9

Active corruption in the private sector

1 - Whoever, per se or, by his/her own consent or ratification, or through an intermediary, offers or promises to the person referred to in the article 8, or to a third party, with his/her consent, an undue patrimonial or non-patrimonial advantage, in order to pursue the aim defined in mentioned provision, is punished by imprisonment up to a year or with a fine.

2 - If the conduct set out in the previous paragraph aims to obtain or is liable to lead to a distortion of competition or to cause a patrimonial damage to third parties, the agent is punished by imprisonment up to three years or with a fine.

According to article 4 of Law no. 20/2008, legal persons and equivalent entities are responsible according to the general rules of the Criminal Code, therefore according to paragraph 2 of article 11:

2 – Legal persons and equivalent entities, with the exception of the State, of other public legal persons and of international organizations of public law, are responsible for the crimes foreseen in Articles 152-A and 152-B, in Articles 159 and 160, in Articles 163 to 166, when the victim is a minor, and in Articles 168, 169, 171 to 176, 217 to 222, 240, 256, 258, 262 to 283, 285, 299, 335, 348, 353, 363, 367, 368-A and 372 to 374, when committed:

- a) In its name and in the collective interest by persons who hold in it a leadership position;
- b) By whoever acts under the authority of the persons referred to in the previous paragraph by virtue of a breach of the surveillance or control duties which are incumbent upon them.

Article 8 of Law no. 20/2008 uses the wording «whoever works...» which is a broad concept and covers all those work or direct a private sector entity, in accordance with Article 21 of UNCAC, that states «... any person who directs or works...». Similarly, paragraph 2 of Article 11 includes both the ownership and the direction of the private sector entity. No case law is available however on this specific issue.

It should also be clarified that the wording in Portuguese “*deveres funcionais*”, meaning the duties that derive from the function that that person develops or performs, including within the private sector entity, was translated above by “official duties”. It does not therefore refer exclusively to the public sector.

Portugal also clarified that the «offer», although not expressly mentioned in the article, as recognized and accepted by GRECO and in the EU framework, would be covered. The verb to give (dar) is considered to encompass both the concept offering and giving in the English language.

No statistics are available and no assessment has been made regarding the corruption in the private sector offence.

(b) Observations on the implementation of the article

The criminalization of corruption in the private sector is foreseen in Articles 8 and 9 of Law no. 20/2008, of 21 April. Article 7 of this Law also criminalizes the active corruption of foreign public officials and officials of public international organizations; however, the passive form of this latter form of corruption, which criminalization is not mandatory under the Convention, is not criminalized in Portugal.

Article 22 Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position

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

The offence of embezzlement in the private sector is not foreseen as such in the Portuguese criminal legislation. However, it should be stated that the behaviour, as described in Article 22 of the Convention, could be punished through the application of other provisions of the Criminal Code, as Article 203 (Theft) and Article 204 (Aggravated theft).

The Criminal Code only foresees the illicit appropriation (Article 234) related to the public sector.

However, Article 205 of the Criminal Code addresses more specifically the question with regards to movable property:

Article 205
Abuse of trust

- 1 - Whoever unlawfully appropriates a movable property that had been entrusted to him without title transferring property shall be punished with imprisonment up to 3 years or a fine.
- 2 - The attempt is punishable.
- 3 - Prosecution requires a complaint.
- 4 - If the thing referred to in paragraph 1 is:
 - a) high value, the offender shall be punished with imprisonment up to 5 years or a fine of up to 600 days;
 - b) Of a value considerably higher, the offender shall be punished with imprisonment from 1 to 8 years.
- 5 - If the offender had received the property in deposit imposed by law due to his occupation, employment or profession, or as a tutor, curator or judicial custodian, shall be punished with imprisonment of 1 to 8 years.

(b) Observations on the implementation of the article

The experts note that Article 203 and 204 on theft and aggravated theft do not cover the full extent of the article 22. However, Article 205 on abuse of trust allows for an adequate implementation of the Convention, with regards to movable property. The experts note that this is not a mandatory provision of the Convention

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) (i) *The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

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

The criminalization of the laundering of the proceeds of crime is foreseen in Article 368-A of the Criminal Code.

Criminal Code
Article 368-A
Laundering

- 1 - For the purposes of the following paragraphs, property considered to be the proceeds of crime is property which derives from unlawful acts such as living on earnings of prostitution, child sexual abuse or sexual abuse of dependant minors, extortion, illegal trafficking of drugs and psychotropic substances, arms trafficking, trafficking in human organs or tissues, trafficking in protected species, tax fraud, trafficking of influences, corruption and other offences referred to in Article 1(1) of the Law no. 36/94 of 29 September, as well as the property obtained through the

unlawful conduct, defined as such under the law and punishable by a minimum term of imprisonment exceeding six months or by a maximum term of imprisonment exceeding five years.

2 - A person who converts, transfers, assists or facilitates, whether directly or indirectly, any operation of conversion or transfer of proceeds, obtained by that person or others, for the purpose of disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions is punished by imprisonment for a term between two and twelve years.

3 - The same applies when the person conceals or disguises the true nature, source, location, disposition, movement, rights with respect to, or ownership of proceeds.

4 - The offences laid down in paragraphs 2 and 3 are punished even if the acts which constitute the predicate offence have been committed outside the national territory, or if the place where the offence was committed or the identity of the offenders remain unknown.

5 to 10 - (...)

The conversion or transfer of property is set forth in paragraph 2, which states: *A person who converts, transfers, assists or facilitates, whether directly or indirectly, any operation of conversion or transfer of proceeds, obtained by that person or others, for the purpose of disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions is punished by imprisonment for a term between two and twelve years.*

Statistical data is collected and analysed within the Ministry of Justice - Directorate General for Justice Policy which is charged to prepare and publish the so-called «Statistics of Justice», the official statistical information in the field of justice in Portugal. All these statistics are available on-line on the website of the Directorate General for Justice Policy.

Portugal provided the following statistics:

	2007	2008	2009
Defendants	16	15	19
Convictions	6	9	10
Acquittals	10	6	8
Procedures filed			1

(b) Observations on the implementation of the article

Article 368-A of the Criminal Code, paragraph 2 appears to cover the provision under review.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) (ii) *The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

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

The criminalization of the laundering of the proceeds of crime is foreseen in Article 368-A of the Criminal Code. The concealment or disguise is set forth in paragraph 3, which states: *The same applies when the person conceals or disguises the true nature, source, location, disposition, movement, rights with respect to, or ownership of proceeds.*

(b) Observations on the implementation of the article

Article 368-A of the Criminal Code, paragraph 3 appears to cover the provision under review.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

- (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

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

The criminalization of the laundering of the proceeds of crime is foreseen in Article 368-A of the Criminal Code. The acquisition, possession and use is set forth, in a different way in order to avoid misinterpretations with the offence of receiving (Article 231 of the Criminal Code).

(b) Observations on the implementation of the article

Article 368-A does not seem to cover the acquisition, possession or use of property as considered in Article 23 subparagraph 1 (b)(i).

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

- (ii) *Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

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

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

Criminal Code

Article 22

Attempt

1. Attempt exists when the agent performs acts for the execution of a crime he has decided to perpetrate, which he failed to consummate.
2. Execution acts are:
 - a) Those that fulfil a constituent element of a type of crime;
 - b) Those that are proper to produce a typical result; or
 - c) Those that, according to common experience and excepting unexpected circumstances, are of a nature as being expected to be followed by acts of the types named in the previous paragraphs.

Article 23

Punishability of attempt

1. Unless a specific provision otherwise states, attempt is only punishable when the respective consummated crime corresponds to a penalty over three years of imprisonment.
2. Attempt is punishable with the penalty applied (applicable) to the consummated crime, specially mitigated.
3. Attempt is not punishable when the means used by the agent is obviously improper, or when the object essential to the commitment of the crime is not existent.

Article 27

Complicity

1. He who, intentionally or in whatever form, materially or morally helps other person to perform an intentional act, is punishable as accomplice.
2. The penalty applicable to the accomplice is the one which is fixed for the principal, specially mitigated

Article 28

Illicitude in participation

1. If illicitude or the degree of illicitude of the act depends on certain qualities or special relations of the agent, to make the respective penalty applicable to all participants it is enough that these qualities or relations occur in any of them, except if the incriminatory rule is different.
2. Whenever owing to the rule provided for in the previous number it results in a more severe penalty for some of the comparticipants, this may be substituted, in consideration of the circumstances of the case, for the one that would occur if that rule did not intervene.

Regarding statistics on attempt:

Active corruption

	2007	2008	2009
Defendants	4	4	0
Convictions	4	4	0
Acquittals			0

Embezzlement

	2007	2008	2009
Defendants	3	0	0
Convictions	0	0	0
Acquittals	0	0	0

Unless a specific provision otherwise states, the attempt to commit a crime is only punished if the accomplished crime is punished with a penalty above 3 years imprisonment. Since the offence of money laundering is punished with imprisonment by a term between 2 and 12 years, therefore its attempt is punished.

(b) Observations on the implementation of the article

Attempt and related ancillary offences were provided for, except for conspiracy, which does not exist as such in the Portuguese legal order.

The review team invites Portugal to consider criminalizing the conspiracy to commit the offence of laundering the proceeds of crime.

Article 23 Laundering of proceeds of crime

Subparagraphs 2 (a) and 2(b)

2. *For purposes of implementing or applying paragraph 1 of this article:*

- (a) *Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;*
- (b) *Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;*

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

The Portuguese criminal law foresees as money laundering predicate offences a wide range of offences, not only those that could be found in the Criminal Code (or annex to Recommendation 3 of FATF) but also another offences set forth in other criminal laws.

In fact, Article 368-A of the Criminal Code states in its paragraph 1 that: *For the purposes of the following paragraphs, property considered to be the proceeds of crime is property which*

derives from unlawful acts such as living on earnings of prostitution, child sexual abuse or sexual abuse of dependant minors, extortion, illegal trafficking of drugs and psychotropic substances, arms trafficking, trafficking in human organs or tissues, trafficking in protected species, tax fraud, trafficking of influences, corruption and other offences referred to in Article 1(1) of the Law no. 36/94 of 29 September, as well as the property obtained through the unlawful conduct, defined as such under the law and punishable by a minimum term of imprisonment exceeding six months or by a maximum term of imprisonment exceeding five years.

Illicit enrichment is not a predicate offence for money laundering in Portugal due to the fact that its criminalization is not mandatory. All other UNCAC offences are money laundering predicate offences under Portuguese law.

(b) Observations on the implementation of the article

Relevant predicate offences for money laundering, according to Portuguese Criminal Law are as follows: i) trade of influences; ii) active and passive corruption in the public sector; iii) diversion by a public official; iv) crimes indicated in article 1.1 of the Law 36/94, of 29 September; v) crimes punished with a minimum penalty of 6 months imprisonment or maximum above 5 years imprisonment.

Portuguese criminal law foresees a wide range of offences (by adopting a combination of list and threshold approaches) as predicate offences to money laundering; however, certain non-mandatory offenses (Article 16 paragraph 2, articles 20 and 22) were not criminalized under Portuguese Criminal Law and were, therefore, not considered as predicate offences for money laundering.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (c)

2. For purposes of implementing or applying paragraph 1 of this article:

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

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

According to paragraph 4 of Article 368-A the laundering offence is punishable in Portugal even if the acts which constitute the predicate offence have been committed outside the national territory, or if the place where the offence was committed or the identity of the offenders remain unknown.

(b) Observations on the implementation of the article

Article 368-A of the Criminal Code, paragraph 4 appears to adequately cover the provision under review.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (d)

2. For purposes of implementing or applying paragraph 1 of this article:

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

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

Portugal stated that a description of the relevant articles of the Criminal Code and Law no. 25/2008 (the AML/CFT Law) will be sent to the Secretary-General of the United Nations pursuant to the provision under review.

(b) Observations on the implementation of the article

Portugal has not yet fulfilled this requirement of the UNCAC.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (e)

2. For purposes of implementing or applying paragraph 1 of this article:

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

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

Portuguese Law criminalizes “self laundering”. According to the wording of Article 368-A of the Criminal Code, paragraph 2 (...*obtained by that person or others*) the person who committed the predicate offences could also be punished for money-laundering.

(b) Observations on the implementation of the article

Article 368-A (2) of the Portuguese Criminal Code allows for the so-called “self laundering”. Therefore, it seems to be consistent with UNCAC.

Article 24 Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

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

The concealment or continued retention of property referred to in Article 24 are elements of

an offence and not an autonomous offence. Both, concealment and continued retention of property are elements of the offences of laundering (Article 368-A of the Criminal Code) and receiving (Article 231 of the Criminal Code).

In addition, continued retention of property can be, according to the case *sub judice* considered as “Theft”, as foreseen in the Criminal Code in provisions such as Article 203, “Embezzlement” as foreseen in Article 205, “Fraud” as foreseen in Article 217, “Receiving of stolen property” as foreseen in Article 231, “Misappropriation”, according to Article 234 or yet other type of crime.

Statistics on receiving

	2007	2008	2009
Defendants	1362	1323	1144
Convictions	632	557	490
Acquittals	634	604	470
Procedures filled	25	18	25

N.B: Whenever a procedure is filed the defendant loses his/her status, therefore it is not considered for the effects of acquittal. The statistic data of acquittals includes only the persons were subject to trial and were not convicted.

(b) Observations on the implementation of the article

Concealment and continued retention of property have been criminalized as elements of the offences of laundering and receiving; however, the offence of “receiving” was expressly limited to property “attained by another by means of a typical unlawful act against the property”. Thus, it fell short of Article 24 of the UNCAC requirement, since most offences established according to the Convention are not property crimes.

Based on that, the review team considers that the continued retention of property, when a person knows that such property is the result of any of the offenses established in accordance to the Convention is not covered by articles 368-A or 231 of the Criminal Code.

The review team therefore invites Portugal to consider extending the scope of the existing legislation to criminalize the concealment or continued retention of any property derived from any UNCAC offenses.

Article 25 Obstruction of Justice

Subparagraphs (a) and (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established

in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

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

There is no so-called “obstruction of justice” offence in the Portuguese Criminal Law.

However, the goal of Article 25 of the UNCAC could be reached through the application of the following provisions:

- Use of physical force, threats or intimidation: Articles 143, 144, 153, 154 and 155 of the Criminal Code.
- Promise or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a criminal proceeding: Article 363 (and 359 and 360) of the Criminal Code.

Criminal Code

Article 143

Simple bodily injury

- 1 - Whoever harms the body or the health of another person is punished with sentence of imprisonment for not more than three years or with a fine.
- 2 - The criminal procedure depends upon complaint, unless the harm is committed against agents of the security forces or services, in the performance of their duties or because of them.
- 3 - The court may discharge without punishment:
 - a) In the case of reciprocal injuries and if it was not proved which one of the contenders has attacked in first place; or
 - b) In the case where the agent has solely exercised retort over the aggressor.

Article 144

Grievous bodily injury

- 1 - Whoever harms the body or the health of another person in a way that:
 - a) Deprives him from important an organ or limb, or deforms him in a serious and permanent manner;
 - b) Takes or affects, in a serious way, his work capacity, intellectual capacities, of procreation or of sexual enjoyment or the possibility to use the body, the senses or the language,
 - c) Causes him a particularly painful or permanent disease or grievous or incurable mental disorder; or
 - d) Causes a danger for his life; is punished with sentence of imprisonment from two to ten years.

Article 153

Threat

- 1 - Whoever threatens another person with the commission of a crime against life, bodily integrity, personal freedom, sexual liberty and self-determination or property of considerable value, in an adequate way to cause him fear or worry or to impair his liberty of determination, is punished with sentence of imprisonment for not more than one year or with a fine for not more than 120 days.
- 2 - The criminal proceeding depends upon complaint.

Article 154

Coercion

1 - Whoever, by means of violence or threat with an appreciable harm, constrains another person to an action or omission or to bear an activity, is punished with sentence of imprisonment for not more than three years or with a fine.

2 - The attempt is punishable.

3 - The act is not punishable:

a) If the use of the means to accomplish the intended purpose is not censurable; or

b) If it is aimed to avoid suicide or the commission of a typical unlawful act.

4 - If the act occurs between spouses, ascendants and descendants, adopting and adopted persons, or between persons of a different or of the same sex, who live in equal conditions as those of spouses, the criminal procedure depends upon complaint.

Article 155

Aggravated coercion

1 - When the acts foreseen in articles 153 to 154 are carried out:

a) By means of threat with the commission of a crime punishable with sentence of imprisonment over three years; or

b) Against a person particularly undefended, due to age, deficiency, disease or pregnancy;

c) Against any of the persons mentioned in paragraph 1) of no. 2 of article 132, in the performance of their duties or because of them;

d) By an officer with serious abuse of authority; the agent is punished with sentence of imprisonment for not more than two years or with a fine for not more than 240 days, in the case of article 153 and with sentence of imprisonment from one to five years, in the case of no. 1 of article 154.

2 - The same sentences are applicable if, by virtue of the threat or coercion, the victim or the person upon whom the harm shall fall commits suicide or attempts to commit suicide.

Article 359

Falsity of testimony or statement

1 - Whoever gives false statements in a party's testimony in relation to facts over which shall testify, after taking oath and having been warned of the criminal consequences to which he is exposed with the false testimony, is punished with sentence of imprisonment for not more than three years or with a fine.

2 - In the same sentence incur the private prosecutor and the civil parties regarding statements given in a criminal procedure as well as the defendant as regards statements about the identity and criminal record.

Article 360

Falsity of testimony, expertness, interpretation or translation

1 - Whoever, as a witness, expert, technician, translator or interpreter, before a court or competent officer to receive as a mean of evidence testimony, report, information or translation, gives testimony, submits report, gives information or makes false translations, is punished with sentence of imprisonment from six months to three years, or with a fine not less than 60 days.

2 - In the same sentence incurs whoever, without a justified reason, refuses to testify or to submit report, information or translation.

3 - If the act mentioned in no. 1 is committed after the agent has taken oath and having been warned of the criminal consequences to which he is exposed, the sentence is of imprisonment for not more than five years or of a fine for not more than 600 days.

Article 363

Bribery

Whoever persuades or tries to persuade another person, through a gift or promise of a benefit of

economic nature or not, to commit the acts foreseen in articles 359 or 360, without such acts being committed, is punished with sentence of imprisonment for not more than two years, or with a fine for not more than 240 days.

Statistics on simple bodily injury (article 143)

	2007	2008	2009
Defendants	18.881	18.335	15.380
Convictions	5.528	5.324	4.496
Acquittals	1.425	1.581	1.211
Non-convictions	2.340	2.464	2.139

Grievous bodily injury (article 144)

	2007	2008	2009
Defendants	129	240	162
Convictions	128	109	69
Acquittals	9	13	
Non-convictions	39	66	65

Threat (article 153)

	2007	2008	2009
Defendants	3.470	3.301	2.586
Convictions	847	772	606
Acquittals	251	316	215
Non-convictions	632	597	560

Coercion (Article 154)

	2007	2008	2009
Defendants	199	198	198
Convictions	97	93	86
Acquittals		4	4
Non-convictions	77	81	82

Falsity of testimony or statement (article 359)

	2007	2008	2009
Defendants	568	513	398
Convictions	327	336	265
Acquittals	6		4
Non-convictions	197	154	116

(b) Observations on the implementation of the article

The above mentioned articles of the Criminal Code provide an adequate implementation of the Criminal Code.

Article 26 Liability of legal persons

Paragraphs 1 and 2

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

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

Until 2007 and according to the general rule stated in Article 11 of the Criminal Code, unless a provision states otherwise, only natural persons could be criminally liable under the Portuguese legislation. That was the case of Decree-Law no. 28/84, of 20 of January 1984 which includes in Article 3 the criminal liability of legal persons and where, at the time, the offences of corruption in the private sector and corruption in international transactions were foreseen.

In 2007 the Criminal Code has been amended and a new version of Article 11 (liability of natural and legal persons) has been incorporated, to cover liability of legal persons for a list of offences including the laundering of proceeds of crime (Article 368-A) and different types of active and passive corruption (Articles 372 to 374 of the Criminal Code).

Based on Article 11 (2), *legal persons and equivalent entities, except for the State, other public legal persons and international organisations of public law can be held liable for the crimes foreseen in articles [...] 368-A and 372 to 374 when committed: a) by a natural person holding a senior management position within a legal person's structure acting in the name and allegedly in the interest of the said legal person; or b) by whoever acts under the authority of the natural persons referred to in the foregoing subparagraph, due to a violation of his/her duties of vigilance and control.*

Law no. 20/2008, of 21 April, establishing the new criminal regime to combat corruption in international trade and in the private sector, in compliance with the Council Framework Decision no. 2003/568/JHA, of 22 July, also includes a provision about the criminal liability of legal persons (Article 4) stating that legal persons and similar entities shall be held liable, in general terms, for the offences laid down in the present law.

There are however other sanctions that can be applicable along with the main sanction. They are called ancillary criminal sanctions and are foreseen in Article 90-A of the Criminal Code:

Article 90-A

Penalties applicable to legal persons

1 – For the offences foreseen in Article 11 (2), the main penalties applicable to legal persons and to equivalent entities are fines or the dissolution.

2 – For the same offences the following accessory penalties may be applicable to legal persons and to equivalent entities:

- a) Judicial order;
- b) Interdiction of the exercise of the activity;
- c) Prohibition to execute certain contracts or contracts with certain entities;
- d) Privation from the right to subsidies, subventions or incentives;
- e) Closing of establishment;
- f) Publicity of the convictional sentence.

The above mentioned ancillary criminal penalties are described in Articles 90-B to 90-L of the Criminal Code.

Article 90-M of the same Code foresees the “Publicity of the convictional penalty”.

Both the main criminal penalties (fines or dissolution of legal persons) and the ancillary penalties are of a criminal nature as the Portuguese State considers those offences to be of such a serious nature that they must be dealt with in criminal legislation. There are some other acts, for example those which fall upon the matter of money laundering prevention (in which the example provided by Portugal is included) that are considered less serious (not serious enough to be criminalized) but which are, nonetheless, dealt with administrative sanctions.

Legal persons could also be subject to civil and administrative liability (through the application of «coimas», which are monetary sanctions). As an example, the Service for Gambling Inspection, of the Tourism Institute, which is the oversight authority for gambling activities has applied an administrative sanction (coima) in the amount of € 63 547,50 for breach of Article 45 a) of former Law no. 11/2004 (replaced by AML/CFT Law no. 25/2008) on the prevention of money laundering, through its Deliberation 5/2007/CJ, of 9 of November 2007, to a gambling entity. The administrative liability of legal persons is also set forth in the Code of Administrative Procedure approved by Decree-Law n° 442/91, of 15 November and amended in 2008 by Decree-Law no. 18/2008, of 29 January.

Criminal Code

Article 11

Liability of natural and legal persons

1. Except for the provisions laid down in the following paragraph and in the special cases envisaged by law, only natural persons can be held criminally liable.
2. Legal persons and equivalent entities, except for the State, other public legal persons and international organisations of public law can be held liable for the crimes foreseen in Articles 152-A and 152-B, in articles 159 and 160, in articles 163 to 166 when the victim is under age 18, and in articles 168, 169, 171 to 176, 217 to 222, 240, 256, 258, 262 to 283, 285, 299, 335, 348, 353, 363, 367, 368-A and 372 to 374 when committed:
 - a) by a natural person holding a senior management position within a legal person's structure acting in the name and allegedly in the interest of the said legal person; or
 - b) by whoever acts under the authority of the natural persons referred to in the foregoing subparagraph, due to a violation of his/her duties of vigilance and control.
3. For the purposes of criminal law, the expression public legal person includes:
 - a) Public law legal persons, where the business public entities are included;

- b) Entities rendering public services, regardless of their ownership,
 - c) Other legal persons who exercise prerogatives of public power.
4. The organs and representatives of legal persons and whoever has, within the legal person, the authority to exercise the control of its activity are considered as holding a senior management position.
5. For the purposes of criminal liability, civil societies and *de facto* associations are considered equivalent entities to legal persons.
6. The liability of legal persons and equivalent entities shall be excluded when the actor has acted against the orders or express instructions of the person responsible.
7. The liability of legal persons and equivalent entities does not exclude the individual liability of the respective actors nor does it depend on the liability of those.
8. Mergers and splits do not determine the extinction of the criminal liability of the legal person or equivalent entity, being the following criminally liable:
- a) Legal person or equivalent entity in which the merger has occurred;
 - b) Legal person or equivalent entity resulting from the splitting.
9. Notwithstanding the right to claim reimbursement, persons holding a senior management position shall be subsidiarily responsible for the payment of the fine and/or compensation which the legal person or equivalent entity has been sentenced to pay, regarding crimes:
- a) Practiced during the exercise of his/her post, without his/her express opposition;
 - b) Previously practiced, when it has been due to his/her fault that the property of the legal person or equivalent entity has become insufficient for the respective payment or;
 - c) Previously practiced, when the final decision to apply the fine and/or compensation mentioned above has been notified while he/she held that senior management position and when the lack of payment is imputable to him/her.
10. Where several persons are liable under the terms of the foregoing paragraph, they shall be jointly liable.
11. If the fine and/or compensation is applicable to an entity without legal personality, the common property and, in its absence or insufficiency, the property of each partner shall be jointly answerable for them.

Law no. 20/2008

Article 4

Criminal liability of legal persons or similar entities

Legal persons and similar entities shall be held liable, in general terms, for the offences laid down in the present law.

(b) Observations on the implementation of the article

The criminal liability of legal persons, foreseen by Article 11 of the Criminal Code, covers a large list of offenses, including the laundering of proceeds of crime and different types of active and passive corruption. Legal persons could also be subjected to civil and administrative liability (through the application of the “coimas”, which are monetary sanctions). Moreover, the liability of legal persons and equivalent entities does not exclude the individual responsibility of the respective actors nor depends upon their liability.

However, the criminal liability of legal persons does not extend to embezzlement offenses, nor can the civil or administrative liability of legal persons be established for this offense.

The review team therefore invites Portugal to adapt the current legislation to establish liability of legal persons for embezzlement offences.

Article 26 Liability of legal persons

Paragraph 3

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

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

According to paragraph 7 of Article 11 of the Criminal Code, the liability of legal persons and equivalent entities does not exclude the individual liability of the respective actors nor does it depend on the liability of those.

(b) Observations on the implementation of the article

Article 11 of the Criminal Code, paragraph 11 appears to adequately cover the provision under review.

Article 26 Liability of legal persons

Paragraph 4

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

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

According to the domestic law, the commission of the offences foreseen in the UNCAC is subject to effective, proportionate and dissuasive criminal and/or non-criminal sanctions, including monetary sanctions (*coimas*). All the legal instruments stated in the previous answers are applicable, as well Law no. 25/2008, of 25 June establishing the legal regime against money laundering and terrorism financing.

The sanctions, including monetary sanctions are usually the fines and «coimas» which amount depends of the nature and seriousness of the offence committed. For instance, the dissolution of the legal persons could as well be decided as a sanction by a court. The Code of Public Procurement foresees the impeachment of public tenders of all legal persons that have been convicted by money laundering or corruption.

(b) Observations on the implementation of the article

In the absence of case law, it was difficult for the reviewing team to evaluate the effective implementation of the sanctions provided for in Portugal's legislation.

Article 27 Participation and attempt

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

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

The general part of the Criminal Code (Chapter II - forms of crimes) establishes as a criminal offence the participation in any capacity such a perpetrator (Article 26, provided that there is execution or commencement of execution), as an accomplice (Article 27), assistant (Article 28 and 29) or public instigator (Article 297) in an offence established in accordance with the UNCAC.

Article 26

Authorship

He who performs the act, by himself or by someone as an intermediary, or who directly participates in its execution, in agreement or together with other person, or other persons, or who intentionally determines other person to carry out the act, is punishable as principal, if there has been execution or the beginning of execution.

Article 27

Accomplice

1 - Whoever, intentionally and by any form, renders material or moral assistance to the commission by another of an act with wilful conduct, is punishable as an accomplice.

2 - The sentence determined to the perpetrator is applicable to the accomplice, specially mitigated.

Article 28

Unlawfulness in the participation

1 - If the unlawfulness or the level of unlawfulness of the act depend upon certain qualities or special relationships of the agent, in order for the respective sentence to become applicable to all participants, it is sufficient that such qualities or relationships are verified in any of them, except if the intention of the incriminated rule is different.

2 - Whenever, by virtue of the rule foreseen in the previous number, results the applicability of a more severe sentence for any of the participants, this may, taking into account the circumstances of the case, be replaced by the sentence which would have been applicable if such rule did not intervene.

Article 29

Guilt in the participation

Each participant is punished according to his guilt, regardless of the punishment or of the level of guilt of the other participants.

Article 297

Public instigation for the commission of an offence

1 - Whoever, in a public meeting, through the media, by writing divulcation or through other means of technical reproduction, reward or exalt another person for the commission of an

offence, in order to create a danger for the commission of a similar offence will be subject to a penalty up to 6 months imprisonment or a fine up to 60 days, except where a more serious penalty is applicable according to other legal provision.
2 - (...)

According to paragraph 2 of Article 27, the attempt is as well an offence established in accordance with the UN Convention against Corruption.

No statistics are available.

(b) Observations on the implementation of the article

The provision has been adequately implemented.

Article 27 Participation and attempt

Paragraph 2

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

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

The general part of the Criminal Code (Chapter II - forms of crimes) criminalizes in its Articles 22 and 23 the attempt to commit criminal offence. Pursuant to Article 23, *unless a provision states otherwise an attempt is punishable only if to the respective completed crime corresponds a sentence higher than three years of imprisonment. An attempt is punishable with the sentence applicable to the completed crime, specially mitigated.*

Article 22
Attempt

1 - An attempt exists when the agent performs acts for the execution of a crime that he has decided to commit, without occurring completion of such crime.

2 - Execution acts are:

- a) Those acts which fulfil a constitutive element of a type of crime;
- b) Those acts suitable to produce a typical result; or
- c) Those acts that, according to the common experience and with the exception of unforeseeable circumstances, are of a kind which is expected to be followed by acts of the types referred to in the previous paragraphs.

Article 23
Punishment for an attempt

1 - Unless a provision states otherwise, an attempt is punishable only if to the respective completed crime corresponds a sentence higher than three years of imprisonment.

2 - An attempt is punishable with the sentence applicable to the completed crime, specially mitigated.

3 - An attempt is not punishable when it is clear that the mean used by the agent is improper or the object essential for the completion of the crime does not exist

Regarding statistics on attempt:

Active corruption

	2007	2008	2009
Defendants	4	4	0
Convictions	4	4	0
Acquittals			0

Embezzlement

	2007	2008	2009
Defendants	3	0	0
Convictions	0	0	0
Acquittals	0	0	0

(b) Observations on the implementation of the article

Unless a specific provision otherwise states, attempt in Portugal was criminalized for offences punishable with a maximal penalty of over three years, therefore not encompassing various offenses under the convention such as threats or bribery to render false testimony, trading influence for the purpose of obtaining a favourable decision, or acts of bribery in the private sector (except in a specific circumstance).

The review team therefore invites Portugal to consider extending the existing legislation to criminalize the attempt to commit any UNCAC offense.

Article 27 Participation and attempt

Paragraph 3

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

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

Pursuant to Article 21 of the Criminal Code, *preparatory acts are not punishable unless a provision states otherwise*. Portugal recognises that it is not in compliance with this non mandatory provision under review.

(b) Observations on the implementation of the article

The Portuguese legal framework does not cover this non mandatory provision under review. The reviewers take note, however, of the non mandatory nature of the provision.

Article 28 Knowledge, intent and purpose as elements of an offence

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

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

According to the Criminal Code (Articles 13-15) and the Code of Criminal Procedure (Article 127), the knowledge, intent and purpose are required as an element of an offence and may be inferred from objective factual circumstances.

In fact, Article 127 of the Code of Criminal Procedure (Free assessment of the evidence) allows that the evidence or the assessment of facts is weighted according to the rules of experience and free judgement of the Criminal Judge. Moreover, Article 124 states that *all acts legally relevant for the existence or non-existence of the offence, the punishment or non-punishment of the defendant and the determination of the applicable sentence or security measure constitute object of evidence.*

Therefore, pursuant to the general principles of evidence assessment (according to Article 124), all the relevant factual circumstances of the case can be studied by the judge, to reach the «factual truth» to determine whether an offence has been committed. The intentional element (wilful element or *dolum*) of the offences established in accordance with the UNCAC can therefore be inferred from objective factual circumstances.

Court of Appeal of Coimbra (Tribunal da Relação de Coimbra) - Case 3101/2005 - 18 January 2006

IV- The completion of the crime of receiving stolen goods objectively requires proof that the received goods were obtained by wrongful act against property and, subjectively, the specific intent regarding the origin of the good.

Thus, the completion of the crime of receiving stolen goods demands, from an objective point of view, proof that the stolen good was obtained by an unlawful act against property and from a subjective point of view, the specific intent regarding the origin of the good, the agent has to effectively know that the good comes from tort against property. There is no doubt that the defendant Maria da Graça bought the good (money), since there was a factual shift of the money into the sphere of its availability, given that later she disposes of it, the good came from a wrongful act against property, as is the case.

Moreover, the defendant Maria da Graça knew the origin of the good at least since August 1, 2002, and acted with the intention of obtaining pecuniary advantage for herself, which, in fact, she does as she acts as if the money was hers and spends it, at least in part, to her advantage.

For the perpetrator of receiving stolen goods it suffices to have knowledge that a crime against property was committed, and that the effects of which he is taking advantage come from the commission of such a crime, it is not necessary to know specifically the crime committed, nor the respective circumstances of manner, time and place of execution.

(b) Observations on the implementation of the article

The information provided is insufficient for the review team to conclude that Portugal complies with article 28 UNCAC and the only Court decision provided does not actually reflect that the mental elements may be inferred from objective factual circumstances.

Article 29 Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

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

Articles 118 to 120 of the Criminal Code regulate the issues relating to statutes of limitations in respect of criminal proceedings. These rules imply that the criminal proceedings against offenders are extinguished following a certain period of time counted from the commission of the offence. The limitation period depends on the maximum penalty foreseen for the offence at stake.

Pursuant to Article 118, *the criminal procedure is extinguished due to the statute of limitation as soon as the following terms have elapsed from the commission of the crime:*

- a) Fifteen years in case of crimes punishable with an imprisonment with a maximum limit higher than ten years, or in case of the crimes set forth in Articles 372, 373, 374, 374-A, 375(1), 377(1), 379(1), 382, 383 and 384 CC, Articles 16, 17, 18 and 19 of Law no. 34/87, amended by Laws no. 108/2001, and no. 30/2008 and Articles 8, 9, 10 and 11 of Law no. 50/2007 and also in case of fraud in obtaining subsidies or subventions;*
- b) Ten years for crimes punishable with imprisonment with a maximum limit equal to or higher than five years but which does not exceed ten years;*
- c) Five years when regarding crimes punishable with sentence of imprisonment with a maximum limit equal or higher than one year, but less than five years;*
- d) Two years in the remaining cases.*

Criminal Code

Article 118

Statute of limitation

1 - The criminal procedure is extinguished due to the statute of limitation as soon as the following terms have elapsed from the commission of the crime:

- a) Fifteen years in case of crimes punishable with an imprisonment with a maximum limit higher than ten years, or in case of the crimes set forth in Articles 372, 373, 374, 374-A, 375(1), 377(1), 379(1), 382, 383 and 384 CC, Articles 16, 17, 18 and 19 of Law no.34/87, amended by Laws no. 108/2001, and no. 30/2008 and Articles 8, 9, 10 and 11 of Law no. 50/2007 and also in case of fraud in obtaining subsidies or subventions;
- b) Ten years for crimes punishable with imprisonment with a maximum limit equal to or higher than five years but which does not exceed ten years;
- c) Five years when regarding crimes punishable with sentence of imprisonment with a maximum limit equal or higher than one year, but less than five years;
- d) Two years in the remaining cases.

2 - For the purposes of the previous paragraph, in the determination of the maximum penalty applicable to each crime are considered the elements pertaining to the type of crime but not the

aggravating or mitigating circumstances.

3 - If the criminal procedure relates to a legal person or equivalent entity, the terms foreseen in paragraph 1 are determined on the basis of the sentence of imprisonment, prior to proceeding with the conversion foreseen in paragraphs 1 and 2 of article 90-B.

4 - When the law establishes for any crime, alternatively, a sentence of imprisonment or a fine penalty, only the first one is considered for the purposes of this article.

5 - In the crimes against sexual liberty and self-determination of minors, the criminal procedure is not ceased, as a result of the statute of limitation, before the offended party completes 23 years of age.

Article 120

Suspension of the statute of limitation

1 -The statute of limitation of the criminal procedure is suspended, besides the cases specially foreseen in the law, during the time in which:

a) The criminal procedure cannot be legally initiated or continued by lack of legal authorisation or of a judgment to be issued by a non criminal court or as a result of the return of a preliminary issue to a non criminal jurisdiction;

b) The criminal procedure is outstanding from the notice of the prosecution or, in the case where the prosecution was not issued, from the notice of the decision of enquiry which sends the defendant to trial or from the application for the applicability of a penalty in the simplest procedure;

c) The contumacy judgment is in force;

d) The court decision cannot be notified to the defendant judged in his absence; or

e) The delinquent serves a custodial sentence or security measure abroad.

2 - In the case foreseen in paragraph b) of the previous number the suspension may not exceed three years.

3 - The statute of limitation runs again from the day in which the suspension cause ceases.

(b) Observations on the implementation of the article

The length of the statute of limitation depends on the maximum penalty foreseen for the offence at stake. Regardless of its length, it was however a concern, due to the discrete nature of UNCAC offences, that the time of the commission, and not the time of the discovery of the offence by law enforcement authorities, is considered as the starting point for the statute of limitation.

The review team therefore invites Portugal to consider a legislative amendment which will take into consideration the time of discovery of UNCAC offences, instead of the time of commission, as starting point for the limitation period.

Article 30 Prosecution, adjudication and sanctions

Paragraph 1

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

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

Within the Portuguese criminal legal framework, sanctions are established according to a minimum (1 month imprisonment - Article 41 (1) of the Criminal Code) and a maximum threshold (25 years imprisonment - Article 41 (2) of the same Code).

Regarding the application of sanctions, the Criminal Code takes into account the gravity of the offence (Chapter IV - Choice and extent of the penalty). According to Article 71, the determination of the extent of the sentence, within the limits established by law, is made on the basis of the agent's guilt and of the prevention requirements.

Article 71

Determination of the extent of the sentence

1 - The determination of the extent of the sentence, within the limits established by law, is made on the basis of the agent's guilt and of the prevention requirements.

2 - In the determination of the concrete sentence, the court takes into consideration all circumstances that, although not taking part of the type of the crime, speak for or against the agent, namely:

- a) The level of unlawfulness of the act, the way of its execution and the seriousness of its consequences as well as the level of breach of the duties imposed to the agent;
- b) The intensity of the wilful conduct or of the negligence;
- c) The feelings evidenced in the committing of the crime and the purposes or motives that have determined it;
- d) The personal conditions of the agent and his economic situation;
- e) The prior and subsequent conduct to the act, especially when it is aimed to repair the consequences of the crime;
- f) The lack of preparation to maintain a lawful conduct, evidenced in the act, when such lack should be censured through the applicability of a sentence.

3 - The grounds of the extent of the sentence are expressly referred to in the sentence.

(b) Observations on the implementation of the article

In assessing the criminal provisions against UNCAC offences, the review team was of the opinion that, in general terms, the sanctions foreseen in the legislation for such offences were adequate. However, no detailed statistics were provided to assess their effective implementation.

Article 30 Prosecution, adjudication and sanctions

Paragraph 2

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

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

As general principle, all public officials, as referred to in Article 30 (2) of UNCAC, are criminally liable as any other citizen and no immunities or jurisdictional privileges apply.

Holders of political office and public office are liable to criminal proceedings for acts and omissions committed in the execution of their duties (Article 117 (1) of the Constitution of the Portuguese Republic), which penalties and effects may include dismissal from office and loss of their mandate in addition to criminal liability.

Portuguese law nevertheless provides for immunity of the holders of certain political offices and of certain high public offices in the Government hierarchy. It draws a distinction between non-liability (for votes and words delivered in Parliament) and parliamentary immunity (preventing prosecution for offences not connected with public functions).

The latter type of immunity applies to (corruption) offences only in certain circumstances, depending on the severity of the possible penalty.

There is also a specific procedural regime. Inviolability is enjoyed by the President of the Republic, MPs, members of the Government and of the Council of State, the Ombudsman, and judges of the Constitutional Court. Inviolability and the specific procedural regime cease to apply at the end of a term of office. The prescription is however suspended during that time. There is no general immunity for civil servants.

However all of these offices/functions have special procedures that allow for their investigation, indictment and conviction.

Generally, when major offences (serious crimes, punished with heavy penalties) are at stake or whenever the crimes were committed in the exercise of their duties (as it is the case of economical-financial crimes) they lose the immunities and privileges.

Each statute of each office or functions contains specific rules on the subject.

For the President of the Republic, members of the Parliament and members of the Government, withdrawal of immunity is a matter within the competence of the Parliament. Authorization for withdrawal is mandatory (other than in cases of *flagrante delicto* and if the offence carries a maximum imprisonment sentence up to 3 years) in order to:

- examine them as deponents or persons under investigation,
- detain or imprison them,
- allow the criminal proceedings to continue after committal for trial.

There have been no instances where the issue of immunities or jurisdictional privileges of public officials has arisen and addressed in official documents. There have been no relevant official inquiries or reports.

Criminal Code
Article 1
Principle of legality

- 1- An act may only be criminally punished if it was determined punishable by law before the act was committed.
- 2- Security measures may only be applied to cases of perilousness, if its conditions are determined by law previous to its fulfilment.
- 3- An appeal to analogy is not permitted to qualify an act as criminal, to define a case of perilousness, or to determine a penalty or a corresponding security measure.

There have been no instances where the issue of immunities or jurisdictional privileges of public officials has arisen and addressed in official documents. There have been no relevant official inquiries or reports.

(b) Observations on the implementation of the article

Portuguese law provides for immunity of the holders of certain political and high public offices in the government hierarchy; however, the existence of special procedures ensures that immunities or jurisdictional privileges will not impede the investigation, prosecution, and sentencing of offences established in accordance with UNCAC.

Article 30 Prosecution, adjudication and sanctions

Paragraph 3

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

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

The Portuguese legal system is ruled by the principle of legality, however, Article 281 of the Code of Criminal Procedure allows for the provisional suspension of the criminal proceeding:

Article 281

Provisional suspension of the proceeding

1 – If the offence is punishable with sentence of imprisonment for not more than 5 years or with different penalty from imprisonment, the Public Prosecution, at his own initiative or upon request of the defendant or of the «assistente», determines, with the agreement of the investigating judge, the suspension of the proceeding, through the imposition to the defendant of injunctions and rules of conduct, whenever the following requirements are verified:

- a) Agreement of the defendant and of the «assistente»;
- b) Absence of a previous conviction for an offence of the same nature;
- c) Absence of a previous applicability of the provisional suspension of the proceeding for an offence of the same nature;
- d) There is no place for the security measure of internment;
- e) Absence of a high degree of guilt; and
- f) It is foreseeable that compliance with the injunctions and rules of conduct is sufficient to the prevention requirements necessary for the case in question.

2 – The following injunctions and rules of conduct may, cumulatively or separately, be opposed to the defendant:

- a) To compensate the injured party;
- b) To give the injured party an adequate moral satisfaction;
- c) To deliver to the State or to private institutions of social solidarity a certain amount or render a service of public interest;
- d) To reside in a certain place;
- e) To attend certain programs or activities;
- f) Not to exercise certain professions;
- g) Not to attend certain environments or places;
- h) Not to reside in certain places or regions;

- i) Not to accompany, accommodate or receive certain persons;
 - j) Not to attend certain associations or participate in certain meetings;
 - l) Not to have in his possession certain objects capable of rendering easy the commission of another crime;
 - m) Any other behaviour specially required by the case.
- 3 – Injunctions and rules of conduct which may offend the dignity of the defendant may not be opposed.
- 4 – For support and monitoring of the compliance with the injunctions and rules of conduct, the investigating judge and the Public Prosecution may, depending on the cases, resort to the social reintegration services, to criminal police bodies and to administrative authorities.
- 5 – The suspension decision, under no. 1, may not be challenged.
- (...).

According to the general principles inspiring the Criminal Code, one of the goals of the sanctions applicable to offenders is to deter the commission of offences in general. For that reason, judges take into account the effectiveness of law enforcement measures in the application of penalties for the commission of an offence.

(b) Observations on the implementation of the article

Portugal's legal framework seems to be in line with the provision under review. However, no detailed statistics were provided to assess the effective implementation.

Article 30 Prosecution, adjudication and sanctions

Paragraph 4

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

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

In order to ensure that the conditions imposed in connexion with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings, the Code of Criminal Procedure foresees a set of compulsion measures (Title II - Measures of compulsion) applicable by the court in accordance of the seriousness of the offence alleged committed: term of identity and residence (Article 196), bail (Article 197), obligation to be present periodically (Article 198), obligation to rest at home (Article 201) and preventive imprisonment (202).

Code of Criminal Procedure

Article 196

Term of identity and residence

1 - The judicial authority or the criminal police body submit to term of identity and residence drawn up in the proceeding whoever is constituted as defendant, even if he has already been identified under article 250.

2 - For the purposes of being notified by regular mail, pursuant to paragraph c) of article 113(1), the defendant indicates his residence, place of work or another domicile at his choice.

3 - The term must include that the defendant has been made aware of:

- a) The obligation to appear before the competent authority or to remain available to the same whenever the law so requires or whenever duly notified to do so;
- b) The obligation not to change residence or to be absent from it for more than five days without indicating the new residence or place where he can be found;
- c) That the subsequent notices will be made by regular mail to the address indicated in no. 2, unless the defendant communicates another, by means of an application delivered or sent by registered mail to the registry where the records run at such time;
- d) That breach with the previous paragraphs legitimates his representation by a defence counsel in all procedural acts in which he has the right or duty to attend as well as for the hearing to be held in his absence, under the terms set out in article 333.

4 - The applicability of the measure set out in this article may always be cumulated with any other measure foreseen hereunder.

Article 197

Surety

1 - If the crime imputed is punishable with sentence of imprisonment, the judge may impose to the defendant the obligation to grant a surety.

2 - If the defendant is not able to grant surety or has serious obstacles or inconveniences to grant it, the judge may, at his own initiative or upon request, replace it by any other measures of constraint, with the exception of the provisional custody or house arrest, which may be legally applicable to the case, which will accrue to others already applicable.

3 - In the determination of the amount of the surety are taken into account the purposes of protective nature to which it is aimed, the seriousness of the crime imputed, the damage caused thereof and the social-economic situation of the defendant.

Article 198

Obligation of periodic appearance

1 - If the crime imputed is punishable with sentence of imprisonment with a maximum higher than 6 months, the judge may impose to the defendant the obligation to appear before a judicial entity or before a certain criminal police body in days and time previously established, taking into account the professional demands of the defendant and the place where he resides.

2 - The obligation of periodic appearance may be cumulated with any other measure of constraint, with the exception of house arrest and provisional custody.

Article 201

House arrest

1 - If the judge deems inadequate or insufficient, in the case, the measures mentioned in the previous articles, he may impose to the defendant the obligation not to be absent or not to be absent without authorisation, from his own house or from another in which he resides at such time or, namely, when justified, in an institution adequate to render him social and healthcare support, upon strong signs of the commission of crime with wilful conduct punishable with sentence of imprisonment with a maximum higher than 3 years.

2 - House arrest is cumulated with the obligation not to contact, by any mean, with certain persons.

3 - For monitoring of the compliance of the obligations mentioned in the previous numbers, technical remote means, pursuant to the terms foreseen in the law, may be used.

Article 202

Provisional custody

1 - If the judge deems inadequate or insufficient, in the case, the measures mentioned in the previous articles, he may impose the provisional custody to the defendant when:

- a) There are strong signs of the commission of crime with wilful conduct punishable with sentence of imprisonment with a maximum higher than 5 years;
- b) There are strong signs of the commission of crime with wilful conduct of terrorism, violent criminality or highly organised with sentence of imprisonment with a maximum higher than 3 years;
- or
- c) Concerns a person who has entered or irregularly remains in national territory, or against whom is in course an extradition or deportation process.

2 - In the event that it is showed that the defendant to be subject to provisional custody suffers from mental disorder, the judge may impose, after hearing the defence counsel and, whenever possible, a relative, in lieu of the imprisonment and while the disorder remains that a preventive internment in a psychiatrist hospital or in another adequate similar institution takes place, adopting the necessary assurances to prevent the danger of escape and of commission of new crimes.

(b) Observations on the implementation of the article

General provisions of the Portuguese Code of Criminal Procedure comply with paragraph 4 of article 30.

Article 30 Prosecution, adjudication and sanctions

Paragraph 5

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

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

The possibility of early release or parole of persons convicted persons by the commission of offences, including the offences set forth in the UNCAC are established in Articles 61 to 64 of the Criminal Code.

Parole Article 61

Requirements and length

- 1 - The applicability of parole is always subject to the convict's consent.
- 2 - The court releases the convict to imprisonment on parole when half of the sentence has already been served and in a minimum of six months if:
 - a) There are grounds to expect, under the circumstances of the case, the previous life of the agent, his personality and its evolution during the execution of the sentence of imprisonment, that the convict, once in liberty, will lead his life in a socially responsible manner, without committing crimes; and
 - b) The release reveals to be compatible with the order and social peace defence.
- 3 - The court releases the convict to imprisonment on parole when two thirds of the sentence are already served and in a minimum of six months, provided that the requirement referred to in paragraph a) of the previous number reveals to have been fulfilled.
- 4 - Without prejudice to the previous numbers, the convict to a sentence of imprisonment higher than six years is released on parole as soon as he has served five sixths of the sentence.
- 5 - In any of the said types, the parole has a length equal to the time of imprisonment which remains to be served, until a maximum of five years, after which the surplus of the sentence is deemed to be extinguished.

Article 62
Adaptation to parole

For the purposes of adaptation to parole, upon verification of the requirements foreseen in the previous article, the court may anticipate the release on parole, for a maximum period of one year, being the convict obliged to, during the anticipation period, besides the compliance of the further conditions imposed, the house arrest regime, monitored by remote technical means.

Article 63
Parole in case of consecutive execution of several sentences

- 1 - In the event of execution of several sentences of imprisonment, the execution of the sentence to be served in first place is interrupted upon serving half of the sentence.
- 2 - In the cases foreseen in the previous number, the court decides about the parole at the time in which the court may simultaneously decide in relation to the total amount of the sentences.
- 3 - Should the sum of the sentences to be consecutively served exceed six years of imprisonment, the court, as soon as five sixths of the sum of the sentences is served, releases the convict on parole, provided that the convict has not previously benefited from it.
- 4 - The previous numbers are not applicable to the case where the execution of the sentence results from the revocation of the parole.

Article 64
Parole regime

- 1 - Article 52, nos. 1 and 2 of article 53, article 54, paragraphs a) to c) of article 55, no. 1 of article 56 and article 57 are correspondently applicable to parole.
- 2 - The revocation of the parole determines the execution of the sentence of imprisonment which has not yet been served.
- 3 - In relation to the sentence of imprisonment to be served the grant of new parole can take place in the terms set out in article 61.

(b) Observations on the implementation of the article

Portugal's provisions on parole seem to comply with the provision under review.

Article 30 Prosecution, adjudication and sanctions

Paragraph 6

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

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

Article 45 (1) of Law No. 58/2008 regarding the disciplinary regimes applicable to public officials foresees the possibility of suspension of a public official during disciplinary proceedings:

Article 45
Preventive suspension

1 – The defendant may be, by proposal of the entity responsible for the opening of the disciplinary proceeding or the person in charge of such proceeding, and upon decision of the person holding the position of management or direction of the entity, subject to provisional suspension of functions, without losing its salary, until the final decision but for a 90 days maximum time-limit, whenever its presence in the entity is considered non convenient or could difficult the search of evidence.

Article 199 of the Code of Criminal Procedure refers to provisory measures, applicable to the accused during the investigation phase:

Article 199

Suspension of the exercise of profession, of duty, of activity and of rights

1 - If the crime imputed is punishable with sentence of imprisonment with a maximum higher than 2 years, the judge may impose to the defendant, cumulatively, if necessary, with any other measure of constraint, suspension of the exercise:

- a) Of, public or private, profession, duty or activity;
- b) Of paternal power, tutorship, curatorship, management of property or issuance of credit certificates; whenever the interdiction of the respective exercise may be adjudged as effect of the crime imputed.

2 – When concerning a public duty, profession or activity which exercise depends upon a public title or of an authorization or homologation of a public authority, or the exercise of the rights foreseen in paragraph b) of the previous number, the suspension is communicated to the administrative, civil or judicial authority usually competent to order the respective suspension or interdiction.

The principle of the presumption of innocence is set forth in the Constitution of the Portuguese Republic as well as in the Code of Criminal Procedure. According to that, the possibility of a public official to be suspended is foreseen in the criminal procedural law and in the disciplinary law as described. However, the removal of a public official is only possible after conviction for a criminal offence and/or for a disciplinary offence and not during these procedures, when such person has the legal status of defendant (accused person).

(b) Observations on the implementation of the article

Portugal's legal framework seems to be in line with the provision under review.

Article 30 Prosecution, adjudication and sanctions

Subparagraph 7

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(b) Holding office in an enterprise owned in whole or in part by the State.

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

The possibility for the disqualification by court order or any other appropriate means (the disciplinary regime for public officials) is foreseen in the Criminal Code as accessory penalties.

Article 65

General principles

- 1 - No sentence involves as a necessary effect the lost of civil, professional or political rights.
- 2 - The law may correspond to certain crimes the prohibition of the exercise of certain rights and professions.

Article 66

Prohibition of the exercise of a duty

- 1 - The holder of a public position, public officer or agent of the administration, who, in the performance of the activity to which he was elected or appointed to, commits a crime punished by sentence of imprisonment higher than three years is also prohibited of the performance of such duties for a period ranging from two to five years when the act:
 - a) Is committed with flagrant and serious abuse of the duty or with clear and serious breach of the inherent duties;
 - b) Reveals indignity in the exercise of the position; or
 - c) Implies the lost of the necessary reliance for the performance of the duty.
- 2 - The previous number is correspondently applicable to the professions or activities which performance is subject to a public title or to an authorisation or homologation from a public authority.
- 3 - The time in which the agent is deprived of liberty as a result of a procedural measure of constraint, sentence or security measure is not taken into account for the prohibition term.
- 4 - When, for the same act, a security measure of interdiction of activity is applicable in accordance with article 100, number 1 and 2 cease to be applicable.
- 5 - Whenever the holder of a public position, public officer or agent of the administration is convicted for the commission of a crime, the court communicates the conviction to the authority which he depends on.

Article 67

Suspension of the performance of a duty

- 1 - The defendant definitely convicted to a sentence of imprisonment, who is not disciplinarily dismissed from a public duty which he performs, is suspended from the duty while serving the sentence.
- 2 - The suspension foreseen in the previous number stands with the effects which, pursuant to the respective legislation, follow the disciplinary sanction of suspension of the performance of the duties.
- 3 - The previous numbers are correspondently applicable to professions or activities which performance is subject to a public title or to authorisation or homologation from a public authority.

Article 68

Effects of the prohibition and suspension of the performance of a duty

- 1 - Except for a provision stating otherwise, the prohibition and suspension of the performance of a public duty imply the lost of the rights and privileges granted to the holder, officer or agent, for the corresponding time.
- 2 - The prohibition of the exercise of a public duty does not impair the holder, officer or agent to be appointed to a position or duty which can be performed without the dignity conditions that

the position or the duty which performance was forbidden require.

3 - The previous numbers are correspondently applicable to professions or activities which exercise is subject to a public title or to authorisation or homologation from a public authority.

(b) Observations on the implementation of the article

General provisions of the Portuguese Criminal Code seem to comply with the provision under review.

Article 30 Prosecution, adjudication and sanctions

Paragraph 8 & 9

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

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

Law no. 58/2008 of 9 September, establishing the Disciplinary Statute of Public Officials, refers to the sanctions that could be applied to public officials who break the legal duties to which they are specifically subject even when mentioned break of duties is related to the commission of an offence. The disciplinary power is exercised regardless of the commission of an offence by the public official, as foreseen in paragraph 3 of Article 7 and Article 8 of mentioned Law.

**Law no. 58/2008, of 9 September
Article 7**

(...)

3 - Where the criminal offence is simultaneously a disciplinary offence, the disciplinary action is exercised regardless of the conviction in the criminal proceedings.

Article 8

Facts that could be regarded as criminal offences

When the facts are regarded to be a criminal offence, the communication to the Public Prosecutor competent for criminal proceeding is mandatory according to Article 242 of the code of Criminal Procedure.

(b) Observations on the implementation of the article

Portugal's legal framework seems to be in line with the provision under review.

Article 30 Prosecution, adjudication and sanctions

Paragraph 10

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

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

According to Article 40 of the Criminal Code (Purposes of sentences and of security measures) the applicability of sentences and of security measures aims the protection of legal assets and the offenders' reintegration into society.

**Criminal Code
Article 40**

Purposes of sentences and of security measures

- 1 - The applicability of sentences and of security measures aims the protection of legal assets and the agent's reintegration into society.
- 2 - In no event the sentence may exceed the extent of guilt.
- 3 - The security measure may only be applicable if it is proportional to the seriousness of the act and to the dangerousness of the agent.

(b) Observations on the implementation of the article

Portugal's legal framework seems to be in line with the provision under review.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (a)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

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

The Criminal Code - Articles 109 to 111 - foresees the confiscation of the proceeds of crime derived for the offences in general (including UNCAC offences) or property the value of which corresponds to that of such proceeds.

Law no. 5/2002, of 11 January provides for a special confiscation regime (Article 7) which applies to some of the offences set forth in the UN Convention against corruption (money laundering, trade in influence and corruption). Chapter IV provides for the confiscation for the State of goods derived from the commission of a money laundering offence. In case of conviction the benefit from a criminal activity is considered the difference between the value of the defendant's actual property and one that is consistent with their lawful income. Without prejudice of the court can take into account of any evidence in the proceeding that the defendant can prove the legal origin of the assets referred to in Article 7 (2).

**Criminal Code
Article 109**

Confiscation of instruments and proceeds

1 - Objects shall be confiscated by the State that have been used or that were meant to be used in the commission of a typical illicit fact, or those that have been generated by it, where by their nature or circumstances of the case, they may endanger the security of persons, the public morals and order, or where they are likely to be used in the commission of additional typical illicit facts.

2 - The provisions in the previous paragraph shall take place even if no one can be punished by the fact.

3 - Where the law does not determine a particular destination for the objects confiscated under the provisions of the previous paragraphs, the judge can order their total or partial destruction or prevent their selling.

Article 110

Objects belonging to a third party

1 - Without prejudice to the provisions in the next paragraphs, confiscation shall not take place where the objects do not belong to none of the actors or beneficiaries as of the date of the fact, or do not belong to them as of the moment when confiscation is ordered.

2 - In the event that the objects belong to a third party, confiscation shall take place where the respective holders have contributed, in a reproachable way, to their utilisation or production, or where they have obtained benefits from it; or still where the objects are, by any means, purchased after the commission of the fact, having knowledge of their origin.

3 - If the objects consist of inscriptions, representations or records in paper, in any other means of audiovisual expression, belonging to a bona fide third party, confiscation shall not occur and restitution shall take place, after erasure of the inscriptions, representations or records integrating the typical illicit fact. Where this is not possible, the court shall order their destruction, with the right to compensation, according to civil law.

Article 111

Confiscation of benefits

1 - Any reward given or promised to the actors of a typical illicit fact, for themselves or for others, shall be confiscated by the State.

2 - Confiscation by the State shall also apply, without prejudice to the rights of the plaintiff or of bona fide third parties, to things, rights or benefits that, through the typical illicit fact, have been directly purchased by the offender for himself or for others and represent property of any kind.

3 - The provisions in the previous paragraphs apply to the things or rights obtained by means of transaction or exchange with the things or rights directly obtained from the typical illicit fact.

4 - Where the reward, the rights, things or benefits referred to in the previous paragraphs cannot be seized in goods, confiscation shall be replaced by payment to the State of their respective value.

Law no. 5/2002 of 11 January

Article 7

Assets confiscation

1 - In case of conviction for an offence referred to in article 1, and for the purpose of assets confiscation to the State, it is considered as benefit from a criminal activity the difference between the value of the defendant's actual property and one that is consistent with his lawful income.

2 - For the purpose of the application of this Law, as the defendant's property one should consider all the assets:

a) Owned by the defendant or under his control or to his benefit, as of his being held defendant or subsequently;

b) Transferred to third parties for free or against a derisory instalment within the 5 previous years to his being held defendant;

c) Received by the defendant within the 5 previous years to his being held defendant, though their intended use remains indeterminate.

3 - Interest, profits and other benefits derived from assets under the conditions set out in article 111 of the Criminal Code, are always considered as benefits from criminal activity.

The assessment of the effectiveness of domestic measures related to confiscation has been made in the framework of the mutual evaluations conducted by the FATF and GRECO, Council of Europe.

Regarding case law, some examples can be provided, as follows:

Supreme Court of Justice (Supremo Tribunal de Justiça) – Case 862/01 - 26 September 2001

It is the prerequisite for forfeiture to the State under Article 111 (2) of the Criminal Code the maintenance of pecuniary advantage to the agent at the time of the declaration.

Court of Appeal of Lisbon (Tribunal da Relação de Lisboa) – Case 8725/03 – 4 December 2003

I- The defendant is accused of the practice of 12 crimes of accepting bribes and awaits trial.

II- The defendant requested the restitution of the money apprehended at his home, claiming that it has nothing to do with the crimes for which he was accused. But the defendant did not justify at all the possession of that amount and why it was at his home and he does not have incomes consistent with its legitimate possession.

III- The money in question is likely to be declared forfeited to the State, in accordance with Article 111 of the Criminal Code.

IV- The limits between the application fields of articles 109 and 111 of the Criminal Code is sometimes blurred. The last of these precepts, establishing the loss of rights or goods related to the unlawful fact, in cases not covered by the first normative, is a safety valve against possible evasion or fraud. The loss referred to in the article 111 of the Criminal Code regards mainly the abstract dangerousness and aims to prevent crime in general.

V- In the present case the provisions of article 111 of the Criminal Code apply, so, being predictable as highly possible a judgment / decision declaring the loss of money in order to safeguard this hypothesis and the preventive needs, the claim of the defendant is refused.

Court of Appeal of Lisbon (Tribunal da Relação de Lisboa) – Case 27/96 – 24 April 2004

I - Prison time suffered by a defendant in a foreign country pending an extradition order does not count for the calculation of the remand regarding the case by which it has been requested, notwithstanding that this time should be discounted in the final sentence to which he will be sentenced.

II - The loss of assets, objects and advantages of crime or, in the legal terminology of Articles 109 and 111 of the Criminal Code, the "objects that have served or were destined to serve for the commission of a typical unlawful act or that have been produced by it", the "rewards given or promised to the agents "or" things, rights or advantages that have been directly acquired by means of the unlawful act and that represent a financial advantage of any kind ", is a direct consequence of the conviction, if the requirements listed in the first two paragraphs of the above mentioned Article 109 are met.

III – That loss being inherent to the indictment, when it indicates the incriminating norm that was violated and which subsumes the accused typified unlawful act, the possibility of such assets, objects and advantages to be declared forfeited to the State, does not have to be clearly and explicitly indicated in the indictment or in the pronouncement.

(b) Observations on the implementation of the article

Portugal's legal framework seems to be in line with the provision under review.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (b)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

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

The Criminal Code - Articles 109 to 111 - foresees the confiscation of property, equipment or other instrumentalities used or to be used in the commission of the offences established in accordance with the UNCAC or property the value of which corresponds to that of such proceeds.

It defines the general regime on confiscation and special regimes of confiscation are foreseen in special legislation, for instance in Law no. 5/2002. The reference to “where by the nature or circumstances of the case, they may endanger the security of persons, the public morals and order, or where they are likely to be used in the commission of additional typical illicit acts” in Article 109 should not be understood as a restriction. In fact it will be the Public Prosecutor to request and the court (the Criminal Judge) to decide the confiscation of assets, instrumentalities obtained, used or derived of the commission of the criminal activity.

Regarding case law, some examples can be provided, as follows:

Court of Appeal of Évora (Tribunal da Relação de Évora) – 27 April 1999

I – The confiscation of instrumentalities of crime to the state is not a sanction nor its effect, but rather an autonomous and essentially preventive measure.

II – Thus, even if the prosecution is terminated without a trial, the seized objects used, or that were intended to be used, for the practice of a typical unlawful act may be declared confiscated to the State, since it is considered that they may be used in committing further unlawful acts.

Court of Appeal of Lisbon (Tribunal da Relação de Lisboa) – Case 5381/04 – 14 October 2004

I – For the purposes of Article 109 of the Criminal Code, an object is only considered an instrument of crime when it caused or was giving cause of a typified unlawful fact.

II – For an object to be considered an instrument of crime and be declared forfeited to the State, it must be proved that this object became or would be necessary for the execution of the crime, so that, without it, the respective consummation would not be possible, or that in the circumstances of the fact, it would become very difficult to consummate thus requiring a relation of means and purpose.

(b) Observations on the implementation of the article

Portugal’s legal framework seems to be in line with the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 2

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

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

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

Law no. 5/2002, Article 4, provides for the possibility of a judge, ex-parte, authorizing or ordering the stay of execution of movements in the bank account (freezing), where necessary in order to prevent the commission of a money laundering offence. This Law provides for the possibility of staying the execution of movements in the bank account (freezing) and, in case of conviction, the defendant can impugn the confiscation and prove the legal origin of the confiscated assets.

This is a mitigated form of inversion of the burden of proof. The Code of Criminal Procedure, Article 178, provides for the possibility of criminal police bodies in the framework of a criminal investigation seizing objects used or meant to be used for the commission of an offence, as well as those that may constitute the proceeds, profit, price or reward (see also Article 249 (2) c).

The law does not require prior notice to allow the initial application to freeze or seize property subject to confiscation. The Code of Criminal Procedure and special legislation only require rules of active legitimacy as far as the intervention of the competent judicial authority is concerned.

Article 249 (2) c) of the Code of Criminal Procedure provides for interim measures of protection that may be necessary to keep or preserve seized objects, so as to prevent the offender from getting rid of the assets or property derived from the commission of an offence. Article 10 of Law 5/2002 provides the seizure of assets belonging to the agent of the offence, meant to secure the hypothetical payment of the value of those assets that would be confiscated to the State and that the agent would probably have disposed.

According to the Civil Code, Article 294 and following, all the acts and contracts made against an imperative legal provision are considered void, which means that it is in this way possible to prevent or avoid attempts to get rid of assets or rights derived from criminal activities and that would possibly be confiscated in case of conviction.

In general, the Portuguese system offers a comprehensive regime for the confiscation, freezing and seizing of the proceeds of crime. The proceeds can be confiscated where an illicit act has been committed but the law does not require a previous criminal conviction of an individual as set forth in Article 109 (2) of the Criminal Code. All property originating from a criminal activity or that has been acquired with its proceeds of crime can also be subject to confiscation in case of a conviction within the framework of a criminal proceeding (as long as it does not belong to bona fide third party). Nonetheless, Chapter IV of Law no. 5/2002 provides for the possibility of the defendant, in case of a conviction, proving the legal origin

of the confiscated assets.

Code of Criminal Procedure
Chapter II
On the searches and domiciliary visits

Article 174
Assumptions

1. The search is ordered whenever there are grounds for believing that a person is hiding any objects relating to the criminal offence or that may be useful as evidence thereof.
2. The search is ordered whenever there are any elements pointing towards the fact that the objects referred to in paragraph here above, as well as the defendant or any other person to be arrested, are in a reserved or restricted area.
3. The searches and the domiciliary visits are authorised or ordered through decision rendered by the competent judicial authority, who should preside over the act whenever possible.
4. The decision mentioned in the previous paragraph is valid for a maximum period of 30 days. After that period the decision is declared void.
5. The requirements set out in paragraph 3 do not apply to the searches and domiciliary visits performed by a criminal police department:
 - a) in a case of terrorism, violent or highly organised criminality, whenever there are reasonable grounds to believe that a criminal offence is to be committed, liable to jeopardize the life and the physical integrity of any person;
 - b) if the persons concerned agree thereto, provided however that the agreement is recorded in writing; or,
 - c) at the moment of arrest in the very act due to a criminal offence to which applies an imprisonment penalty.
6. As to the cases referred to in sub-paragraph (a) of the previous paragraph the step in to be immediately communicated to the Examining Judge (*Juíz de Instrução*), or it will be regarded as void and nul. The Examining Magistrate must validate the step.

Article 175
Formalities regarding the search

1. Before the search takes place and except for the cases foreseen in Article 174 paragraph 5, a copy of the decision is rendered to the person concerned stating that that person is allowed to indicate a person of his/her choice to be present during the search as long as the person indicated for the effect is able to be immediately present.
2. The search must respect the personal dignity of the person and, where possible, its bashfulness.

Article 176
Formalities regarding the domiciliary visits

1. Before the domiciliary visit takes place and except for the cases foreseen in Article 174 paragraph 5, a copy of the decision is rendered to the person who has rights over the property where the search is to take place stating that that person is allowed to be present during the search as well as to be accompanied or replaced by a person of his/her choice as long the person indicated for the effect is able to be immediately present.
2. If the persons referred to in the previous paragraph do not appear, the copy will be delivered, whenever possible, to a relative, a neighbour, a doorman or any person replacing him/her.
3. Together with the domiciliary visit or in the course thereof any person present at the place subject to the domiciliary visit can also be searched if the person who orders or performs the search has reasonable grounds for believing that the presuppositions set out in article 174,

paragraph 1, have been fulfilled. Provisions set out in Article 173 can also be complied with.

Chapter III **Seizure**

Article 178

Objects liable to and requirements for seizure

1. Any objects that were used or were destined for being used for the commission of a crime, as well as any objects that constitutes the proceeds of a crime, or the profit, or the price, or the recompense thereof, as well as any objects left by the perpetrator in the place where the crime was committed, as well as any other objects that could be used as evidence, shall be seized.
2. The objects seized should be attached to the proceedings, where possible; otherwise, they shall be entrusted for guardianship either to a court official linked with the proceeding, or to a custodian; all decisions should be mentioned in the referred proceeding.
3. Seizure shall be authorised, ordered or validated by way of a decision taken by the judicial authority.
4. Under the terms provided in Article 249 (2) (c), any criminal police body may seize objects in the course of body searches or the search of premises, or in circumstances of urgency, or where there is danger in delaying matters.
5. Seizures undertaken by the any criminal police body shall be submitted to validation by the judicial authority within a period of no more than 72 hours.
6. Any person who holds a title over any goods or rights seized may request to the Investigation Judge to modify the terms of, or revoke the seizure. The provisions of Article 68 (5) above, shall apply correspondingly.
7. Where the property rights over the objects seized are liable of being confiscated for the State and where such objects do not belong to the defendant, the judicial authority shall issue an order for the defendant to appear before that authority in order to hear him/her. The judicial authority shall do without the presence of the defendant when that presence is not possible.

Article 179

Seizure of mail

1. Subject to it being declared void, the judge may decide to authorise or to order the seizure of letters, parcels, values, telegrams and any other kind of mail, even in post offices and telecommunications' offices, where she/he has grounded reasons to believe that:
 - a) the mail was sent by the suspect, or is addressed to the suspect, even under a different name, or through a different person; and
 - b) relates with a crime punishable with a maximum sentence of more than 3 years imprisonment; and
 - c) the measure is likely to be of great value for discovering the truth or for purposes of evidence.
2. Subject to the seizure being declared void, it shall be forbidden to seize, or otherwise exercise any other form of control over the mail between the defendant and his/her defender, save where the judge has well grounded reasons to believe that that correspondence is the purpose, or an element of an offence.
3. The judge who authorised or ordered the measure shall be the first person to become acquainted with the contents of the seized mail. If she/he considers it to be relevant for purposes of evidence, she/he shall attach it to the case file; otherwise, she/he shall return it to the rightful owner; in which case the mail may not be used for purposes of evidence; and in which case the judge shall remain under a duty to keep secrecy whatever she/he got acquainted with and is not relevant for purposes of evidence.

Article 180

Seizure within the professional premises of lawyers or doctors

1. The provisions set forth in Article 177 (5) and (6), shall apply correspondingly to seizures performed within the professional premises of lawyers or doctors.
2. In the cases mentioned in the previous paragraph and subject to the seizure being declared void, is not permitted to seize documents subject to professional secrecy [legal professional privilege], or subject to medical professional secrecy, except where such documents are the object or an element of the crime.
3. The provisions of paragraph 3 of the previous Article, shall apply correspondingly.

Article 181

Seizures performed within banking institutions

1. Within the premises of banks and other credit institutions, the judge seizes documents, titles, values, cash and any other objects, even when located in personal safe-boxes, only where she/he has grounded reasons to believe that such articles are connected with a crime and are likely to be of great value for discovering the truth or for purposes of evidence, even when they do not belong to the defendant and are not deposited under his/her name.
2. In order to identify the objects to be seized in accordance with the provisions of the preceding paragraph, the judge may examine the mail and any banking documents. The examination is made personally by the judge, assisted, where necessary, by criminal police bodies and by qualified experts, who shall remain under a duty of secrecy with respect to all that they will have become acquainted with, and is not relevant for purposes of evidence.

Article 182

Professional or functionary secrecy and State secrecy

1. The persons mentioned in Articles 135 to 137, when so ordered by the judicial authority, submit to this authority any documents or objects that they hold and should be seized, except where in writing they raise an objection grounded on reasons pertaining to professional or functionary secrecy, or State secrecy.
2. Where the objection is grounded on reasons pertaining to professional or functionary secrecy, the provisions of Articles 135 (2) and (3), and 136 (2) shall apply correspondingly.
3. Where the objection is grounded on reasons pertaining to State secrecy, the provisions of Article 137 (3), shall apply correspondingly.

Article 183

Copies and certificates

1. Copies of documents seized may be attached to the case file, in which case the original document shall be returned. Where it is necessary to keep the original document, a copy or a certificate thereof, may be made and handed over to whoever rightfully held the former. The copy and the certificate must include an express reference to the seizure of the original.
2. If requested, a copy of the seizure order shall be handed over to whoever rightfully held the document or the object seized.

Article 184

Sealing and unsealing objects

Whenever that is possible, the articles seized shall be sealed. The persons who were present at

the time of sealing, if possible, shall also be present at the time of unsealing; such persons shall examine whether or not the seals were violated and whether or not any changes were made to the objects seized.

Article 185

Seizure of perishable goods, dangerous goods or goods prone to deterioration

1. Where the objects seized are perishable, dangerous or prone to deterioration, the judicial authority may order, according to the circumstances, either the sale of the objects, or their use for any publically or socially useful purpose, or may order the necessary preservation and maintenance measures or their immediate destruction.
2. Unless otherwise stated in the law, it's up to the judicial authority to decide the modality of sale, among the modalities of sale foreseen in the law of civil procedure.
3. After the deduction of expenses resulting from the keeping, conservation and sale, the profit belongs to the State.

Regarding identification and tracing, the measures foreseen in Chapter II of the Code of Criminal Procedure (On the searches and domiciliary visits) - Articles 174 and seq. are taken exactly for such purpose, that to say to allow to identify and trace of the proceeds of crime, property or instrumentalities as referee to in Article 31 (1) of UNCAC.

Other relevant provisions are Articles 249, regarding tracing, and Article 171 (2) and 173, regarding the examination or identification requirements, all from the Code of Criminal Procedure:

Article 249

Protective acts as to means of evidence

- 1 – The criminal police bodies must perform, even before receiving order from the competent judicial authority to proceed with the investigations, the necessary and urgent protective acts to assure the means of evidence.
- 2 – Pursuant to the previous number, it is up to them, namely:
 - a) To proceed with examinations of the tracks of the crime, in particular to the actions foreseen article 171 (2) and in article 173, assuring maintenance of the state of the things and of the places; (...)

Article 171

- (...)
- 2 – As soon as there is notice of the commission of a crime, the necessary measures to avoid, when possible, that its tracks are deleted or amended prior to their examination, are taken, prohibiting, if necessary, the entry or transit of strange persons in the crime scene or any other acts which may prevent the discovery of the truth.”

Article 173

Persons within the place of examination

- 1 – The competent judicial authority or the criminal police body may determine that any or some persons do not drift away from the place of the examination and oblige, with the assistance of public force, if necessary, the ones intending to drift away to remain therein while the examination is not ended and their presence is indispensable.
- (...)

(b) Observations on the implementation of the article

Portugal's legal framework seems to be in line with the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 3

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

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

According to Article 178 (2) of the Code of Criminal Procedure the objects seized should be attached to the proceedings, where possible; otherwise, they shall be entrusted for guardianship either to a court official linked with the proceeding, or to a custodian; Where money, securities, gold or precious stones are seized they are usually deposited in a banking entity (Caixa Geral de Depósitos) to the order of the Portuguese judicial authorities.

In 2007 the Decree-Law no. 11/2007, of 19 January was approved, establishing the legal regime for the evaluation, utilization, selling and reparation of objects seized by the police bodies in the framework of criminal proceedings that are susceptible to be confiscated for the State. The goal of mentioned legal instrument is to preserve the objects or property seized and, at the same time, to allow to all police bodies the possibility of an operational use of such objects, as cars for instance, which is considered a use of relevant social interest.

Law no. 45/2011, of 24 June creates the National Assets Recovery Office, adapting thus the Portuguese legal system to the Council Decision 2007/845/JHA, of 6 December 2007, concerning the cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime. The Portuguese ARO is able for the management and administration of frozen, seized and confiscated property.

The Office referred to shall be under the remit of the Criminal Police, shall have investigation powers similar to those of the criminal police bodies and shall, by determination of the Public Prosecution Service, carry out financial or patrimonial inquiries whenever at stake are instruments, property or products related to crimes punishable with a prison sentence equal or higher than three years and when their universal estimated value is higher than 1.000 units of account (€ 102 000,00).

Mentioned legal instrument also foresees besides the creation of an Office for Property Management (GAB) which shall have its seat at the Institute for Financial Management and Justice Infra-structure, I.P., a body under the remit of the Ministry of Justice, the establishment of rules related to the administration of the recovered, seized or confiscated assets, bearing in mind their good management and their patrimonial increase.

Code of Criminal Procedure Chapter III Seizure

Article 178

Objects liable to and requirements for seizure

1. (...)
2. The objects seized should be attached to the proceedings, where possible; otherwise, they shall be entrusted for guardianship either to a court official linked with the proceeding, or to a custodian; all decisions should be mentioned in the referred proceeding.

(b) Observations on the implementation of the article

Portugal's latest measures regarding the provision under review (including Law no. 45/2011, passed on June 24, 2011), seem to comply with the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 4

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

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

Converting proceeds of crime into other property, in order to hide its illegitimate origin, is a criminal offence established by article 368 (2) of the Criminal Code.

As previously stated, Article 111 of the Criminal Code allows the confiscation of property, equipment or other instrumentalities used or to be used in the commission of the offences in general or property the value of which corresponds to that of such proceeds, as well the seizure (Article 178 of the Code of Criminal Procedure) and confiscation of transformed or converted proceeds of crime.

(b) Observations on the implementation of the article

Portugal's legal framework seems to be in line with the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 5

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

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

According to article 111 of the Criminal Code, the proceeds of crime are liable to confiscation, even if intermingled with property legitimately acquired.

The assessment of the effectiveness of domestic measures related to the freezing, seizure and confiscation has been made in the framework of the mutual evaluations conducted by the FATF and GRECO, Council of Europe.

(b) Observations on the implementation of the article

Portugal's legal framework seems to be in line with the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 6

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

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

As previously stated, Article 111 of the Criminal Code allows the confiscation of property, equipment or other instrumentalities used or to be used in the commission of the offences established in accordance with the UNCAC or property the value of which corresponds to that of such proceeds, as well the seizure (Article 178 of the Code of Criminal Procedure) and confiscation of the income or other benefits derived from the proceeds of crime or property into which such proceeds of crime have been transformed or converted or property with which such proceeds of crime have been intermingled.

(b) Observations on the implementation of the article

Portugal's legal framework seems to be in line with the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 7

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

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

Courts are empowered by law to have access to banking, financial or commercial records and, where necessary to break bank secrecy, according to Article 79 of Decree-Law no. 282/92 (the Banking Law). Tax administration is also entitled to have access to bank and financial institutions records in order to tackle tax evasion. According to Article 181 of the Code of Criminal Procedure, the judge can order the seizure of documents, titles, values, cash and any other objects, even when located in personal safe-boxes within the premises of banks and other financial institutions.

Decree-Law 298/92 (as amended by Law 36/2010 of 2 September)

Article 79

Exceptions to the obligation of professional secrecy

1. Facts or data regarding relations between a client and an institution may be disclosed upon the client's authorization, transmitted to the institution.

2. With the exception of the case envisaged in the foregoing paragraph, the facts and data subject to secrecy may only be disclosed:

- a) To the Bank of Portugal, within the scope of its duties;
- b) To the Securities Market Commission, within the scope of its duties;
- c) To the Deposit Guarantee Fund and to the Investor Compensation Scheme, within the scope of their duties;
- d) To the judicial authorities, in the scope of a criminal procedure;
- e) When any other legal provision expressly limits the obligation of professional secrecy.

3. It is implemented at the Bank of Portugal a database covering all the bank accounts and their respective holders currently contained in the banking system; for such purpose, the following proceeding must be carried out:

- a) Within three months as of the day of the entry into force of the present norm, all the entities authorized to open bank accounts, whatever the type, should send to the Bank of Portugal, the identification of the accounts and their respective holders, as well as of the persons entitled to operate them, including their agents, and the day in which they are or have been opened;
- b) They should also send to the Bank of Portugal, information on the opening or closure of accounts, indicating their respective number, the identification of their holders and of the persons that may operate them, including their agents, and the day in which they are opened or closed; such information should be disclosed on a monthly basis and up to the 15th of each month, with reference to the previous month;
- c) The Bank of Portugal shall adopt the necessary measures to ensure a restricted access to this database, being the information contained therein refer solely to the identification of the bank accounts, of the respective bank entity, of the day of their opening, of their respective holders and of the persons entitled to operate them, including their agents and of the day of their closure. Such information must only be conveyed to the entities referred to in n. 2(d) of the present article, within the scope of a criminal procedure.”

Code of Criminal Procedure

Article 181

Seizures performed within banking institutions

1. Within the premises of banks and other credit institutions, the judge seize documents, titles, values, cash and any other objects, even when located in personal safe-boxes, only where she/he has grounded reasons to believe that such articles are connected with a crime and are likely to be of great value for discovering the truth or for purposes of evidence, even when they do not belong to the defendant and are not deposited under his/her name.

2. In order to identify the objects to be seized in accordance with the provisions of the preceding paragraph, the judge may examine the mail and any banking documents. The examination is made personally by the judge, assisted, where necessary, by criminal police bodies and by qualified experts, who shall remain under a duty of secrecy with respect to all that they will have become acquainted with, and is not relevant for purposes of evidence.

(b) Observations on the implementation of the article

Portugal’s legal framework seems to be in line with the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 8

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the

extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

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

According to the general principles of criminal law, it is up to the Public Prosecution to gather the evidence that allows for the accusation on an offender (natural or legal person) for the commission of an offence.

However, Law no. 5/2002 of 11 January, which establishes measures for the combat against organised crime and economic and financial crime foresees in its Articles 7 to 9 the partial reversal of the burden of evidence: without prejudice of consideration by the court, in general terms, of all evidence in the proceedings, the defendant is entitled to prove the lawful origin of the assets referred to in article 7, paragraph 2.

Law no. 5/2002 of 11 January

Article 1

Scope of application

1 - This law establishes a special regime for the collection of evidence, breach of professional secrecy and confiscation of assets to the State in relation to the following offences:

- a) Narcotics trafficking, pursuant to articles 21 to 23 and 28 of Decree-Law no. 15/93, of 22 January;
- b) Terrorism and terrorist organization;
- c) Arms trafficking;
- d) Trading in influence;
- e) Active and passive corruption;
- f) Misappropriation of public moneys;
- g) Economic participation in business
- h) Money laundering;
- i) Criminal gang;
- j) Smuggling;
- l) Trafficking and change of identification elements in robbed vehicles;
- m) Incitement to prostitution and incitement to prostitution and trafficking in minors;
- n) Counterfeiting currency and securities equivalent to currency.

2 – The provision set forth in this Law shall only apply to the offences provided for in subparagraphs j) to n) of the preceding article if such offence is committed in an organized manner.

3 – The provisions in chapters II and III shall also apply to the other offences referred to in paragraph 1, article 1, of Law no. 36/94 of 29 September.

Article 7

Assets confiscation

1 - In case of conviction for an offence referred to in article 1, and for the purpose of assets confiscation to the State, it is considered as benefit from a criminal activity the difference between the value of the defendant's actual property and one that is consistent with his lawful income.

2 - For the purpose of the application of this Act, as the defendant's property one should consider all the assets:

- a) Owned by the defendant or under his control or to his benefit, as of his being held defendant or subsequently;
- b) Transferred to third parties for free or against a derisory instalment within the 5 previous years to his being held defendant;

c) Received by the defendant within the 5 previous years to his being held defendant, though their intended use remains indeterminate.

3 - Interest, profits and other benefits derived from assets under the conditions set out in article 111 of the Penal Code, are always considered as benefits from criminal activity.

Article 8

Procedure for assets confiscation

1 - At the moment of the indictment, the Public Prosecutor shall settle the amount to be confiscated to the State.

2 - If the settlement is not possible at the moment of the indictment, it may take place until the 30th day prior to the date of the first discussion and trial audience, and it shall be included in the proceedings themselves.

3 - Once settled, the amount may be changed within the time period provided for in the preceding paragraph, if it proves to be inaccurate later on.

4 - Once the settlement is received by the court, or the respective amendment, it shall immediately be reported to the defendant and to his defender.

Article 9

Evidence

1 - Without prejudice of consideration by the court, in general terms, of all evidence in the proceedings, the **defendant is entitled to prove the lawful origin of the assets** referred to in article 7, paragraph 2.

2 - For the purpose of the above-mentioned paragraph, any instrument of evidence valid under the Criminal Procedure is admissible.

3 - The assumption established in article 7, paragraph 1, shall rebut if the assets prove to:

a) Be derived from benefits of illicit origin;

b) Have been in the ownership of the defendant for at least 5 years prior to the moment he was held defendant;

c) Have been purchased by the defendant with income that was obtained in the time period referred to in the above-mentioned sub-paragraph.

4 - If the settlement of the confiscated amount is included in the indictment, the defence shall be presented in the pleadings. If it is subsequent to the indictment, the time limit for the defence is 20 days as of notification of the settlement.

5 - The evidence referred to in paragraphs 1 to 3 shall be presented along with the defence.

(b) Observations on the implementation of the article

Portugal's legal framework seems to be in line with the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 9

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

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

The protection of the rights of bona fide third parties is established by law in Article 178 (6) and (7) of the Code of Criminal Procedure and Article 110 (3) and Article 111(2) of the

Criminal Code.

Criminal Code

Article 110

Objects belonging to a third party

(...)

3 - If the objects consist of inscriptions, representations or records in paper, in any other means of audiovisual expression, belonging to a bona fide third party, confiscation shall not occur and restitution shall take place, after erasure of the inscriptions, representations or records integrating the typical illicit fact. Where this is not possible, the court shall order their destruction, with the right to compensation, according to civil law.

Article 111

Confiscation of benefits

(...)

2 - Confiscation by the State shall also apply, without prejudice to the rights of the plaintiff or of bona fide third parties, to things, rights or benefits that, through the typical illicit fact, have been directly purchased by the offender for himself or for others and represent property of any kind.

Code of Criminal Procedure

Article 178

Objects liable to and requirements for seizure

(...)

6. Any person who holds a title over any goods or rights seized may request to the Investigation Judge to modify the terms of, or revoke the seizure. The provisions of Article 68 (5) above, shall apply correspondingly.

7. Where the property rights over the objects seized are liable of being confiscated for the State and where such objects do not belong to the defendant, the judicial authority shall issue an order for the defendant to appear before that authority in order to hear him/her. The judicial authority shall do without the presence of the defendant when that presence is not possible.

(b) Observations on the implementation of the article

Portugal's legal framework seems to be in line with the provision under review.

Article 32 Protection of witnesses, experts and victims

Paragraph 1

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

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

Portugal approved Law no. 93/99, of 14 July governing the enforcement of measures on the protection of witnesses in criminal proceedings, amended by Law no. 42/2010 of 3 September thereby extending the situations in which the identity of the witness in criminal procedures is not disclosed. Experts are considered in this framework as witnesses under Portuguese law.

As said before, Law no. 93/99 governs the enforcement of measures on the protection of

witnesses in criminal proceedings where their lives, physical or mental integrity, freedom or property of a considerably high value are in danger due to their contribution to the collection of evidence of the facts which are subject to investigation. The protection could as well be extended to their relatives and other persons closed to the witnesses.

Article 1

Object

1. This Act governs the enforcement of measures on the protection of witnesses in criminal proceedings where their lives, physical or mental integrity, freedom or property of a considerably high value are in danger due to their contribution to the collection of evidence of the facts which are subject to investigation.
2. The measures stated in the previous paragraph may cover the witnesses' relatives and other persons in close contact with them.
3. This Act also provides for measures intended to collect, under the most satisfactory conditions, any testimonies or statements of specially vulnerable persons, namely by reason of age, even if the danger mentioned in paragraph 1 hereabove does not apply.
4. The measures laid down in this Act are extraordinary in nature, and they do not apply unless deemed necessary and adequate *in casu* to the protection of the persons involved and to the fulfilment of the purposes of the proceedings.
5. The cross-examination allowing a fair balance between the needs for combating crime and the right to a defense is hereby guaranteed.

CHAPTER IV

Security and special measures and programs

Article 20

Sporadic measures of security

1. Where significant grounds for security so justify and where the criminal offence requires the intervention of a three judge court or of a jury court, notwithstanding the enforcement of other protective measures laid down in this Act, the witness may benefit from sporadic measures of security, namely:
 - a) (...)
 - b) (...)
 - c) (...)
 - d) Benefiting from police protection extended to his relatives, to the person living in civil union with the witness or other persons in close contact with him/her;
 - e) (...)

Altogether, 59 people benefited from the protection programme. With regards to specific offenses of corruption, Portugal indicated that in the period 2003-2010, from the 18 files opened by the CPES (Special Security Programmes Commission), two individuals have been placed in the witnesses programme (one in 2004 and another one in 2008).

(b) Observations on the implementation of the article

Portugal's legal framework seems to be in line with the provision under review.

Article 32 Protection of witnesses, experts and victims

Subparagraph 2 (a)

2. *The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

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

As said before, Law no. 93/99 governs the enforcement of measures on the protection of witnesses in criminal proceedings where their lives, physical or mental integrity, freedom or property of a considerably high value are in danger due to their contribution to the collection of evidence of the facts which are subject to investigation. The protection could as well be extended to their relatives and other persons closed to the witnesses.

Law no. 93/99

Article 20

Sporadic measures of security

1. Where significant grounds for security so justify and where the criminal offence requires the intervention of a three judge court or of a jury court, notwithstanding the enforcement of other protective measures laid down in this Act, the witness may benefit from sporadic measures of security, namely the following:

- a) Mention in the proceedings of an address different from the one he uses or which does not coincide with the domicile locations provided by the civil law;
- b) Being granted transportation in a State vehicle for purposes of intervention in the procedural act;
- c) Being granted a room, eventually put under surveillance and security, located in the Court or the Police premises, to which he must displace himself and where he may stay without the presence of other intervenient in the proceedings;
- d) Benefiting from police protection extended to his relatives, to the person that lives with him in a situation similar to a spouse or to other persons in close contact with him;
- e) Benefiting from an inmate regimen which allows him to remain isolated from the others and to be transported in a separate vehicle;
- f) Alteration of the usual place of residence.

2. The measures laid down in the previous paragraph are ordered by the Public Prosecutor during the enquiry, either unofficially, upon the demand of the witness or his legal representative or upon proposal of the criminal police authorities. Subsequent to the enquiry, the said measures are ordered by the Judge presiding to the current phase of the proceeding, upon the request of the Public Prosecutor.

3. The judicial authority undertakes the necessary procedures to assess *in casu* from the need and the adequacy of the measure.

4. Every three months the judicial authority re-appreciates the decision, either maintaining or modifying it, or revoking the applied measures.

5. The police protection stated in paragraph 1, sub-paragraph d) here above shall generally be at the charge of a police entity which did not have a relevant intervention during the investigation.

6. Whenever police protection shall predictably be extended for over three months, the responsible police force may propose to the judicial authority the application of new safety measures in order to reduce the danger to the witness.

7. The measures foreseen in paragraph 1 may include rules of behaviour to be complied by the beneficiary, the intentional non compliance implicating the suspension of the applied measures.

8. The decision of altering, revoking and suspending the measures shall, safe in case of clear impossibility, be preceded by the hearing of the witness.

Article 21

Special program of security

Any witness, the respective spouse, ancestors, descendants, brothers and sisters, the person that lives with him in a situation similar to a spouse or any other persons in close contact with him, may benefit from a special program of security during the running of the proceeding or even after its closure, provided the following concurrent conditions occur:

- a) The testimony or statements concern the criminal offences laid down in article 16, subparagraph a);
- b) There is a serious danger to their lives, physical or psychical integrity or freedom;
- c) The testimony or the statement constitutes a contribution which is deemed, or has proved to be, essential to the ascertainment of the truth.

(b) Observations on the implementation of the article

Portugal's legal framework seems to be in line with the provision under review.

Article 32 Protection of witnesses, experts and victims

Subparagraph 2 (b)

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

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

Portugal approved Law no. 93/99, of 14 July 1999 governing the enforcement of measures on the protection of witnesses in criminal proceedings, amended by Law no. 42/2010, of 3 September 2000 thereby extending the situations in which the identity of the witness in criminal procedures is not disclosed.

Law no. 93/99

Article 13

Non-disclosure of identity

Where the witness's identity is to remain unrevealed, it is particularly incumbent of the judge presiding to the act to avoid asking any question likely to induce the witness to the indirect disclosure of his identity.

Article 14

Access to sound and image

1 - In case of the concealment of the witness's image and voice, the access to the undistorted sound and image is to be allowed in exclusive to the judge presiding to the act or the court, should the technical means available enable it.

2 - The autonomous and direct communication between both the judge presiding to the act and the escorting magistrate, as well as between the defendant and his counsel, shall be guaranteed in any circumstance.

Article 18

Supplementary proceedings of non-disclosure of identity

1. For purposes of decision on a request for non-disclosure of identity a supplementary proceeding of a confidential and urgent nature shall be separately prepared, to which only the Examining Magistrate and whoever he appoints for that purpose shall have access.
2. The Examining Magistrate shall be entrusted with the safekeeping and confidentiality of the supplementary proceeding.
3. The Examining Magistrate asks the Bar to appoint a lawyer with the proper profile to represent the defence's interests. The appointed lawyer shall only intervene in the supplementary proceeding. Unofficially or upon request the Examining Magistrate makes the investigation he deems indispensable to meet the requirements needed for the granting of such a measure.
4. Before rendering his decision the Examining Magistrate calls the Public Prosecutor and the representative for the defence for an oral debate under cross-examination on the grounds of the request.
5. The decision allowing the requested measure confers the witness a codified reference, by which he shall be referred afterwards in the proceeding. The reference is transmitted to the judicial authority with jurisdiction over the proceedings.
6. The defendant has the right to demand the hearing set out in paragraph 4 here above in his benefit, in case he assumes such a status by virtue of article 57 of the Criminal Procedure Code after the measure of non-disclosure of a witness's identity has been granted. Provisions of paragraphs 3 and 4 here above apply correspondently.

It is interesting to note that the file with the name of the witness is not kept in court, ensuring its anonymity during all stages of the proceedings.

(b) Observations on the implementation of the article

Portugal's legal framework seems to be in line with the provision under review.

(c) Successes and good practices

The file with the name of the witness is not kept in court, ensuring its anonymity during all stages of the proceedings. The non-retention by the Court of the name of the witness ensures anonymity during all stages of proceedings.

Article 32 Protection of witnesses, experts and victims

Paragraph 3

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

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

Portugal stated that the adoption of measures such as the measures set forth in paragraph 3 of Article 32 is ongoing. The negotiations for a bilateral agreement for witness's protection with other country have been initiated. The provisions of the draft agreement include the possibility for the relocation of persons.

However, a formal agreement is not needed when a relocation of a witness should be made, and some situation occurred in an informal basis under the principle of reciprocity.

There have been cases where such ad hoc agreements were concluded, for example, with Brazil for the purpose of relocation of protected persons.

(b) Observations on the implementation of the article

Portugal's legal framework seems to be in line with the provision under review.

Article 32 Protection of witnesses, experts and victims

Paragraph 4

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

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

Law no. 93/99, of 14 July also applies to victims insofar as they are witnesses, in accordance with the definition of witness set forth in paragraph a) of Article 2, which does not exclude this possibility.

Article 2
Definitions

For the purposes of this Law:

- a) Witness means any person who, notwithstanding his status towards the procedural law, is in possession of any information or knowledge necessary to the disclosure, apprehension or evaluation of facts subject to investigation and which are likely to represent a danger to that person or to others by virtue of paragraphs 1 and 2 of the previous article.

Portugal indicated that one victim has entered in a witness protection programme in 2004, and one victim has received physical protection in a witness protection programme.

(b) Observations on the implementation of the article

Portugal's legal framework seems to be in line with the provision under review.

Article 32 Protection of witnesses, experts and victims

Paragraph 5

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

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

Law no. 93/99, of 14 July also takes into consideration the views and concerns of victims that could be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of defence. That's for instance the case of measures foreseen in Articles 4, 5, 11, 13 or 14.

Article 4
Witnesses' concealment

1. The court may decide, either unofficially, upon the request of the Public Prosecutor, or **upon the demand of the defendant or of the civil party claiming damages**, that the testimony or the statement must be taken by means of either concealing the witness's image or distorting his voice, or both, instead of taking the form of a public procedural act or of a cross-examination, in order to avoid the witness's recognition.
2. The decision must be based upon facts or circumstances which reveal intimidation or a high risk of intimidation of the witness, and it shall also refer to the degree of concealment of image or distortion of voice.

Article 5 Teleconference

1. In case of offer of evidence relating to a crime to be judged by a three-judge court or by a jury court, whenever there are serious grounds to believe that the protection is necessary, the use of teleconference is admissible during the procedural acts mentioned in paragraph 1 of the previous article.
2. Teleconference can include the resort to distortion either of image or voice, or of both, with a view to avoid the witness's recognition.

Article 11 Questions

The questions to which the witness is required to answer during the collection of evidence are made at distance, and they shall observe the terms of the procedural law.

Article 13 Non-disclosure of identity

Where the witness's identity is to remain unrevealed, it is particularly incumbent of the judge presiding to the act to avoid asking any question likely to induce the witness to the indirect disclosure of his identity.

Article 14 Access to sound and image

1. In case of the concealment of the witness's image and voice, the access to the undistorted sound and image is to be allowed in exclusive to the judge presiding to the act or the court, should the technical means available enable it.
2. The autonomous and direct communication between both the judge presiding to the act and the escorting magistrate, as well as between the defendant and his counsel, shall be guaranteed in any circumstance.

Portugal indicated that no information is available regarding the number of victims who have presented their views and concerns at any stage of the criminal proceedings against offenders.

The victim may take part in the criminal proceedings in different situations/stands: as a victim, as a witness and as “assistant”.

The witnesses under Law no. 93/1999, which regulates the protection of witnesses can, for example, be heard at any stage of the criminal proceedings - investigation, inquiry and trial hearing, given that public acts in those and subject to the contradictory testimony of these witnesses due to the special protection measures set forth therein, *maxime* the possibility to give statements by teleconference, with image or voice distortion or both.

The victim, while injured or offended, may constitute as "assistant" as defined in the Code of Criminal Procedure as the "holder of the interests that the law especially intended to protect by incriminating, since older than 16 years" (article 68 (1) a)).

In this case the victim may exercise the rights that the Code of Criminal Procedure attaches to the "assistants", generically referred to in Articles 68 and 69:

- (i) intervene in the investigation and finding of facts (assessment procedures required to the judge and led by him on the merits of the decision of the Public Prosecution Service, aiming to close the investigation or to prosecute (cf. art. 286 (1)), providing evidence and requiring the due diligence that may be necessary and to know the orders issued on such initiatives;
- (ii) appeal against decisions that affect them, even if the prosecutor failed to do so; and
- (iii) during the trial hearing the assistant has the right to know the evidence and may require its production when it is not on the accusation made by of the prosecution, and also enjoys the right to the adversarial, participating in the interrogation and cross-examination of witnesses presented by him or submitted by any other subjects.

Victims, while "assistants" in a criminal procedure may also submit a claim for compensation founded in the practice of a crime in consequence of which they suffered damages of any kind, whether physical or patrimonial.

Article 82 of the Code of Criminal Procedure also notes (compensation of victims in special cases) that if an application for compensation was not submitted in the criminal proceedings or separately, in accordance with Articles 72 and 77 thereof, the court may specify an amount by way of compensation for losses suffered when special requirements of protection to the victim so requires it.

Although the legislation adequately ensures the interests of the victims of crime, including their participation in criminal proceedings, we believe that implementation of the new EU Directive - Directive 2012/29/EU, of 25 October, establishing minimum standards on the rights, support and protection of victims of crime - will, when necessary, allow to update the legislation in force in Portugal in this respect.

The victim participates in the proceedings as witness. If the victim is not a witness, he/she can participate as civil party to the proceedings.

(b) Observations on the implementation of the article

Portugal's legal framework seems to be in line with the provision under review.

Article 33 Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

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

The protection against unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences establish in accordance with UNCAC is foreseen in different legal instruments.

Law no. 19/2008 approves measures to fight against corruption and amends several laws in this matter. The relevant measure for the matter foreseen in Article 33 of UNCAC is contained in Article 4, which states:

Article 4

Guarantees of complainants (whistleblowers)

- 1 - Workers of the Public Administration and of State owned companies, who report the commission of offences that they have knowledge of in the exercise of their duties or because of them cannot, in any form, including their non voluntary transfer, be harmed.
- 2 - It is presumed abusive, until proven otherwise, the application of disciplinary sanction to the workers referred in the preceding paragraph, when taking place within one year of their complaint.
- 3 - The workers referred to in the preceding paragraphs are entitled to:
 - a) Anonymity, except for the person in charge of investigation, until the deduction of charges;
 - b) Transfer on request, without right of refusal, after the deduction of charges.

Law no.25/2008, of 5 June provides as well for the protection of persons who report in good faith (Article 20).

Article 20

Disclosure of information protection

- 1- The disclosure in good faith by the entities covered by this Law, in compliance with the obligations laid down in Articles 16, 17 and 18, shall not constitute a breach of any restriction on disclosure of information, imposed by any legislative, regulatory or contractual provision, and shall not involve the persons providing it in liability of any kind.
- 2- Any person, who even due to mere negligence, reveals or favours the discovery of the identity of the person that provided the information, in accordance with the Articles referred to in the foregoing paragraph, shall be punishable by deprivation of liberty for a maximum of three years or by a fine.

In the private sector the Labor Law applies and the workers who denounce the commission of a crime cannot as well be subject to any undue measure, namely removal, disciplinary measures or reassignment. Moreover, the ratification of the Civil Law Convention of Corruption, of the Council of Europe, will provide the legal basis to amend the legislation in force and to include a provision similar to Article 9 of the mentioned legal instrument: *«Each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities».*

The ratification of the Civil Law Convention of Corruption is ongoing. In addition, in the framework of the Council of Europe, under the European Committee on Legal Cooperation of the Council a draft Recommendation on whistleblowers was submitted to the State members for discussion which may also be a good legal basis for the amendments in domestic legislation.

(b) Observations on the implementation of the article

Portugal's legal framework seems to provide adequate protection, provided for in Article 33 of UNCAC, to only employees of the public administration and of state owned companies, though such protection does not explicitly extend to private sector employees.

Article 34 Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

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

Corruption as well other economic and financial crimes are relevant factors in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

For instance, according to Article 294 and following of the Civil Code, according to Article 294 and seq of the Civil Code all acts or contracts contrary to the law - that is, in violation of the law -, are considered void and therefore unable to produce any legal effect. The effects of the declaration of void of a contract are retroactive and the object of the contract should be restituted or, where such restitution could not be made, the correspondent value. Based on that, it is possible to prevent or avoid attempts to get rid of assets or rights derived from criminal activities including corruption.

In the framework of judicial proceedings the Criminal Judge can determine the annulment of a contract, withdraw a concession whenever it is proved that such contract or concession or other similar instrument therein are linked to corruption.

Supreme Court of Justice (Supremo Tribunal de Justiça) – Case 07A1839 - 5 July 2007

I – Once a deal is declared null and void, the parties, not being able to make a restitution in kind, are obliged to refund the equivalent value.

Supreme Court of Justice (Supremo Tribunal de Justiça) – Case 4/95 - 28 March 1995

When the court has unofficial knowledge of the invalidity of the transaction evoked on the assumption of its validity and whether the necessary material facts have been established in the suit, should the party be ordered to pay restitution of the amount received on the basis of paragraph 1 of Article 289 of the Civil Code.

Supreme Court of Justice (Supremo Tribunal de Justiça) – 9 May 1996

Declared in sentence under Article 289 (1) of the Civil Code, the nullity of the contract of purchase and sale of the traded buildings, there shall be simultaneous restitution the buildings and of the amounts paid to the plaintiff company and to the defendants buyers, respectively.

Court of Auditors (Tribunal de Contas) – Case 69/2011 – 28 November 2011

The pursuit of private interests rather than the public interest, by any body or administrative agent in the exercise of their functions, constitutes corruption, and as such carries a range of penalties, either administrative or criminal, for those who do so;

DECISION – based on the said grounds, and under subparagraphs a), b) and c) 3 of article 44 of Law nr. 98/97 of August 26, the Judges of the 1st Section agree in refusing a visa to the draft of the contract.

Moreover, the new Code for Public Procurement, approved by Decree-Law no. 18/2008 of 29 January 2008, includes a “model declaration” as one of the requirements that a contestant must fulfil when applying for a contract. The natural or legal person (including the directors or other representatives) should state that he/she have not been convicted for number of offences including money laundering and corruption. False declarations are foreseen and punished, among others with the exclusion of the candidacy and with the application of a misdemeanour.

Law no. 98/97, of 26 August (Organisation and Procedural Law of the Court of Auditors) - *A priori* control

Article 44

Prior approval finality. Legal basis for the prior approval refusal

- 1- A priori control aims to verify whether the acts, contracts or other instruments, which generate expenditure or represent direct or indirect financial liability, are according to the law and whether the respective duties are covered by the suitable budgetary appropriation.
- 2- For instruments which generate public debt, a priori control aims to verify, namely, the observance of the limits and sub-limits of indebtedness and of the respective purposes, established by the Assembly of the Republic.
- 3- Prior approval refusal must be founded on the discordance of the mentioned acts, contracts or any other instruments with the law which implies:
 - a) Nullity;
 - b) Duties without being covered by the suitable budgetary appropriation, or direct breach of financial norms;
 - c) Illegality which alters or could alter the respective financial result.
- 4- In the procedures foreseen by paragraph c) of the previous point, the Court, on the basis of a founded decision, may grant the prior approval and make recommendations to the services and organisation in order to overcome or avoid the future occurrence of such illegalities.

(b) Observations on the implementation of the article

According to the additional answer of the Portuguese authorities, in the framework of judicial proceedings the Criminal Judge can determine the annulment of a contract, withdraw a concession whenever it is proved that such contract or concession or other similar instrument therein are linked to corruption.

The Portuguese authorities also mention in their additional information articles 208 and 208 of the Civil Code regarding when a contract is void and the effects of the declaration of voiding, but they do not provide by themselves enough legal basis to assert the possibility to annul or rescind a contract in the framework of a criminal procedure, specifically a judgment of conviction.

The Portuguese legislation therefore allows for the possibility to annul or rescind a contract in the framework of a criminal procedure, specifically in the framework of the conviction decided by the court; however, no cases have been provided to the reviewers to establish the actual implementation.

This provision of the Convention seems to be implemented.

Article 35 Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

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

According to the Constitution of the Portuguese Republic and to the Criminal Code (Articles 113, 114 and 117 as well Article 130), all the persons who have suffered a damage as result of an act of corruption or due to any other offence have the right to initiate legal proceedings against the offenders in order to obtain compensation.

It should be clarified that the offences of corruption are considered under the domestic principles of Criminal Law as «public offences» meaning that it is mandatory to the Public Prosecution Service to open an investigation and to prosecute an individual or a legal person for the commission of an offence of corruption.

Any natural or legal person suffering a damage derived from the corruption act could intervene in the criminal proceeding as «assistente» (Article 68 to 70 of the Code of Criminal Procedure) and has the right to require a compensation for that damage.

This procedural possibility is regulated under Articles 71 to 84 of the same Code. Therefore, the person who suffered a damage could submit a request for civil compensation within the criminal proceeding (Public Prosecutor are the only responsible for the criminal proceedings), as foreseen in Article 71.

Article 72 of the same Code regulates the situation where the possibility for the requesting of a civil compensation before a civil court (separated from the criminal court) is admissible.

Within the Portuguese legal system, a claim for damages based on the commission of an offence is brought in the respective criminal proceeding and may only be brought separately, before the civil court, in the cases foreseen in the law. This principle set forth in Criminal Procedure law is known as “the principle of adherence”.

Law no. 104/2009 established a legal regime for the compensation of victims of violent crimes and domestic violence. It is not applicable in the case of the acts foreseen in the UNCAC. However that law is an example of “special legislation” according to which the State can ensure compensation in consequence of criminally typified facts.

Criminal Code

TITLE IV COMPLAINT AND PRIVATE ACCUSATION

Article 113

Persons entitled to right to complaint

1. When the criminal process depends on complaint, the offended has legitimacy to make it, except when it is contrary to the law, and he is as such entitled to the interests that the law endeavors to protect through incrimination.

[...]

5. When the right of complaint cannot be exerted because the only person entitled to make it would be the agent of the crime, the Public Prosecutor may begin legal proceedings if special reasons of public interest demand it.

6. When the criminal proceedings depend on the complaint, in cases prescribed by law, the Public Prosecutor may initiate legal proceedings when the interest of the victim demands it.

Article 114

The extension of the effects of complaint

The presentment of complaint against one of the participants in the crime turns the criminal proceedings extensive to the remaining participants.

Article 117

Private accusation

The prescription in the articles under this title is correspondingly applicable in cases when the criminal proceedings depend on private accusation.

Article 130

Compensation for the injured complainant

1. Special legislation fixes the conditions in which the State can ensure compensation in consequence of criminally typified facts, whenever they cannot be done by the agent.

2. In cases not covered by the legislation referred to in the previous number, the court may grant the complainant, on his request and **to the limit of the damage he has suffered**, the objects declared to have been lost, the product or the price of their sale, or the value corresponding to the advantages resulting from the crime, paid to the State, or transferred in its favour by force of the articles 109 and 110.

3. Leaving out the cases prescribed in the legislation referred to in number one, if the damage caused by the crime is so serious as to have left the complainant without a means of living, and it is to believe that the agent will not make amends to compensate him, the court will grant the complainant, on his request, the amount of the fine, wholly or partially, to the limit of the damage.

4. The State becomes subrogate regarding the rights of the injured for the compensation to the amount it has fulfilled.

(b) Observations on the implementation of the article

According to the Portuguese legislation, any person who has suffered damage as result of an act of corruption or due to any other offence has the right to initiate legal proceedings against the offender in order to obtain compensation. That person could also submit a request for civil compensation within criminal proceedings.

Portugal's legal framework seems to be in line with the provision under review.

Article 36 Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

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

On the preventive and repressive side of corruption the Criminal Police has, within its structure, a special body devoted to this type of crime and other economic and financial crimes - the National Unit Against Corruption (UNCC) - which is the law enforcement body competent for the investigation of the offences of corruption in Portugal.

All corruption offences, including corruption in international transactions, are considered among others an offence of priority investigation, according to the general guidance sent by the Attorney General of the Portuguese Republic.

At the same time and according to the legislation in force - Statute of the Public Prosecution Service - it is incumbent to the Central Department for Criminal Investigation and Prosecution (DCIAP) to direct the inquiry and to carry out the prosecution of offences of corruption whenever the criminal activity occurs in counties (*comarcas*) appertaining to different judicial districts or following an order of the Attorney General whenever, considering the especially serious crimes, the particular complexity or the extent of the criminal activity throughout the national territory or extraterritorially justify a centralized direction of the investigations. In mentioned situations, the other departments of the Public Prosecution Service (DIAPs – Departments for Criminal Investigation and Prosecution) should promptly send to DCIAP the files about suspicions of corruption offences.

Law no. 60/98, of 28 August, approving the Statute of the Public Prosecution Service

SECTION VI

The Central Department for Criminal Investigation and Prosecution

Article 46

Definition and Composition

1. The Central Department for Criminal Investigation and Prosecution is a body which coordinates and directs the investigation and prevention of the violent, highly organized or particularly complex crime.
2. The Central Department for Criminal Investigation and Prosecution is composed of a Deputy Attorney General, who leads the department, and Attorney for the Republic, the number of whom appears in a schedule approved decision of the Minister of Justice, after consultation with the Superior Council of the Public Prosecution Service.

Article 47

Powers

1. The Central Department for Criminal Investigation and Prosecution is responsible for the coordination and the direction of the investigation of the following crimes:

- a) Crimes against peace and humanity;
- b) Terrorist organizations and terrorism;
- c) Crimes against national security, except for electoral crimes; d) Trafficking in narcotics, psychotropic substances and precursors, except in situations of direct distribution to the consumer, and criminal association in view of trafficking in drugs;
- e) Money laundering;
- f) Corruption, embezzlement and economic subterfuge in business;
- g) Fraudulent insolvency;
- h) Prejudicial management in economic units of the public sector;
- i) Fraudulent receipt or embezzlement of subsidies, grants or credit;
- j) Economic or financial breaches committed as part of an organised crime, namely using information technology.
- l) Economic or financial breaches on an international or transnational level.

2. The functions of coordination of the Central Department for Criminal Investigation and Prosecution include:

- a) The study and implementation of ways to work together with other departments and services, namely of criminal police, with a view to reinforcing the simplification, rationality and efficiency of the proceedings;
- b) The carrying out of studies, together with the Departments for Criminal Investigation and Prosecution seated at the judicial districts, on the nature, the volume and the tendencies of the evolution of the criminal activity, as well as on the results achieved as regards the prevention, the detection and the control.

3. The Central Department for Criminal Investigation and Prosecution shall be responsible for the direction of inquiries and the carrying out of the prosecution:

- a) In what concerns the crimes falling within paragraph 1 hereabove, when the criminal activity occurs in areas belonging to different judicial districts;
- b) Following an order of the Attorney General, whenever - considering the specially serious crimes - the particular complexity or the extent of the criminal activity throughout the territory justify a concentrated direction of the investigations.

4. The Central Department for Criminal Investigation and Prosecution is responsible for the implementation of actions of prevention provided for in law, concerning the following crimes:

- a) Money laundering;
- b) Corruption, embezzlement and economic subterfuge in business;
- c) Prejudicial management in economic units of the public sector;
- d) Fraudulent receipt or embezzlement of subsidies, grants or credit;
- e) Economic or financial breaches committed as part of an organized crime, namely using information technology.
- f) Economic or financial breaches on an international or transnational level.

Regarding the independence of the Public prosecutors, according to Article 203 of the Constitution of the Portuguese Republic the courts - which include judges and public prosecutors - are independent and only subject to the law.

The Public Prosecutors are the only responsible for the criminal action, as stated in the Code of Criminal Procedure, meaning that they are the responsible for the criminal investigation and prosecution of all crimes. However, the criminal investigation could be delegated in the Criminal Police and other police forces (for minor offences) which perform its tasks under the direction and supervision of the Public prosecutor in charge with the criminal file. The independence of the police forces is granted due to the fact that no interference is allowed within its investigative activities, depending, on the operational point of view of the Public Prosecution Service. In other words, the criminal police cannot be subject to influences or undue pressures from the legislative or executive power, according to the principle of separation of the responsibilities.

Constitution of the Portuguese Republic

Article 203

Independence

The courts are independent and subject only to the law.

Article 219

Functions and statute

(...)

2. The Public Prosecutors' Office shall have its own statute and autonomy, as laid down by law.

4. The agents (prosecutors) of the Public Prosecutors' Office are accountable judicial officers, shall form part of and be subject to a hierarchy, and may not be transferred, suspended, retired or removed from office except in the cases provided for by law.

5. The competences to appoint, assign, transfer and promote agents of the Public Prosecutors' Office and exercise discipline over them pertains to the Public Prosecutors Office.

The word «courts» used in Article 203 of the Constitution of the Portuguese Republic should be understood in a broad sense, including the Judges and Public Prosecutors.

Law no. 60/98, of 28 August, approving the Statute of the Public Prosecution Service

SECTION VI

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Definition and Composition

1. The Central Department for Criminal Investigation and Prosecution is a body which coordinates and directs the investigation and prevention of the violent, highly organized or particularly complex crime.

2. The Central Department for Investigation and Prosecution is composed of a Deputy Attorney General, who leads the department, and Attorney for the Republic, the number of whom appears in a schedule approved decision of the Minister of Justice, after consultation with the Superior Council of the Public Prosecution Service.

Article 47

Powers

1. The Central Department for Investigation and Prosecution is responsible for the coordination and the direction of the investigation of the following crimes:

- a) Crimes against peace and humanity;
- b) Terrorist organizations and terrorism;

- c) Crimes against national security, except for electoral crimes; d) Trafficking in narcotics, psychotropic substances and precursors, except in situations of direct distribution to the consumer, and criminal association in view of trafficking in drugs;
 - e) Money laundering;
 - f) Corruption, embezzlement and economic subterfuge in business;
 - g) Fraudulent insolvency;
 - h) Prejudicial management in economic units of the public sector;
 - i) Fraudulent receipt or embezzlement of subsidies, grants or credit;
 - j) Economic or financial breaches committed as part of an organised crime, namely using information technology.
 - l) Economic or financial breaches on an international or transnational level.
2. The functions of coordination of the Central Department of Investigation and Prosecution include:
- a) The study and implementation of ways to work together with other departments and services, namely of criminal police, with a view to reinforcing the simplification, rationality and efficiency of the proceedings;
 - b) The carrying out of studies, together with the Departments for Criminal Investigation and Prosecution seated at the judicial districts, on the nature, the volume and the tendencies of the evolution of the criminal activity, as well as on the results achieved as regards the prevention, the detection and the control.
3. The Central Department for Criminal Investigation and Prosecution shall be responsible for the direction of inquiries and the carrying out of the prosecution:
- a) In what concerns the crimes falling within paragraph 1 hereabove, when the criminal activity occurs in areas belonging to different judicial districts;
 - b) Following an order of the Attorney General, whenever - considering the specially serious crimes - the particular complexity or the extent of the criminal activity throughout the territory justify a concentrated direction of the investigations.
4. The Central Department for Criminal Investigation and Prosecution is responsible for the implementation of actions of prevention provided for in law, concerning the following crimes:
- a) Money laundering;
 - b) Corruption, embezzlement and economic subterfuge in business;
 - c) Prejudicial management in economic units of the public sector;
 - d) Fraudulent receipt or embezzlement of subsidies, grants or credit;
 - e) Economic or financial breaches committed as part of an organized crime, namely using information technology.
 - f) Economic or financial breaches on an international or transnational level.

(b) Observations on the implementation of the article

The Criminal Police/National Unit Against Corruption (PJ/UNCC) was the special law enforcement body competent for the investigation of corruption offences in Portugal, acting under the direction of the Public Prosecutor in charge of the case.

According to the Statute of the Public Prosecution, the Central Department for Criminal Investigation and Prosecution (DCIAP) is charged with directing inquiries and carrying out the prosecution of corruption offences whenever the criminal activity occurs in counties (*comarcas*) belonging to different judicial districts. The DCIAP is also competent when the Attorney General considers that a centralized direction of the investigation is required, taking into consideration the seriousness of the crime, the particular complexity or the extent of the criminal activity throughout the national territory or extraterritorially. In such situations, the other departments of the Public Prosecution Service (DIAPs – Departments for Criminal

Investigation and Prosecution) should promptly send to DCIAP files about suspicions of corruption offences. DCIAP is also competent to investigate corruption in international transactions.

According to Article 203 of the Constitution, the courts - which include judges and public prosecutors - are independent and only subject to the law. As for the Criminal Police, it cannot be subject to influences or undue pressures from the legislative or executive power, according to the principle of separation of the responsibilities.

Portugal's legal framework seems to be in line with the provision under review. However no information has been provided regarding the resources of the competent authorities.

Competent authorities are encouraged to further continue to explore the possibility to institute, within the judicial power, specialized judges in the field of corruption/economic and financial crimes, as is already the case with the office of the Attorney General or the Criminal Police. Portuguese authorities are also encouraged to consider the possibility of elaborating a risk management plan on corruption within the public sector.

Article 37 Cooperation with law enforcement authorities

Paragraph 1 and 2

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

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

Regarding the cooperation with law enforcement authorities, the Criminal Code foresees general principles in Articles 72 to 74 which could be applicable to all offenders when the court (the Criminal Judge) will decide the penalty for the commission of an offence. According to the mentioned Articles, the applicable penalties could be mitigated under certain conditions.

Other provisions of the same Code, for instance Article 374-B (related to active and passive corruption and the undue receiving of advantage offences, as added by Law no. 32/2010, of 2 September) and Article 299 (4), specifically foreseen situations of exception or mitigation of penalty.

Criminal Code **Article 72** Special mitigation of penalty

1- The court specially mitigates the penalty, apart from the cases expressly prescribed in the law, whenever there are circumstances previous or posterior to the crime, or contemporary to it, that diminishes the unlawfulness of the act, the guilt of the agent or the necessity of the penalty, in an accentuated manner.

2- For the purpose of the prescribed in the above number, the following circumstances will be considered, among others:

- a) that the agent had acted under the influence of a serious threat, under the influence of someone he depends on, or to whom he owes obedience;
- b) that the agent's conduct had been determined by honourable motive, by strong solicitation or temptation from the victim himself, or unjust provocation or undeserved offence;
- c) that there had been demonstrative acts of the agent's sincere repentance, namely reparation of the damages up to where it had been possible for him;
- d) that a long time had elapsed over the perpetration of the crime, the agent maintaining good conduct.

3- It may be taken into account only once the circumstance that, on its own or jointly with other circumstances, gives room simultaneously to a mitigation especially prescribed in the law and to the one prescribed under this article.

Article 73

Special mitigation terms

1- Whenever the special mitigation of the penalty takes place, the following occurs relatively to the limits of the applicable penalty:

- a) The maximum limit of the imprisonment penalty is reduced by one third;
- b) The minimum limit of the imprisonment penalty is reduced to one fifth if it is equal or superior to 3 years, and to the legal minimum if it is inferior;
- c) The maximum limit of the fine penalty is reduced by one third and the minimum limit to the legal minimum;
- d) If the maximum limit of the imprisonment penalty is not superior to 3 years, it may be replaced by a fine, inside the general limits.

2- The specially mitigated penalty that has been concretely fixed is susceptible of replacement in general terms, including suspension.

Article 374-B

Exemption or mitigation of penalty

1 - The penalty is not applied if the offender:

- a) Has denounced the crime, within 30 days, at the maximum, after the commission of the act and always before the criminal proceeding commences;
- b) Prior to the commission of the act, voluntarily refuses the offer or promise that he had accepted, or if he returns the advantage, or in the case of tangible property, its value; or
- c) Before the commission of the act, he withdraws the promise or refuses the offer of the advantage or requests that it be returned.

2 - The penalty is specially mitigated whenever the offender:

- a) Gives concrete assistance in the collection of decisive evidence leading to the identification or arrest of other persons responsible, up until the trial hearing, at first instance; or
- b) Has, directly or through a third person, committed the act at the request of a public official."

Article 368-A

Laundering

1 - For the purposes of the following paragraphs, property considered to be the proceeds of crime is property which derives from unlawful acts such as living on earnings of prostitution, child sexual abuse or sexual abuse of dependant minors, extortion, illegal trafficking of drugs and psychotropic substances, arms trafficking, trafficking in human organs or tissues, trafficking in protected species, tax fraud, trafficking of influences, corruption and other offences referred to in Article 1(1) of the Law no. 36/94 of 29 September, as well as the property obtained through the

unlawful conduct, defined as such under the law and punishable by a minimum term of imprisonment exceeding six months or by a maximum term of imprisonment exceeding five years.

2 - A person who converts, transfers, assists or facilitates, whether directly or indirectly, any operation of conversion or transfer of proceeds, obtained by that person or others, for the purpose of disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions is punished by imprisonment for a term between two and twelve years.

3 - The same applies when the person conceals or disguises the true nature, source, location, disposition, movement, rights with respect to, or ownership of proceeds.

4 - The offences laid down in paragraphs 2 and 3 are punished even if the acts which constitute the predicate offence have been committed outside the national territory, or if the place where the offence was committed or the identity of the offenders remain unknown.

5 to 10 - (...)

(b) Observations on the implementation of the article

Article 374-B of the Criminal Code considers both the non application of the penalty and the mitigation of the penalty with regards to the offence of bribery. With regards to the offence of money laundering, Article 368-A considers the possibility of mitigation.

The review team invites Portugal to consider providing or granting immunity from prosecution to a person who cooperates in the investigation or prosecution of UNCAC offences in order to encourage those persons to supply information useful to the authorities.

Article 37 Cooperation with law enforcement authorities

Paragraph 3

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

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

The granting of immunity from prosecution to a person (which participates as well in the commission of such offence) who provides substantial cooperation in the investigation or prosecution of an offence is not foreseen in the Portuguese criminal law.

(b) Observations on the implementation of the article

Portugal has not implemented this provision. The experts take note, however, of the non mandatory nature of the provision.

Article 37 Cooperation with law enforcement authorities

Paragraph 4

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

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

Portugal referred to its reply regarding witnesses.

The cooperation of defendants/offenders could be rewarded in accordance to the previous provisions related to the determination of penalties applicable to offenders. As said before, in corruption cases, the exemption or mitigation of the penalties could be applicable by the courts.

(b) Observations on the implementation of the article

The reviewing experts referred to their comments made with respect to the national implementation of UNCAC article 32.

Article 37 Cooperation with law enforcement authorities

Paragraph 5

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

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

The possibility to entering into agreements or arrangements concerning the potential provision by other Member State, of the treatment set forth in paragraphs 2 and 3 of Article 37 was not considered by the time being by Portugal.

Usually, the application of Criminal Law, namely the mitigation of the punishment is under the competence of the States and could not be decided by agreement.

This provision is not binding and the principle of legality is applicable as well.

(b) Observations on the implementation of the article

Portugal has not implemented this provision. The experts note, however, its non mandatory nature.

Article 38 Cooperation between national authorities

Subparagraph (a)

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

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

Pursuant to Article 242 of the Code of Criminal Procedure, all public officials, as defined in Article 2 (a) of UNCAC have the legal duty to report all criminal offences that they acknowledge in the performing of or due to their duties.

A central bank accounts' database in the Central Bank of Portugal, accessible to all prosecutors and judges, centralizes information from all banks on financial transactions; includes the name of persons with access to the account, history of the account, all information about transactions, etc.

Code of Criminal Procedure

Article 242

Mandatory denunciation

1. Denunciation is mandatory, even where the offenders are unknown:
 - a) for police authorities, in respect of all crimes they become aware of;
 - b) for public officials, as defined in Article 386 of the Criminal Code, in respect of crimes that come to their knowledge in the performance their duties and because of such duties.
2. Where different persons are all under a duty to denounce the same crime, the circumstance that one of them reports the crime, discharges the others from that duty.
3. When the denunciation is related to crimes which prosecution depend on complaint or private denunciation, this denunciation only leads to a criminal inquiry if the complaint is made within the time limit foreseen in the law.

(b) Observations on the implementation of the article

Portugal's legal framework seems to be in line with the provision under review.

(c) Successes and good practices

The experts note with interest the Integrated System of Criminal Data within the Criminal Police allowing criminal information to be accessed by the DCIAP and public prosecutors.

Article 38 Cooperation between national authorities

Subparagraph (b)

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

- (b) Providing, upon request, to the latter authorities all necessary information.*

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

In the framework of the duty of mandatory denunciation and other related provisions of the

Code of Criminal Procedure and according to the general duty to cooperate with law enforcement authorities and with the judiciary, public authorities and public officials should provide all information available related to the commission of an offence.

Regarding the officials:

The collaboration and cooperation between the judiciary and the law enforcement authorities is a principle foreseen in the Code of Criminal Procedure. The Criminal Police and other police forces (for minor offences) perform its tasks under the direction and supervision of the Public Prosecutor in charge with the criminal file which means that the collaboration and cooperation should be full. They should also inform the Public Prosecutor about any investigation they are carrying out or about evidences that they gather in the course of its activities.

In addition Article 10 of the Law no. 49/2008 on the Organization of the Criminal Investigation establishes the duty of cooperation between the Public prosecutors and the police forces charged of the criminal investigations. Pursuant to this article, “the criminal police forces shall mutually cooperate in the exercise of their attributions”.

Regarding the cooperation between the public authorities and the public officials, Article 242 of the Code of Criminal Procedure establishes the mandatory denunciation by mentioned public officials in relation to the crimes that come to their knowledge in the performance their duties and because of such duties. The investigative and the prosecution authorities are empowered to request all the information needed in the framework of a criminal investigation and the public official and public authorities should comply (upon request by its initiative) or with the rules set forth in the Code of Criminal Procedure related to the acquisition of criminal evidence.

A data base exists in the Criminal Police where the criminal information could be accessed by the DCIAP - Central Department for Criminal Investigation and Prosecution as well by Public Prosecutors, the so-called SIIC - Integrated System of Criminal Data.

Other examples of cooperation between authorities could be found in Law no. 73/2009 which establishes the conditions and procedures for the exchange of information between criminal police forces.

As to the relation between judiciary authorities and police forces, Article 2 of the Law no. 49/2008 clearly states that the police forces act under the direction of the judicial authorities and shall immediately communicate to the Public Prosecutor whenever they have knowledge of an offence being committed whether they have direct knowledge or indirect knowledge of that offence.

(b) Observations on the implementation of the article

Portugal’s legal framework seems to be in line with the provision under review.

(c) Successes and good practices

The experts note with interest the central bank accounts’ database in the Central Bank of Portugal, accessible to all prosecutors and judges, that centralizes information from all banks

on financial transactions, name of persons with access to the account, history of the account, all information about transactions, etc.

Article 39 Cooperation between national authorities and the private sector

Paragraph 1

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

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

Besides the awareness raising provided to the public sector regarding some crimes, including corruption and money laundering, the Portuguese authorities responsible for the criminal investigation (Criminal Police) and prosecution (DCIAP) promote regularly working meetings and provide training to the financial entities namely in the field of money laundering and predicates offences, particularly corruption.

Every year, several training courses on the subject of the UNCAC – prevention and fight against corruption - take place directed at public officials, police forces, prosecutors and judges.

Furthermore, seminars on the subject are organized by different entities and the private sector is invited to participate in them including as speakers.

The Portuguese State has, in the scope of economical and financial crime prevention, an added responsibility expressed in the law as regards financial institutions that, with the exception of the Central Bank, are private sector entities.

Thus, in order to fulfil this obligation, the State organizes special courses for all entities that are in a privilege position to detect illicit acts identified in this Convention, such as money laundering and corruption.

There are also seminars on economical-financial crime organized by different professions such as the Bar Association.

Regarding joint conferences, seminars and other forms of collaboration, some examples were provided. For instance, the Criminal Police School has provided in 2010 specific training on confiscation of proceeds from crime and recovery of assets for criminal investigation officers. The training was devoted to substantial issues (Articles 109 and 111 of the Criminal Code), procedural questions (Article 178 and others of the Code of Criminal Procedure) and executorial matters (Law no. 88/2008 on the Execution of Confiscation Orders) as well as a comparative study of European systems, including the “CARIN network”.

Furthermore, the Financial Intelligence Unit (FIU) has disseminated information on typologies, methods of action, and practical cases relating to economic crime, including corruption, and has thus increased its training as well as training provided to several banks related to the prevention of money laundering and terrorism financing and related offences

and the way to report suspicious transactions. The bi-annual workshop between the FIU, the Public Prosecution and the financial sector has been held in Lisbon in November 2010.

The Criminal Police School carried out a “theme-week” on corruption and related issues in April 2010 for the law enforcement and judiciary authorities.

Several members of the Criminal Police have participated in international meetings and conferences (in particular the Council of Europe and the EU) between 2008 and 2010.

The Judicial Training Centre (CEJ), which is responsible for the training of judges and prosecutors, open to public officials and representatives of the private sector, has carried out a number of training activities since 2008, for example on organized crime and assets from such crime (Rome, October 2008) and on judicial cooperation (Lisbon, February 2010). The CEJ was also involved in a training module on asset recovery and confiscation of proceeds from corruption in March 2010. Corruption is included in the CEJ annual training programmes.

An international workshop about corruption in international transactions has been organized in Lisbon last December 2010 attended by representatives of public and private entities and especially representatives of Portuguese exporting companies and small and medium companies, in order to raise awareness.

(b) Observations on the implementation of the article

The Portuguese authorities responsible for criminal investigation (Criminal Police) and prosecution (DCIAP), as well as the FIU, provide awareness raising to the public sector on serious crimes, such as corruption and money laundering. They also hold working meetings and provide training to financial entities in the field of money laundering and predicate offences, with particular emphasis on corruption.

Portugal’s legal framework seems to be in line with the provision under review.

Competent authorities are encouraged to continue developing joint projects between state authorities in charge of the prevention and fight against corruption and the civil society, including non-governmental organizations (NGOs), universities, etc.

(c) Successes and good practices

The experts note with interest the work conducted between State and NGO such as the project of case law analysis launched between DIAP and the NGO Transparency and Integrity, or project on monitoring campaign cost of political parties during election campaigns. (see recommendation).

Article 39 Cooperation between national authorities and the private sector

Paragraph 2

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

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

In the last years Portugal promoted several actions in order to raise awareness about crime prevention and to encourage its citizens and other persons with a habitual residence in the national territory to report the commission of crimes, including the crimes established in accordance with UNCAC.

As an example, an itinerant exhibition about prevention of corruption was organized, visiting all the major cities of the country, from north to south and the islands of Madeira and Azores. The Ministry of Justice published in 2007 a «Guide for the prevention of corruption» where the examples of the different types of corruption and related crimes are included, as well the duty to report crimes, the way how such crimes could be communicated and the useful information (address, contacts) about law enforcement and public prosecution services, in order to facilitate the reporting.

Moreover, a special mechanism was created in order to facilitate the reporting of corruption by any person to prosecuting authorities. For that effect, the Attorney General's Office created an electronic tool in which the person reporting the alleged offence must describe the facts, insert the dates, identify the suspect and the entities involved and explain how that information reached his/her knowledge. The person who reports the acts shall have his/her own password to access his/her communication and shall have access to its investigation. This tool is available in <https://simp.pgr.pt/dciap/denuncias/> . The identity of the person that reports the acts is protected. Neither the experts nor the public in general have access to the number of reports made through the Attorney General's website. The reports are confidential and could lead or not to the opening of a criminal proceeding. A telephone line was opened as well as to denounce acts of corruption. 8 investigations were launched on the basis of information received through these channels. The denunciation can be anonymous.

Figures on criminal cases (convictions, trials, etc.) are sent directly by the courts to an electronic database maintained by the statistics department of the Ministry of Justice. This system allows users to receive immediate updates on statistics. Most data can be fully and freely accessed by the public, whereas others are password-protected

(b) Observations on the implementation of the article

In recent years, Portugal promoted several actions in order to raise awareness about crime prevention and to encourage its citizens and other persons with a habitual residence in the national territory to report the commission of crimes, including the crimes established in accordance with UNCAC. An electronic tool was created to facilitate the reporting of corruption by any person to prosecuting authorities.

Portugal's legal framework seems to be in line with the provision under review.

(c) Successes and good practices

A telephone line as well as an online form was open to the public to denounce acts of corruption. Eight investigations were launched on the basis of information received through these channels. The denunciation can be anonymous.

Figures on criminal cases (convictions, trials, etc.) are sent directly by the courts to an electronic database maintained by the statistics department of the Ministry of Justice. This system allows users to receive immediate updates on statistics. Most data can be fully and freely accessed by the public, whereas others are password-protected

Article 40 Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

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

Bank secrecy is not an obstacle to the criminal investigations in Portugal.

According to Article 79 of the Legal Framework of Credit Institutions and Financial Companies (the Banking Law) approved by Decree-Law no. 298/92, of 31 December, exceptions to the obligation of professional secrecy are admissible.

In addition, Article 178 of the Code of Criminal procedure allow for the seizure in banking facilities.

It should be also referred to the Law no. 36/2010, of 2 September, amending the Decree-Law no. 298/92, which foresees the implementation of a detailed banking account central database at the Banco de Portugal (Central Bank), which could only be accessed by judges and public prosecutors and only in the framework of a criminal proceeding. However, the access to mentioned database is not direct and the information should be requested to the Central Bank.

Decree-Law no. 298/92, of 31 December

Article 79

Exceptions to the obligation of professional secrecy

1. Facts or data regarding relations between a client and an institution may be disclosed upon the client's authorisation, transmitted to the institution.
2. With the exception of the case envisaged in the foregoing paragraph, the facts and data subject to secrecy may only be disclosed:
 - a) To Banco de Portugal, within the scope of its duties;
 - b) To the Securities Market Commission, within the scope of its duties;
 - c) To the Deposit Guarantee Fund and to the Investor Compensation Scheme, within the scope of their duties;
 - d) Under the terms laid down in the criminal law and in the law of penal procedure;
 - e) When any other legal provision expressly limits the obligation of professional secrecy.

Code of Criminal Procedure

Article 181

Seizures performed within banking institutions

1. Within the premises of banks and other credit institutions, the judge seize documents, titles, values, cash and any other objects, even when located in personal safe-boxes, only where she/he has grounded reasons to believe that such articles are connected with a crime and are likely to be of great value for discovering the truth or for purposes of evidence, even when they

do not belong to the defendant and are not deposited under his/her name.

2. In order to identify the objects to be seized in accordance with the provisions of the preceding paragraph, the judge may examine the mail and any banking documents. The examination is made personally by the judge, assisted, where necessary, by criminal police bodies and by qualified experts, who shall remain under a duty of secrecy with respect to all that they will have become acquainted with, and is not relevant for purposes of evidence.

Law no. 36/2010 of 2nd September amending Decree-Law no. 298/92, creating in the Bank of Portugal (Central Bank) a central bank accounts' database

Article 79

(...)

3 – It is implemented at the Bank of Portugal a database covering all the bank accounts and their respective holders currently contained in the banking system; for such purpose, the following proceeding must be carried out:

- a) Within three months as of the day of the entry into force of the present norm, all the entities authorized to open bank accounts, whatever the type, should send to the Bank of Portugal, the identification of the accounts and their respective holders, as well as of the persons entitled to operate them, including their agents, and the day in which they are or have been opened;
- b) They should also send to the Bank of Portugal, information on the opening or closure of accounts, indicating their respective number, the identification of their holders and of the persons that may operate them, including their agents, and the day in which they are opened or closed; such information should be disclosed on a monthly basis and up to the 15th of each month, with reference to the previous month;
- c) The Bank of Portugal shall adopt the necessary measures to ensure a restricted access to this database, being the information contained therein refer solely to the identification of the bank accounts, of the respective bank entity, of the day of their opening, of their respective holders and of the persons entitled to operate them, including their agents and of the day of their closure. Such information must only be conveyed to the entities referred to in n. 2(d) of the present article, within the scope of a criminal procedure.”

(b) Observations on the implementation of the article

Banking or any other professional secrecy did not seem to constitute an impediment to the investigation and prosecution of corruption-related offences and other offences. Rights of *bona fide* third parties seem also to be adequately protected. Hence, Portugal's legal framework seems to be in line with the provision under review.

(c) Successes and good practices

A central bank accounts' database at the Banco de Portugal (Central Bank), accessible to all prosecutors and judges, which centralizes information from all banks such as on financial transactions, name of persons with access to the account, history of the account.

Article 41 Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such

information in criminal proceedings relating to an offence established in accordance with this Convention.

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

According to Article 75 (3) of the Criminal Code, the convictions applied by foreign courts are taken into account for recidivism purposes in accordance to paragraphs (1) and (2) provided that the fact constitutes an offence according to Portuguese law. Moreover, Article 83 (4) of the same Code states that the facts judged abroad which have led to effective prison for more than two years, are taken into account, provided that the prison penalty for more than 2 years is applicable to them in Portuguese law.

In the same context, Article 71 of the Criminal Code on the criteria for the determination of the penalty measure, and Articles 96 and 101 (1) of Law no. 144/99, of 31 of August on international judicial cooperation in criminal matters are also relevant.

Portugal is implementing the Council Framework Decision 2008/675/JHA, of 24 July 2008, on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings and with Article 41 of UNCAC.

Portugal is also implementing the Council Framework-Decision 2009/315/JHA of 26 February 2009 on the organization and content of the exchange of information extracted from criminal records, which will allow for a more effective exchange of information between Member States of the European Union.

The implementation of ECRIS – European Criminal Record Information System by European Union Member States will allow in the near future for a fast access to information in criminal records and for taking into consideration previous convictions in the European territory.

(b) Observations on the implementation of the article

The experts are of the opinion that this non mandatory provision has been partially implemented by Portugal. Portugal does not take into consideration previous foreign convictions for the purpose of using such information in criminal proceedings relating to an UNCAC offence. It does, however, use that information to inform the sentencing process once liability is affirmed.

Article 42 Jurisdiction

Subparagraph 1 (a) and (b)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

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

The establishment of jurisdiction regarding the territory criteria is set forth in paragraph a) of Article 4 of the Criminal Code which states that *except when it is contrary to international treaties or conventions, Portuguese criminal law is applicable to acts committed: a) In Portuguese territory, regardless of the nationality of the agent; or b) On board of Portuguese ships or aircrafts.*

(b) Observations on the implementation of the article

Portugal's legal framework seems to be in line with the provision under review.

Article 42 Jurisdiction

Subparagraph 2 (a) and (b)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

- (a) The offence is committed against a national of that State Party; or*
- (b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

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

The establishment of the passive and active personal jurisdiction is set forth in Article 5 (1) (e) of the Criminal Code.

Article 5

Acts committed outside the Portuguese territory

1 - Unless provided otherwise in an international treaty or convention, the Portuguese criminal law is also applicable to acts committed outside the national territory:

- a) When constituting the crimes foreseen in articles 221, 262 to 271, 308 to 321 and 325 to 345;
- b) Against Portuguese, by Portuguese customarily residents in Portugal at the time of their commission and found therein;
- c) When constituting the crimes foreseen in articles 159 to 161, 171, 172, 175, 176 and 278 to 280, provided that the agent is found in Portugal and cannot be extradited or handed over as a result of the execution of an European arrest warrant or other instrument of international cooperation which bounds the Portuguese State;
- d) When constituting the crimes foreseen in articles 144, 163 and 164, when the victim is a minor, provided that the agent is found in Portugal and cannot be extradited or handed over as a result of the execution of an European arrest warrant or other instrument of international cooperation which bounds the Portuguese State;
- e) By Portuguese, or by foreigners against Portuguese, whenever:
 - i) The agents are found in Portugal;
 - ii) Such acts are also punishable by the law of the place where they have been committed, unless the place of the act is not subject to any punitive power; and
 - iii) Such acts constitute a crime permitting extradition and such extradition cannot be granted or it is decided not to hand over the agent in execution of an European arrest warrant or other instrument of international cooperation which bounds the Portuguese State;
- f) By foreigners found in Portugal and whose extradition has been requested, when constituting crimes permitting extradition and such extradition cannot be granted or it is

decided not to hand over the agent in execution of an European arrest warrant or other instrument of international cooperation which bounds the Portuguese State;

g) By a legal person or against a legal person having its registered office in the Portuguese territory.

2 - The Portuguese criminal law is also applicable to acts committed outside the national territory to which the Portuguese State has, by international treaty or convention, bound itself to decide.

(b) Observations on the implementation of the article

Portugal's legal framework seems to be in line with the provision under review.

Article 42 Jurisdiction

Subparagraphs 2 (c) and (d)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(d) The offence is committed against the State Party.

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

Portugal stated that it is in compliance with the provision under review, referring to the same provisions Article 4 and Article 5 (1) (e) of the Criminal Code are also relevant.

(b) Observations on the implementation of the article

Although this is not a mandatory provision, article 5 (1) (e) would only cover the hypothesis of subparagraph 2 (c) and (d) when committed by a Portuguese national or by a foreigner against a Portuguese.

Article 42 Jurisdiction

Paragraph 3

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

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

Article 32 (5) of Law no. 144/99 of 31 August foresees the principle *aut dedere aut judicare*. Moreover, paragraphs e) and f) of Article 5 of the Criminal Code could be also relevant.

(b) Observations on the implementation of the article

Article 32 (5) of the Law no. 144/99 seems to be in line with the provision under review.

Article 42 Jurisdiction

Paragraph 4

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

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

Article 5 (1) f) clearly states that unless provided otherwise in an international treaty or convention, the Portuguese criminal law is applicable to acts committed outside the national territory by foreigners found in Portugal and whose extradition has been requested, when constituting crimes permitting extradition and such extradition cannot be granted or it is decided not to hand over the agent in execution of an European arrest warrant or other instrument of international cooperation which bounds the Portuguese State.

(b) Observations on the implementation of the article

Article 5 (1) f) of the Portuguese Criminal seems to be in line with the provision under review.

Article 42 Jurisdiction

Paragraph 5

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

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

Portugal refers to legislation given under Articles 48-50 of THE UNCAC relating to international cooperation.

Article 79 of Law no. 144/99 of 31 August 1999 on international judicial co-operation in criminal matters allows for the consultation between the competent authorities of the States where a State Party exercising its jurisdiction under paragraph 1 and 2 of Article 42 of the UNCAC has been notified that any other State Party are conducting an investigation, prosecution or judicial proceeding in respect to the same offender and same conduct, in order to coordinate their actions.

Law no. 144/99, of 31 August **Article 79** Principle

At the request of a foreign State, under the conditions and with the effects set out in the following Articles, proceedings may be taken or continued in Portugal for an offence committed outside the Portuguese territory.

Moreover, Articles 89 and seq of Law no. 144/99, of 31 August foresee the situation where Portugal, as requesting country, could consult with other countries with a view to coordinating their actions.

Article 89 Principle

The power to take criminal proceedings or to continue criminal proceedings pending in Portugal, for an act that constitutes an offence under Portuguese law may be delegated to a foreign State that accepts it, subject to the requirements laid down in the following Articles.

(b) Observations on the implementation of the article

The Portuguese legal framework seems to be in line with the provision under review.

Article 42 Jurisdiction

Paragraph 6

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

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

Portugal stated that this Convention does not exclude the exercise of any criminal jurisdiction established in accordance with Portugal's law.

The exercise of criminal jurisdiction is a decision to be decided by national legislator and according to article 5 (2) of the Criminal Code which states that the Portuguese criminal law is also applicable to acts committed outside the national territory to which the Portuguese State has, by international treaty or convention, bound itself to decide.

(b) Observations on the implementation of the article

Article 5 of the Portuguese Criminal Code seems to be in line with the provision under review.

Chapter IV. International cooperation

Article 44 Extradition

Paragraph 1

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

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

According to Article 8 of the Constitution of the Portuguese Republic, (1) the rules and principles of general or customary international law are an integral part of Portuguese law; (2) Rules provided for in international conventions that have been duly ratified or approved, shall apply in national law, following their official publication, so long as they remain internationally binding with respect to the Portuguese State; (3) Rules made by the competent organs of international organizations to which Portugal belongs apply directly in national law to the extent that the constitutive treaty provides.

According to Article 229 of the Code of Criminal Procedure and Article 3 of Law no. 144/99, of 31 August approving the law on international judicial co-operation in criminal matters, the forms of co-operation mentioned in Article 1 above shall be carried out in accordance with the provisions of the international treaties, conventions and agreements that bind the Portuguese State and, where such provisions are non-existent or do not suffice with the provisions of this law.

The Portuguese law therefore foresees the primacy of international treaties, conventions and agreements and the provisions of UNCAC prevail in relation to domestic law, namely mentioned Law no.144/99.

Extradition is foreseen in Title II (Extradition) Articles 31 to 78 of Law no. 144/99, of 31 August, on international judicial co-operation in criminal matters, which include provision of passive extradition (Article 31), active extradition (Article 69), and a simplified procedure for extradition (Article 74) .

Law no. 144/99, of 31 August

Article 31

Purpose of and grounds for extradition

1. Extradition may be granted only for the purpose either of instituting criminal proceedings or of executing a sanction or measure involving deprivation of liberty, for an offence that the courts of the requesting State have jurisdiction to try.
2. For any such purpose, surrender of a person shall be possible only in respect of offences, including attempted offences that are punishable under both the Portuguese law and the law of the requesting State by a sanction or measure involving deprivation of liberty for a maximum period of at least one year.
3. If the request for extradition includes several separate offences each of which is punishable under the Portuguese law and the law of the requesting State by deprivation of liberty, but of

which one or some do not fulfill the condition mentioned in the preceding paragraph, extradition for the latter offences shall also be possible.

4. Extradition requested for the purpose of executing a sanction or measure involving deprivation of liberty may be granted only if the duration of the sentence that remains to be served is not less than four months.

5. The provisions of the preceding paragraphs, adapted as appropriate, shall apply to co-operation that carries with it the extradition or the surrender of any person to international judicial entities as mentioned in Article 1 (2) of the present Law.

6. The provisions of this Article establishing limits shall not preclude extradition where conventions, treaties or agreements to which Portugal is a Party establish lower limits.

Extradition to Portugal

Article 69

Powers and procedure

1. The Minister of Justice shall be empowered to request the extradition to Portugal of any person against whom there are criminal proceedings pending in Portugal, from the foreign State on whose territory that person is.

2. The request and the accompanying documents shall be transmitted through the channels provided for in this law.

3. The Attorney-General's Office shall be empowered to organize the file on the basis of a request from the public prosecutor attached to the court in which the proceedings are pending.

4. The Minister of Justice may request to the foreign State to which extradition was requested that the Portuguese State, through a representative appointed to that effect, be allowed to participate in the extradition procedure.

(b) Observations on the implementation of the article

Articles 31 to 78 of the Law on International Judicial Cooperation in Criminal Matters (Law no. 144/99) regulate extradition. Passive extradition is regulated by Article 31, while active extradition is addressed with Article 69, and a simplified procedure of limited scope of application by Article 74. The Portuguese system requires double incrimination. Furthermore, "The provisions of this Article establishing limits shall not preclude extradition where conventions, treaties or agreements to which Portugal is a Party establish lower limits."

The principle *aut dedere aut judicare*, apply as well in accordance with Article 10 and Article 32 of Law no. 144/99.

Article 44 Extradition

Paragraph 2

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

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

According to Law no. 144/99, of 31 August 1999, if the request for extradition includes several separate offences each of which is punishable under the Portuguese law and the law of the requesting State by deprivation of liberty, but of which one or some do not fulfil the

condition stating that surrender of a person shall be possible only in respect of offences, including attempted offences that are punishable under both the Portuguese law and the law of the requesting State by a sanction or measure involving deprivation of liberty for a maximum period of at least one year, extradition for the latter offences shall also be possible.

The extradition could as well be granted according to the principle of reciprocity set forth in Article 4 of the same legal instrument.

Article 4 Principle of reciprocity

1. International co-operation in criminal matters, as provided for in this law, falls within the province of the principle of reciprocity.
2. Where circumstances so require, the Ministry of Justice shall demand an undertaking to the effect that reciprocity shall apply; within the limits set out in the provisions of this law, it may provide other States with such an undertaking.
3. The absence of reciprocity shall not prevent compliance with a request for co-operation where such co-operation:
 - 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;
 - c) may serve to shed light on facts endorsed to a Portuguese national.

The issue related to international judicial cooperation in criminal matters have been assessed within FATF evaluations but exclusively about the crimes of money laundering and terrorism financing. This sentence should apply to all the answers provided to in international cooperation chapter (Chapter IV). Please see the answer provided to Article 17 regarding the assessment of effectiveness of other domestic measures.

(b) Observations on the implementation of the article

The general principle under Portuguese Law, following article 31 (2) of Law no. 144/91, is dual criminality. However, the Portuguese law incriminates all the mandatory offences established under the Convention. Furthermore, the reciprocity principle established by article 4 of Law no. 144/99 makes it possible to extradite an individual based in UNCAC in the case where the act is not incriminated by domestic legislation.

As the offence of passive trading in influence for the purpose of obtaining a licit favourable decision is punished with six months of imprisonment, it is not an extraditable offence. Portugal could consider raising the imprisonment terms in order to make it extraditable.

Article 44 Extradition

Paragraph 3

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

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

Law no. 144/99, of 31 August

Article 31

Purpose of and grounds for extradition

1. Extradition may be granted only for the purpose either of instituting criminal proceedings or of executing a sanction or measure involving deprivation of liberty, for an offence that the courts of the requesting State have jurisdiction to try.
2. For any such purpose, surrender of a person shall be possible only in respect of offences, including attempted offences that are punishable under both the Portuguese law and the law of the requesting State by a sanction or measure involving deprivation of liberty for a maximum period of at least one year.
3. If the request for extradition includes several separate offences each of which is punishable under the Portuguese law and the law of the requesting State by deprivation of liberty, but of which one or some do not fulfil the condition mentioned in the preceding paragraph, extradition for the latter offences shall also be possible.

(b) Observations on the implementation of the article

Article 31 (3) of the Law no. 144/99 seems to be consistent with the UNCAC.

Article 44 Extradition

Paragraph 4

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

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

According to paragraph 2 of Article 31 of Law no. 144/99, extradition of a person shall be possible only in respect of offences, including attempted offences that are punishable under both the Portuguese law and the law of the requesting State by a sanction or measure involving deprivation of liberty for a maximum period of at least one year.

According to the Portuguese criminal law the offences established in accordance with the United Nations Convention against Corruption are punishable with sanctions or measures involving deprivation of liberty for a maximum period of at least one year, meaning that all these offences are extraditable offences. Therefore and according to paragraph 2 of Article 31 mentioned offences are usually included in the extradition treaties concluded by the Portuguese State.

Regarding the question of grounds for refusal, any of the offences established in accordance with the UN Convention against Corruption are regarded as a political offence. Besides Article 6 (mandatory grounds for refusal of international cooperation) and Article 32 (cases in which extradition is excluded), paragraph 2 d) of Article 7 clearly states that shall not be regarded as political offences any offences that ought not to be regarded as political under the terms of an international treaty, convention or agreement to which Portugal is a Party which is the case of the UNCAC.

Law no. 144/99, of 31 August

Article 7

Refusal on grounds relating to the nature of the offence

1. (...)
2. The following shall not be regarded as political offences:
 - a) genocide, crimes against humanity, war crimes and serious offences under the 1949 Geneva Conventions;
 - b) the offences mentioned in Article 1 of the European Convention on the Suppression of Terrorism, opened to signature on 27 January 1977;
 - c) the acts mentioned in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 17 December 1984;
 - d) any other offences that ought not to be regarded as political under the terms of an international treaty, convention or agreement to which Portugal is a Party.

Copies of bilateral extradition agreements celebrated by Portugal are to be found further.

The offences established in accordance with the UN Convention against Corruption are not deemed to be considered political offences and, therefore, no cases of extradition as requested could be reported.

The Ministry responsible for the negotiations of bilateral (and multilateral) agreements in the criminal area is the Ministry of Justice. Portugal would like to state that negotiations of such agreements need to obey the rules set forth in the Law no. 144/99, which means that all the offences foresee in the Portuguese criminal law that are punishable with deprivation of liberty for a maximum period of at least one year are considered extraditable offences.

(b) Observations on the implementation of the article

This provision of the convention is implemented adequately.

Article 44 Extradition

Paragraph 5

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

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

Portugal does not make extradition conditional on the existence of a treaty. Portugal considers the Convention as the legal basis for extradition in respect to any offence to which Article 44 applies.

According to Article 3 of Law no. 144/99, of 31 August 1999 the forms of co-operation mentioned in Article 1 of the same law shall be carried out in accordance with the provisions of the international treaties, conventions and agreements that bind the Portuguese State and, where such provisions are non-existent or do not suffice the provisions of this law. The principle of reciprocity could be applied as well in an extradition case where no extradition

treaty exists. Therefore, the United Nations Convention against Corruption may be considered as the legal basis for extradition in respect of any of the offences foreseen in the convention.

Law no. 144/99, of 31 August

Article 3

Primacy of international treaties, conventions and agreements

1. The forms of co-operation mentioned in Article 1 above shall be carried out in accordance with the provisions of the international treaties, conventions and agreements that bind the Portuguese State and, where such provisions are non-existent or do not suffice the provisions of this law.

2. The provisions of the Code of Criminal Procedure shall apply as subsidiary provisions.

Article 4

Principle of reciprocity

1. International co-operation in criminal matters, as provided for in this law, falls within the province of the principle of reciprocity.

Article 8

International law

1. The norms and principles of general or common international law form an integral part of Portuguese law.

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

3. 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.

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

(b) Observations on the implementation of the article

Portugal does not make extradition conditional on the existence of a treaty. Furthermore, the UNCAC can be enforced through Article 8 of the Portuguese Constitution and Article 3 of the Law no. 144/99.

Article 44 Extradition

Paragraph 6

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

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

Portugal does not makes extradition conditional on the existence of a treaty.

Despite the fact that Portugal celebrated bilateral and multilateral agreements on extradition, Law no. 144/99, as explained before, allows for passive, active and even for a simplified procedure of extradition. Portugal also mentioned the legislation related with the European Arrested Warrant, applicable within the European Union Member States, replacing the traditional mechanism of extradition by the surrender of persons.

Therefore, there is no need for celebration of bilateral agreements on extradition to comply with the subparagraph 6 (b) of Article 44 of UNCAC.

Furthermore, no obstacles exist in the Portuguese domestic system for the UNCAC to be used as legal basis for extradition. According to Article 229 of the Code of Criminal Procedure and Article 3 of Law no. 144/99, the forms of co-operation shall be carried out in accordance with the provisions of the international treaties, conventions and agreements that bind the Portuguese State and, where such provisions are non-existent or do not suffice with the provisions of this law.

However, nothing prevail Portugal to negotiate such kind of bilateral legal instruments. The Ministry responsible for the negotiations of bilateral (and multilateral) agreements in the criminal area is the Ministry of Justice. The celebration of bilateral or multilateral agreements on international cooperation in criminal matters takes into account Article 44 of UNCAC.

(b) Observations on the implementation of the article

Portugal does not make extradition conditional on the existence of a treaty. Furthermore, the UNCAC can be enforced through Article 8 of the Portuguese Constitution and Article 3 of the Law no. 144/99.

Article 44 Extradition

Paragraph 7

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

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

According to paragraph 2 of Article 31 of Law no. 144/99 the offences set forth in the UN Convention against Corruption are recognized as extraditable offences.

Law no. 144/99, of 31 August

Article 31

Purpose of and grounds for extradition

1. (...)

2. For any such purpose, surrender of a person shall be possible only in respect of offences, including attempted offences that are punishable under both the Portuguese law and the law of the requesting State by a sanction or measure involving deprivation of liberty for a maximum

period of at least one year.

(b) Observations on the implementation of the article

The Portuguese law incriminates all the mandatory offences established under the Convention. Furthermore, the reciprocity principle established by Article 4 of Law no. 144/99 makes it possible to extradite an individual based in UNCAC in the case where the act is not incriminated by domestic legislation.

Article 44 Extradition

Paragraph 8

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

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

Regarding the admissibility of extradition, paragraph 2 of Article 31 of Law no. 144/99 states that offences, including attempted offences, should be punishable under both the Portuguese law and the law of the requesting State, by a sanction or measure involving deprivation of liberty for a maximum period of at least one year.

The grounds for refusal are established in Articles 6 to 10 and Article 32 of Law no. 144/99.

Law no. 144/99, of 31 August
Article 6

Mandatory grounds for refusal

1. Requests for co-operation shall be refused:

a) where the proceedings do not comply with the requirements laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, or other relevant international instruments ratified by Portugal;

b) where there are well-founded reasons for believing that co-operation is sought for the purpose of persecuting or punishing a person on account of that person's race, religion, sex, nationality, language, political or ideological beliefs, or his belonging to a given social group;

c) where the risk exists that the procedural situation of the person might be impaired on account of any of the factors indicated in the preceding sub-paragraph;

d) where the co-operation sought might lead to a trial by a court of exceptional jurisdiction or where it concerns the enforcement of a sentence passed by such a court;

e) where any of the facts in question is punishable with the death sentence or with a sentence resulting in any irreversible injury of the person's integrity;

f) where any of the offences in question carries a life-long or indefinite sentence or measure.

2. The provisions in sub-paragraphs e) and f) of the preceding paragraph shall not preclude co-operation:

a) should the requesting State, by way of an irreversible decision that binds its courts or any other authority with powers to execute the sentence, have either commuted the death sentence or the sentence resulting in any irreversible injury of the person's integrity, or

withdrawn the life-long nature of the sentence or measure;

b) where the co-operation sought is in the form of extradition for offences that, under the law of the requesting State, carry a life-long or indefinite sentence or measure involving deprivation of or restrictions to liberty, should the requesting State offer assurances that such a sentence or measure shall not be imposed or shall not be executed;

c) should the requesting State accept the conversion of the sentence or the detention order, by a Portuguese court and under the Portuguese law applicable to the offence or offences for which the person was sentenced; or

d) where co-operation is sought on the basis of the provisions of Article 1.1.f), on grounds that it will presumably be relevant for the purpose of preventing such sentences or orders to be rendered.

3. In assessing the sufficiency of the assurances mentioned in sub-paragraph b) of paragraph 2 above, account shall be taken, in the light of the law and practice of the requesting State, inter alia, of the possibility that the sentence is not executed, of a reconsideration of the situation of the person sought and his conditional release, as well as of the possibilities that pardon, amnesty, commutation of the sentence or similar measure be granted, as provided in the law of the requesting State.

4. A request for co-operation shall also be refused where reciprocity is not ensured, without prejudice to the provisions of Article 4. 3.

5. Where co-operation is refused on the grounds offered by the provisions of sub-paragraphs d), e) or f) of paragraph 1 above, the method of co-operation provided for in Article 32.5 shall apply.

Article 7

Refusal on grounds relating to the nature of the offence

1. A request for co-operation shall also be refused where the proceedings concern:

a) Any facts that, according to the concepts of Portuguese law, constitute a political offence or an offence connected with a political offence;

b) any facts that constitute a military offence and do not constitute an offence under ordinary criminal law.

2. The following shall not be regarded as political offences:

a) genocide, crimes against humanity, war crimes and serious offences under the 1949 Geneva Conventions;

b) the offences mentioned in Article 1 of the European Convention on the Suppression of Terrorism, opened to signature on 27 January 1977;

c) the acts mentioned in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 17 December 1984;

d) any other offences that ought not to be regarded as political under the terms of an international treaty, convention or agreement to which Portugal is a Party.

Article 8

Discontinuation of criminal proceedings

1. Co-operation shall not be admissible where, either in Portugal or in another State in which criminal proceedings concerning the same facts have been initiated:

a) Either the proceedings ended with a final sentence of acquittal, or were otherwise definitively discontinued;

b) either the sentence was carried out, or it cannot be carried out according to the law of the State in which it was passed;

c) the criminal proceedings were discontinued on any other grounds, unless an international convention provides that discontinuation of proceedings under such grounds does not prevent the requested State from engaging in co-operation.

2. The provisions of sub-paragraphs a) and b) of the preceding paragraph shall have no effect

where the request by the foreign authority is made for purposes of the judicial review of a sentence and the grounds for such a review are identical to those that are provided for under Portuguese law.

3. The provisions of sub-paragraph a) of paragraph 1 above shall not preclude co-operation where the latter is sought for the purpose of re-opening proceedings, in accordance with the law.

Article 9

Concurrent admissibility and inadmissibility of co-operation

1. If the conduct attributed to the person against whom criminal proceedings are taken falls under several provisions of the Portuguese criminal law, the request for co-operation may be complied with only with respect to such offence or offences in respect of which the request is admissible, provided that the requesting State undertakes to abide by the conditions imposed.

2. However, co-operation shall not be granted if the conduct falls under several provisions of the Portuguese or the foreign criminal law, one of which concerns the conduct in its entirety and the nature of which excludes the possibility of co-operation.

Article 10

Minor offences

Co-operation may be refused where the minor importance of the offence does not justify it.

Article 32

Cases in which extradition is excluded

1. Extradition shall be excluded in the cases mentioned in Articles 6 to 8 above, as well as in the following cases:

a) where the offence was committed on the Portuguese territory;

b) where the person claimed is a Portuguese national, without prejudice to the provisions of the following paragraph.

2. The extradition of Portuguese nationals shall however not be excluded where:

a) extradition of nationals is provided for in a treaty, convention or agreement to which Portugal is a Party;

b) extradition is sought for offences of terrorism or international organized crime; and

c) the legal system of the requesting State embodies guarantees of a fair trial.

3. In the circumstances covered by the preceding paragraph, extradition may only take place for purposes of criminal proceedings and provided that the requesting State gives assurances that it will return the extradited person to Portugal for that person to serve in Portugal the sanction or measure eventually imposed on him, once the sentenced is reviewed and confirmed in accordance with the Portuguese law, unless the extradited person expressly refuses to be returned.

4. For the purpose of assessing the guarantees mentioned in sub-paragraph c) of paragraph 2 above, account shall be taken of the European Convention of Human Rights and other relevant international instruments ratified by Portugal, as well as the conditions under which protection is ensured against the situations mentioned in sub-paragraphs b) and c) of paragraph 1 of Article 6.

5. Where extradition is not granted on any of the grounds stated in paragraph 1 above or in sub-paragraphs d), e) or f) of paragraph 1 of Article 6, criminal proceedings shall be instituted for the offence on the grounds of which the request was made; the requesting State shall be asked to provide such information as is necessary. The judge may impose such provisional measures as he deems adequate.

6. The question of whether the person claimed is or is not a Portuguese national shall be examined at the time of the decision on the extradition request.

7. Special arrangements, within the framework of military or other alliances, may provide that

offences under military law which are not offences under ordinary criminal law shall be extraditable offences.

(b) Observations on the implementation of the article

Article 31 (2) of Law no. 144/99 sets out the minimum period of time imprisonment penalty, which is 1 year imprisonment. Article 31 (2) seems to be consistent with the UNCAC.

Article 44 Extradition

Paragraph 9

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

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

According to Article 46 of Law no. 144/99, the extradition procedure is considered of an urgent nature and for that reason should be expedite, taking also into account the simplification of the evidentiary requirements.

Law no. 144/99, of 31 August

Article 46

Nature of the extradition procedure

1. The extradition procedure shall be of an urgent nature and shall consist of two stages, namely the administrative and the judicial stages.
2. The administrative stage of the procedure aims at an assessment of the extradition request by the Minister of Justice for the purpose of deciding on the basis of political reasons, or on discretionary grounds, taking into account the safeguards applicable, whether the request is admissible or not admissible.
3. The judicial stage rests under the exclusive competence of the "Tribunal da Relação" which, after having heard the person concerned, shall undertake a legal assessment of the form and substance of the facts in relation to the legal requirements, for the purpose of deciding whether extradition shall be granted or not; no evidence on the alleged conduct of the person claimed shall be taken into consideration.

Article 46 of Law no. 144/99 applies to all procedures of extradition that should be treated as urgent matter. If the evidence provided by the requesting State are considered sufficient, the request for extradition could be decided in a short lack of time. According to Article 45 (1) if the request for extradition is either not complete, or not accompanied by all the information that is necessary in order to take a decision, the provisions of paragraph 3 of Article 23 shall apply.

A simplified procedure of extradition is foreseen in Articles 74 and 75 of the same Law and is applicable to all countries. However, the consent of the extraditable person should be given under the same conditions set forth in Article 74 of the Convention on Simplified Extradition Procedure between the Member States of the European Union, of 10 March 1995.

After the entering in force of Law no. 65/2003, of 23 August, establishing the legal regime of the European Arrest Warrant, no more «regular» procedures of extradition between the EU Member States are allowed.

(b) Observations on the implementation of the article

This provision of the Convention is implemented adequately.

Article 44 Extradition

Paragraph 10

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

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

Law 144/99, of 31 of August allows for the provisional arrest of persons in cases of urgency.

Article 38
Provisional arrest

1. In case of urgency the provisional arrest of the person sought may be requested as a preliminary to a formal extradition request.
2. Any decision on such a provisional arrest, or on the continuation of such an arrest, shall be taken in accordance with the Portuguese law.
3. Requests for provisional arrest shall: indicate the existence of either a detention order or a sentence against the person claimed; describe briefly the facts that amount to an offence; state when and where such offence was committed, the legal provisions that are applicable, as well as the available data concerning the identity, the nationality and the whereabouts of that person.
4. The provisions of Article 29 shall apply to the transmission of the request.
5. Provisional arrest shall be terminated if the request for extradition is not received within 18 days of the arrest; it may however be prolonged for up to 40 days of the arrest if the reasons given by the requesting State so justify.
6. Provisional arrest may be replaced by any other coercive measure in accordance with the provisions of the Code of Criminal Procedure.
7. The provisions of paragraph 5 above shall not prejudice re-arrest and extradition if a request is received subsequently.
8. The request for provisional arrest shall be examined only where no doubts arise as to the powers of the requesting authority and if the request contains such elements as are indicated in paragraph 3 above.

(b) Observations on the implementation of the article

Article 38 of the Law no. 144/99 is consistent with UNCAC.

Article 44 Extradition

Paragraph 11

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

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

Portugal does not extradite its nationals. The principle *aut dedere aut judicare* in foreseen in paragraph 5 of Article 32 of Law no. 144/99 which refer that where extradition is not granted on any of the grounds stated in paragraph 1 above or in sub-paragraphs d), e) or f) of paragraph 1 of Article 6, criminal proceedings shall be instituted for the offence on the grounds of which the request was made; the requesting State shall be asked to provide such information as is necessary. A reference is made as well in paragraph 5 of Article 6.

If the request for extradition is denied, the Portuguese authorities have the obligation to open a case, on the basis of the *aut dedere aut judicare* principle, even in the absence of such request by the requesting state.

Law no. 144/99, of 31 August

Article 32

Cases in which extradition is excluded

1. Extradition shall be excluded in the cases mentioned in Articles 6 to 8 above, as well as in the following cases:

- a) where the offence was committed on the Portuguese territory;
 - b) where the person claimed is a Portuguese national, without prejudice to the provisions of the following paragraph.
- (...)

5. Where extradition is not granted on any of the grounds stated in paragraph 1 above or in sub-paragraphs d), e) or f) of paragraph 1 of Article 6, criminal proceedings shall be instituted for the offence on the grounds of which the request was made; the requesting State shall be asked to provide such information as is necessary. The judge may impose such provisional measures as he deems adequate.

Article 6

Mandatory grounds for refusal

1. to 5. (...)

5. Where co-operation is refused on the grounds offered by the provisions of sub-paragraphs d), e) or f) of paragraph 1 above, the method of co-operation provided for in Article 32 (5) shall apply.

Portugal indicated that no statistics are available.

(b) Observations on the implementation of the article

Article 32 (5) of the Law no.144/99 is consistent with UNCAC.

(c) Successes and good practices

The experts note with satisfaction the obligation in Portugal to open a case when the request of extradition has been denied, regardless of whether or not this was asked by the requesting State.

Article 44 Extradition

Paragraph 12

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

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

Law no. 144/99 of 31 August 1999 complies with paragraph 12 and 11 of Article 44 of the UN Convention against corruption. Effectively, paragraphs 2 and 3 of Article 32 state that the extradition of Portuguese nationals could be conceded in some circumstances - a) to c) of paragraph 1 - and, in such cases, extradition may only take place for purposes of criminal proceedings and provided that the requesting State gives assurances that it will return the extradited person to Portugal for that person to serve in Portugal the sanction or measure eventually imposed on him, once the sentenced is reviewed and confirmed in accordance with the Portuguese law, unless the extradited person expressly refuses to be returned.

Law no. 144/99, of 31 August

Article 32

Cases in which extradition is excluded

1. (...)

2. The extradition of Portuguese nationals shall however not be excluded where:

a) extradition of nationals is provided for in a treaty, convention or agreement to which Portugal is a Party;

b) extradition is sought for offences of terrorism or international organized crime; and

c) the legal system of the requesting State embodies guarantees of a fair trial.

3. In the circumstances covered by the preceding paragraph, extradition may only take place for purposes of criminal proceedings and provided that the requesting State gives assurances that it will return the extradited person to Portugal for that person to serve in Portugal the sanction or measure eventually imposed on him, once the sentenced is reviewed and confirmed in accordance with the Portuguese law, unless the extradited person expressly refuses to be returned.

(b) Observations on the implementation of the article

Article 32 (2) and 3 of the Law no. 144/99 is consistent with UNCAC.

Article 44 Extradition

Paragraph 13

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

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

Law no. 144/99 of 31 August

Article 95

Principle

1. Final and enforceable foreign criminal judgements may be enforced in Portugal under the conditions laid down in this law.
2. The request for delegation must be made by the sentencing State.

Article 96

Specific requirements

1. Any request for the enforcement in Portugal of a foreign criminal judgement shall be admissible only subject to the general requirements provided for in this law, as well as the following requirements:
 - a) a sentence imposing a criminal reaction must have been rendered for an offence in respect of which the foreign State has jurisdiction;
 - b) if the sentence was pronounced during a trial in the absence of the sentenced person, the later must have been given the legal possibility of requesting a new trial or introducing an appeal;
 - c) the enforcement of the sentence must not run counter to the fundamental principles of the Portuguese legal system;
 - d) the facts involved must not be the subject of criminal proceedings in Portugal;
 - e) the facts involved must amount to a criminal offence under Portuguese law;
 - f) the sentenced person must be a Portuguese national, or otherwise must have his habitual residence in Portugal;
 - g) the enforcement of the sentence in Portugal must be justified in terms of a better chance of, either the rehabilitation of the sentenced person, or compensation for damages caused by the offence;
 - h) the sentencing State must have provided guarantees that, once the sentence has been enforced in Portugal, it shall consider the criminal liability of the person concerned to be extinguished;
 - i) the term to be served under the sentence must not be less than one year or, in case of a pecuniary sanction, it should correspond at least to the equivalent of 30 units of account in criminal procedure;
 - j) where the sentence involves deprivation of liberty, the sentenced person must give his consent.

The possibility of enforcement of the sentence imposed under the domestic law of the requesting State when the request of extradition has been refused because the person sought is a national of the requested State can be done through the application of Article 96 (1) f).

Law no. 144/99 foresees the enforcement of foreign criminal judgments and Article 96 (3) states that the enforcement in Portugal of a foreign sentence involving deprivation of liberty shall also be admissible, even where the requirements provided for in paragraph 1, subparagraphs g) and j) above are not met, if, in case of escape to Portugal or other situation in which the person is present in Portugal, the extradition of the person concerned, for the offence for which he was sentenced, has been refused. So, in these situations the consent of the sentenced person (paragraph (1) j)) is not needed.

(b) Observations on the implementation of the article

Article 95 of the Law no. 144/99 foresees to enforcement of foreign criminal judgments and its scope of application embodies penalties consisting on deprivation of liberty, confiscation of proceeds, objects or instrumentalities of the offence and any decision concerning civil law compensation, should the claimant request it (Article 98 of the Law no. 144/99).

However, when the judgment involves deprivation of liberty, Portuguese Law establishes a requirement which does not appear in the UNCAC: the consent of the sentenced person, what makes Article 95 of the Law no. 144/99 inconsistent with UNCAC. Yet, the experts note the non mandatory nature of the article and in particulate that the state shall consider the enforcement of the sentence if its domestic law so permits and in conformity with the requirements of such law.

Article 44 Extradition

Paragraph 14

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

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

Constitution of the Portuguese Republic

Article 32

Guarantees in criminal proceedings

1. Criminal proceedings shall provide all necessary safeguards for the defence, including appeal.
2. Everyone charged with an offence is presumed innocent until convicted, shall be tried within the shortest period of time that is compatible with the defence guarantees.
3. An accused person has the right to select, and be represented by, counsel at all stages of the proceedings. The matters and stages of proceedings for which representation by a lawyer shall be compulsory and shall be prescribed by law.
4. A judge shall have jurisdiction throughout the preliminary investigation, who, in accordance with the law, may delegate to other persons those aspects of the investigation that are not directly connected with fundamental rights.
5. Criminal proceedings shall be accusatory in structure, and the trial and such parts of the preliminary investigation as are determined by law shall be subject to the principle that both parties should be heard.

6. The law shall define the circumstances in which the presence of the defendant or accused at stages of the proceedings, including hearing of the case, can be dispensed with, while at all time ensuring the rights of defence.
7. The victim is entitled to take part in the proceedings, under the terms of the law.
8. Evidence is of no effect if it is obtained by torture, force, infringement of the physical or moral integrity of the individual or wrongful interference with private life, the home, correspondence or telecommunications.
9. No case shall be withheld from the court which has jurisdiction under existing law.
10. In proceedings concerning regulatory offences, as well as in other proceedings where a sanction is likely to be ordered the accused shall be guaranteed the right to be heard in addition to the right to make a defence.

Article 33

Deportation, extradition and right to asylum

1. to 5. (...)
6. Extradition shall be determined by a judicial authority only.

According to the Constitution of the Portuguese Republic and the general provisions of the Code of Criminal Procedure, a fair treatment at all stages of the criminal proceedings, including enjoyment of all the rights and guarantees are guaranteed to any person regardless of its nationality.

(b) Observations on the implementation of the article

In its answer to this paragraph of the Convention, Portugal referred to Articles 32 and 33 of the Constitution. They seem to be consistent with the UNCAC.

Article 44 Extradition

Paragraph 15

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

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

Law no. 144/99, of 31 August

Article 6

Mandatory grounds for refusal

1. Requests for co-operation shall be refused:
 - a) where the proceedings do not comply with the requirements laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, or other relevant international instruments ratified by Portugal;
 - b) where there are well-founded reasons for believing that co-operation is sought for the purpose of persecuting or punishing a person on account of that person's race, religion,

sex, nationality, language, political or ideological beliefs, or his belonging to a given social group;

c) where the risk exists that the procedural situation of the person might be impaired on account of any of the factors indicated in the preceding sub-paragraph;

d) where the co-operation sought might lead to a trial by a court of exceptional jurisdiction or where it concerns the enforcement of a sentence passed by such a court;

e) (...)

f) (...)

The extradition of persons for the purpose of prosecuting or punishing on account of that's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that's person position for any of these reasons is forbidden under Portuguese law (Article 6 b), c) and d) of Law no. 144/99 of 31 August 1999).

(b) Observations on the implementation of the article

It seems that article 6 of the Law no. 144/99 is consistent with UNCAC.

Article 44 Extradition

Paragraph 16

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

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

Fiscal matters are not included in the grounds for refusal international judicial cooperation, including extradition, in Articles 6 to 10 and Article 32 of Law no. 144/99. Mentioned provisions are attached to previous answers.

Portugal indicated that no cases of extradition evolving fiscal matters have been received.

(b) Observations on the implementation of the article

Fiscal matters are not included in the grounds for refusing international judicial cooperation, including extradition, in articles 6 to 10 of the Law no. 144/99. Therefore, they seem to be consistent with UNCAC.

Article 44 Extradition

Paragraph 17

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

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

Law no. 144/99, of 31 August

Article 23

Requests

1. and 2. (...)

3. The competent authority may require that a formally irregular or an incomplete request be modified or completed, without that precluding the possibility of taking provisional measures whenever such measures should not await the revised request.

According to the general provisions of the international judicial cooperation, foreseen in paragraph 3 of Article 23 of Law no. 144/99, the competent authority may require that a formally irregular or an incomplete request be modified or completed, without that precluding the possibility of taking provisional measures whenever such measures should not await the revised request, meaning that consultations between the requested State and the requesting State, even informally and directly (paragraph 4 of Article 21 of the same Law), could be promoted in order to opinions be presented and relevant information to the allegation of the requesting State be provided.

(b) Observations on the implementation of the article

Article 23 of the Law no. 144/99 is consistent with UNCAC.

Article 44 Extradition

Paragraph 18

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

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

Portugal concluded a number of bilateral agreements on extradition. One multilateral agreement on extradition has been celebrated within the Portuguese Speaking Countries Community. A multilateral agreement on simplified extradition was concluded with Spain, Argentina and Brazil.

Portugal celebrated a number of bilateral agreements on extradition and the negotiations of some other agreements are ongoing. One multilateral agreement on extradition has been celebrated within the Portuguese Speaking Countries Community.

The Ministry responsible for the negotiations of bilateral (and multilateral) agreements in the criminal area is the Ministry of Justice. The celebration of bilateral or multilateral agreements on international cooperation in criminal matters, as the examples provided, takes into account Article 44 of UNCAC.

The negotiations of bilateral agreements on extradition with other States are ongoing. Treaties were concludes with Australia (1 March 1988), Mexico (16 April 1999), India (18 July 2008), China (6 March 2009), Algeria (2008), Bolivia (1879), Botswana (1970), Brazil (1991), and the United States (1908 and 2003).

(b) Observations on the implementation of the article

The experts encourage Portugal to continue seeking the negotiation of international agreements on extradition in the framework of the UNCAC, both at bilateral and multilateral level.

Article 45 Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

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

The transfer of sentenced person is foreseen in Articles 114 to 125 of Law no. 144/99, of 31 of August.

Regarding this matter, Portugal concluded a number of bilateral agreements on the transfer of sentenced persons. The negotiations of bilateral agreements on the same subject with other States are ongoing.

Law no. 144/99, of 31 August

CHAPTER IV Transfer of sentenced persons

Section I Common provisions

Article 114 Scope

This Chapter applies to the enforcement of criminal judgments where such enforcement carries with it the transfer of a person sentenced to a sanction or measure involving deprivation of liberty and where the transfer results from the person's request or depends on the person's consent.

Article 115 Principles

1. If the general requirements provided for in this law and in the following articles are met, any person sentenced by a foreign court to a sanction or a measure involving deprivation of liberty may be transferred to Portugal in order to serve the sentence imposed on him.
2. In the same way and for the same purposes, any person sentenced in Portugal to a sanction or measure involving deprivation of liberty may be transferred to the territory of a foreign State.
3. The transfer may be requested either by a foreign State or by Portugal, in both cases provided that it is either at the request or with the express consent of the sentenced person.
4. The transfer is also subject to the existence of an agreement between the State in which the person was sentenced and the State to which the transfer should be requested.

Article 116 Information to sentenced persons

The prison administration shall inform all foreign persons sentenced in Portugal of their right to request their transfer in conformity with this law.

Section II

Transfer out

Article 117

Information and supporting documents

1. Where the person concerned expresses his interest in being transferred to a foreign State, the Central Authority shall so inform that State with a view to obtaining its agreement; that information shall include:

- a) name, date and place of birth, and nationality of the person concerned;
- b) his address in that State, where applicable;
- c) a statement of the facts upon which the sentence was based;
- d) the nature and duration of and date in which the person started serving the sanction or measure.

2. The following information shall also be forwarded to the foreign State:

- a) a certificate or an authenticated copy of the sentence and of the text of the legal provisions that apply to the case;
- b) a statement indicating the duration of the sanction or measure that was already served, duration of provisional arrest, reduction of the sentence and any other facts pertaining to the enforcement of the sentence;
- c) a statement on the consent of the person concerned to be transferred;
- d) if applicable, any medical or social report relating to the person concerned and in particular to any medical treatment undergone by that person in Portugal and any recommendations as to the continuation of such treatment.

Article 118

Powers

1. The public prosecutor attached to the court that rendered the sentence shall be empowered, at his initiative or at the request of the sentenced person, to implement any request for transfer. 2. Requests for transfer must be forwarded as soon as the sentence becomes enforceable. 3. Requests shall be forwarded by the Attorney-General's Office to the Minister of Justice for examination. 4. Where the circumstances of the case so justify, the Minister of Justice may request an opinion from the Attorney-General's Office, the prison administration and the Institute for Social Rehabilitation; the opinions requested shall be produced within 10 days. 5. The person concerned shall be informed in writing of all the decisions taken subsequent to the request.

Article 119

Request and supporting documents

1. Where a person expressed to a foreign State the wish to be transferred, that State should forward, with the request, the following documents:

- a) a statement indicating that the sentenced person either is a national of that State or has his habitual residence on its territory;
- b) a copy of the legal provisions from which it can be assumed that the facts upon which the Portuguese sentence was based also amount to a punishable offence in that State;
- c) any other pertinent documents.

2. The information listed in paragraph 2 of Article 117 shall be forwarded to the foreign State, save if the request is summarily rejected.

Article 120

Decision

1. Where the Minister of Justice deems the request to be admissible, it shall be forwarded by the Attorney-General's Office to the public prosecutor attached to the "Tribunal da Relação" that has jurisdiction in the area of the prison where the person concerned is.
- 2.. The public prosecutor shall take steps to ensure that the person concerned is heard by the judge; the provisions of the Code of Criminal Procedure relating to the hearing of arrested persons shall apply.
3. The ""Tribunal da Relação" shall take a decision on the request, after having determined that the person concerned, fully knowledgeable of the legal consequences thereof, voluntarily consented to his transfer.
4. A consular agent or any official appointed with the agreement of the foreign state shall be granted the possibility of verifying whether or not the consent was given in conformity with the provisions of the preceding paragraph.

Article 121

Effects of transfer

1. The transfer of the person to a foreign State shall have the effect of suspending the enforcement of the sentence in Portugal.
2. Portugal may no longer enforce the sentence after the person has been transferred if the foreign State communicates that a judicial decision has deemed the sentence as having been fully enforced.
3. Where any court applies a measure of amnesty, pardon or commutation, the foreign State shall be informed accordingly through the Central Authority.

Section III

Transfer in

Article 122

Request

1. Where a person sentenced in a foreign State expresses his wish to be transferred to Portugal, the Attorney-General shall forward to the Minister of Justice the information mentioned in Article 117 that he will have received from that State for the purpose of the Minister examining the admissibility of the request.
2. The provisions of the preceding paragraph shall also apply in the cases in which the request comes from the foreign State.
3. The Minister of Justice may request an opinion from the Attorney-General's Office, the prison administration and the Institute for Social Rehabilitation; the opinions requested shall be produced within 10 days.
4. The provisions of paragraph 5 of Article 118 shall apply mutatis mutandis.

Article 123

Specific requirements

1. Once a request for transfer to Portugal is accepted, the file shall be forwarded through the Attorney-General's Office to the public prosecutor at the ""Tribunal da Relação" which has jurisdiction in the place of residence indicated by the person concerned, in order to engage a procedure of revision and confirmation of foreign sentence.
2. When the judicial decision on the review and confirmation of the foreign sentence becomes enforceable, that decision shall be transmitted by the Central Authority to the requesting State for the purpose of the transfer being carried out.

Section IV

Information concerning the enforcement and transit

Article 124

Information on the enforcement

1. All information concerning the enforcement of the sentence shall be transmitted to the requesting State; that information shall include:
 - a) the date on which enforcement of the sentence has been completed, as decided upon by way of a judicial decision;
 - b) if applicable, notice of the escape of the person concerned prior to the sentence having been fully enforced.
2. At the request of the State that requested the transfer, a special report on the way in which enforcement took place and the results thereof, shall be forwarded to it.

Article 125

Transit

Authorization for the transit through the Portuguese territory of a person being transferred from one State to another may be granted, at the request of any such State; the provisions of Article 43 shall apply *mutatis mutandis*.

(b) Observations on the implementation of the article

Articles 114 to 125 of the Law no. 144/99 are consistent with UNCAC.

Article 46 Mutual legal assistance

Paragraph 1

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

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

Law no.144/99 on international judicial co-operation in criminal matters applies to different modalities of international cooperation: extradition; transfer of proceedings in criminal matters; enforcement of criminal judgments; transfer of persons sentenced to any punishment, or measure, involving deprivation of liberty; supervision of conditionally sentenced or conditionally released persons; and mutual legal assistance in criminal matters.

Mutual legal assistance provisions, which are broad in terms of application, are set forth in Title VI of mentioned Law, Articles 145 to 164. Therefore, Portugal is able to afford the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to offences covered by UNCAC, under this Law as well as in the framework of bilateral and multilateral agreements concluded by Portugal with other States.

Copies of examples of bilateral agreements celebrated with other States are attached to the answers provided to the self-assessment questionnaire.

Law no. 144/99, of 31 August

Article 1

Subject-matter

1. This law shall apply to the following forms of international judicial co-operation in criminal matters:

- a) extradition;
- b) transfer of proceedings in criminal matters;
- c) enforcement of criminal judgments;
- d) transfer of persons sentenced to any punishment, or measure, involving deprivation of liberty;
- e) supervision of conditionally sentenced or conditionally released persons;
- f) mutual legal assistance in criminal matters.

2. The provisions of paragraph 1 shall apply, as appropriate, to the co-operation between Portugal and any international judicial entities established within the framework of treaties or conventions that bind the Portuguese State.

Portugal can use multilateral treaties and conventions as the legal basis to request and to answer to requests on this issue. At the same time, a number of bilateral agreements have been celebrated in areas such as extradition, mutual legal assistance and transfer of sentenced persons. In the absence of such legal instruments, Law no. 144/99, of 31 of August can be applicable and Portugal can provide international cooperation in criminal matters on the basis of reciprocity.

Regarding law enforcement cooperation, judicial authorities are able to cooperate directly with counterparts using the multilateral and bilateral treaties and conventions or in the previously mentioned Law no. 144/99, of 31 August. The existing networks – European Judicial Network (EJN), Ibero-American Judicial Network (IBERRed) and Portuguese Speaking Countries Judicial Network (RJCPLP) – can be used as well to facilitate the cooperation.

At police level Portugal cooperates bilaterally with other countries and through EUROPOL and INTERPOL. The most recent example of such cooperation is a request submitted by Peru in order to investigate if some stolen cultural goods can be found in Portugal.

(b) Observations on the implementation of the article

Law no. 144/99 seems to be consistent with UNCAC.

Article 46 Mutual legal assistance

Paragraph 2

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

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

Legal persons are criminally liable for the commission of offences as stated in Article 11 of the Criminal Code, Article 4 of Law no. 20/ 2008 and other pieces of legislation as Law no. 52/2003 of 21 august (Terrorism Law). Therefore Law no. 144/99, namely Articles 145 to 164 on mutual legal assistance, applies without any distinction to legal and natural persons, with the necessary adaptations.

Law no. 144/99, of 31 August

Part VI
Mutual legal assistance in criminal matters

CHAPTER I
Provisions common to different forms of assistance

Article 145

Principle and scope

1. Assistance shall include: the communication of information; the service of writs; communication of procedural steps or other public law acts admitted by Portuguese law if they are necessary for the purposes of criminal proceedings; as well as steps that are necessary to seize or recover proceeds from, objects of or instrumentalities of an offence.
2. Assistance shall include in particular the following:
 - a) the notification of deeds and the service of documents;
 - b) the procuring of evidence;
 - c) searches, seizure of property, experts examination and analysis;
 - d) the service of writs to and hearing of suspects, accused persons, witnesses or experts;
 - e) the transit of persons;
 - f) the communication of information on Portuguese law or the law of a foreign State, as well as the communication of information relating to the judicial record of suspect, accused or sentenced persons.
3. Where the circumstances of the case so require, subject to an agreement between Portugal and a foreign State or an international judicial entity, any hearings as mentioned in subparagraph d) of paragraph 2 above may take place by using telecommunication means in real time, in accordance with Portuguese criminal procedure law and without prejudice to the provisions of paragraph 10 ahead.
4. Within the framework of assistance in criminal matters, either upon authorisation of the Minister of Justice or in conformity with the provisions of any agreement, treaty or convention to which Portugal is a Party, direct communication of information relating to criminal matters may be established between Portuguese and foreign authorities that assist judicial authorities.
5. The Minister of Justice shall be empowered to authorise the participation of foreign judicial authorities and foreign criminal police authorities in criminal proceedings that take place on Portuguese territory, in particular within the framework of joint criminal investigation teams made up of both national and foreign members.
6. Unless provided for by international agreements, treaties or conventions, setting up joint criminal investigation teams requires authorisation from the Minister of Justice.
7. Participation as mentioned in paragraph 5 shall be authorised only if reciprocity applies and where its purpose is to assist a Portuguese or foreign judicial authority or a Portuguese or foreign criminal police authority; under the authority and in the presence of Portuguese authorities; the provisions of the Portuguese criminal procedure law shall apply; all must be recorded in writing.
8. The provisions of Article 29 above shall apply to any measures that come under the competence of the criminal police authorities where such measures are undertaken under the conditions and within the limits provided for in the Code of Criminal Procedure.

9. The powers mentioned in paragraph 5 above may be delegated upon the Central Authority or, where the participation sought is exclusively that of a foreign criminal police authority or body, upon the national Director of the "Polícia Judiciária" (Criminal Police).

10. The provisions of paragraph 5 shall apply mutatis mutandis to requests for assistance submitted by Portugal.

11. The provisions of this Article shall not prejudice the application of more favourable provisions in agreements, treaties or conventions to which Portugal is a party.

Article 145-A

Joint criminal investigation teams

1. Joint investigation teams shall be set up by mutual agreement between the Portuguese State and a foreign State, in particular where:

a) in the framework of a foreign State's criminal investigation, specially complex investigations having links with Portugal or with another State are required;

b) a number of States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the States involved.

2. Requests for the setting up of joint investigation teams shall, in addition to the information referred to in the relevant provisions of Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty of 27 June 1962, as amended by Protocol of 11 May 1974, include proposals for the composition of the team.

3. Seconded members of a joint investigation team may be present when criminal investigation acts are carried out in the Portuguese territory, unless the national authority leading the team decides otherwise, giving the reasons therefore, in accordance with the Portuguese law.

4. Criminal investigation acts may be carried out in the Portuguese territory by seconded members of a joint investigation team by a decision taken by the national authority leading the team and subject to the approval of the Minister of Justice and of the competent authority of the seconding State.

5. Where a joint investigation team needs assistance from a State other than those which have set up the team, the request for assistance may be addressed by the Minister of Justice to the competent authorities of the State concerned in accordance with the relevant instruments or arrangements.

6. Members of joint investigation teams who have been seconded by the Portuguese State may provide their teams with information available in Portugal for the purpose of the criminal investigations conducted by them.

7. Information lawfully obtained by the members of joint investigation teams during the performance of their duties which is not otherwise available to the competent authorities of the seconding States concerned may be used for the following purposes:

a) for the purposes for which the team has been set up;

b) subject to the prior consent of the Minister of Justice, for detecting, investigating and prosecuting other criminal offences, provided that such use will not endanger criminal investigations being carried out in Portugal or when facts are at stake in respect of which the State concerned could refuse mutual assistance; c) for preventing an immediate and serious threat to public security and, without prejudice to subparagraph (b), if a criminal investigation is subsequently opened;

d) for other purposes provided that an agreement thereon exists between States setting up the team.

8. Arrangements may be agreed for persons other than representatives of the States setting up a joint investigation team to take part in the activities of the team, in accordance with national laws or the provisions of any legal instrument applicable. Such persons shall not enjoy the rights conferred upon the seconded members of the team unless an agreement expressly states otherwise.

Article 145-B

Civil liability regarding members of joint investigation teams

1. The seconding State shall be liable for any damage caused to third parties by its own officials during the exercise of their functions as seconded members of a joint investigation team, in accordance with the law of the State in whose territory such damage was caused.
2. The Portuguese State shall make good any damage caused in the national territory by seconded members of a team, and shall exercise its right to claim return of all sums it has paid.
3. The Portuguese State shall reimburse any sums paid to third parties by the seconding State for damage caused by its own members of joint investigation teams.
4. The Portuguese State shall waive all requests for reimbursement of damages it has sustained, caused by members of joint investigation teams who have been seconded by the foreign State, without prejudice to the exercise of its rights vis-à-vis third parties."

Article 146

Applicable law

1. Requests for assistance addressed to Portugal shall be carried out in conformity with the Portuguese law.
2. However, where the foreign State so requests explicitly or where it results from an international agreement, treaty or convention, the assistance sought may be given in conformity with the law of that State, if such is not incompatible with the fundamental principles of Portuguese law and if it does not carry serious prejudice to the parties involved.
3. Requests for assistance shall be refused where the assistance sought implies measures that are banned under Portuguese law or might carry penal or disciplinary sanctions.

Article 147

Coercive measures

1. Where any of the measures mentioned in Article 145 above imply the resort to coercive measures, such measures shall be carried out only if the facts mentioned in the request amount to an offence under Portuguese law and if the measures are carried out according to Portuguese law.
2. However, coercive measures shall be admitted even where the facts are not punishable under Portuguese law, if such measures aim at procuring or producing evidence to the effect of excluding the responsibility of the person against whom the criminal proceedings run.

Article 148

Prohibition to use information obtained

1. Any information obtained in order to be used within the criminal proceedings mentioned in the foreign State's request shall not be otherwise used.
2. At the request of a foreign State or an international judicial entity, the Minister of Justice, after having sought the opinion of the Attorney-General, may exceptionally authorise that information to be used in the framework of other criminal proceedings.
3. Any authorisation given to a foreign State to consult a Portuguese criminal proceedings file within the framework of which that State is an injured party, shall be made subject to the conditions mentioned in the preceding paragraphs.

Article 149

Confidentiality

1. Upon application of a foreign State or an international judicial entity, the request for assistance, its purpose, the measures taken upon the request, as well as the documents involved, shall be kept confidential.

2. If the assistance requested cannot be carried out without unveiling information thereupon, the Portuguese authority shall invite the interested authority to confirm or annul its request for assistance.

CHAPTER II

Request for assistance

Article 150

Powers

Any foreign authority or entity that has powers to take criminal proceedings under the law of the State or the International Organization involved, may request assistance.

Article 151

Contents of the request and supporting documents

Other than the documents and statements mentioned in Article 23 above, requests shall include, as applicable:

- a) the name, address and capacity of the person to whom the writ or the document should be serviced, as well as specification of the nature of such document;
- b) a statement to the effect of certifying that search, seizure or handing of property, as requested, are admissible under the law of the requesting State;
- c) any reference to particulars of the proceedings or to requirements, including time-limits and confidentiality, that the foreign State or judicial entity wishes to be met.

Article 152

Procedure

1. Requests for assistance that take the form of letters rogatory may be transmitted directly between competent judicial authorities, without prejudice to the possibility of using the channels mentioned in Article 29.
2. In accordance with the criminal procedure law, the judge or the public prosecutor shall be empowered to take decisions to the effect of executing letters rogatory.
3. Where a letter rogatory is received that should not be executed by the public prosecutor, the public prosecutor shall be given the possibility to state his opinion.
4. The execution of letters rogatory shall be refused in the following cases:
 - a) where the requested authority is not empowered to execute the measures sought, without prejudice of the transmission of the letter rogatory to the competent judicial authority if such authority is a Portuguese authority;
 - b) where the measures sought are forbidden by law or contrary to the Portuguese "ordre public";
 - c) where the execution of the letter rogatory offends the sovereignty or the security of the State;
 - d) where the measures imply the execution of a decision of a foreign court, and that decision must have previously been reviewed and confirmed and that decision has not been reviewed and confirmed.
5. Other requests, in particular requests relating to criminal records, to the verification of the identity of a person and mere requests for information, may be directly forwarded to the competent authorities or entities and, once complied with, the result communicated back through the same channels.
6. The provisions of paragraph 4 above shall apply mutatis mutandis to requests that do not take the form of a letter rogatory.
7. The provisions of paragraph 3 above shall apply mutatis mutandis to letters rogatory addressed by any competent Portuguese judicial authority to any foreign authorities; letters rogatory shall be issued in every instance where any competent Portuguese judicial authority deems that such is necessary in order to obtain evidence of any fact that is essential either to the prosecution or to the defence.

CHAPTER III

Special forms of international assistance

Article 153

Service of documents

1. The Portuguese authorities shall service any judicial decisions, as requested by a foreign authority.
2. Service may be carried out by simple transmission of the documents to the person by post or, where the foreign authority expressly so requests, by any other manner if consistent with the Portuguese law.
3. Proof of service shall be given either by means of a document dated and signed by the person served or by means of a statement made by the Portuguese authority indicating the manner in which the documents were served and the date.
4. Documents shall be deemed to be serviced when they are accepted, as well as when they are refused in writing.
5. If documents cannot be served as requested, the foreign authority shall be informed of the reasons thereof.
6. The provisions of this Article shall not prejudice direct service to any person who is present on the territory of a foreign State, in accordance with the provisions of any agreement, treaty or convention to which Portugal is a party.

Article 154

Summons to appear

1. Suspect or accused persons, witnesses or experts who are summoned to appear for the purposes of foreign criminal proceedings, service of which has been requested, may fail to appear.
2. When the summons are served, the person concerned shall be informed of his right not to appear.
3. The Portuguese authority shall refuse to service any summons where the person concerned is threatened with sanctions or where the safety of the person concerned is not safeguarded.
4. Consent to appear, if it is given, shall be freely given by way of a written statement.
5. Requests shall indicate the allowances and remunerations, as well as the travelling and subsistence expenses, to be paid out; they ought to be transmitted reasonably in advance so that they can be received 50 days at least before the date at which the person should appear.
6. In urgent cases, the time-limits indicated in the preceding paragraph may be shortened.
7. The allowances, remunerations and expenses mentioned in paragraph 5 above shall be calculated as from the place of residence of the person concerned and shall be at the rates provided for in the law of the State where the hearing is intended to take place.

Article 155

Temporary surrender of persons in custody

1. A person arrested or imprisoned in Portugal may be temporarily surrendered to an authority of a foreign State for the purposes mentioned in the preceding Article, provided that that person consents, that his remaining in custody is guaranteed and that he shall be returned within the period stipulated by the Portuguese authorities or when his presence in that State is no longer necessary.
2. Without prejudice to the provisions of the preceding paragraph, surrender shall be refused if:
 - a) the presence of the person concerned is necessary at criminal proceedings pending in Portugal;
 - b) it is liable to prolong the provisional arrest of the person concerned;
 - c) regarding the circumstances of the case, the Portuguese judicial authority does not deem surrender to be convenient.

3. The provisions of sub-paragraphs 1 and 2 of Article 21 shall apply to the requests mentioned in this Article.

4. The time during which the person remains out of Portugal shall be taken into consideration for the purposes of provisional arrest or sentence imposed in Portugal.

5. If the sentence imposed on the person surrendered expires while that person is on the territory of a foreign State, that person shall be set free and shall as from that moment enjoy such rights as enjoy the persons who are not under custody.

6. The Minister of Justice may grant the assistance requested subject to specified requirements.

Article 156

Temporary transfer of persons in custody for purposes of investigation

1. The provisions of Article 155 shall apply to cases in which, upon agreement, a person arrested or imprisoned in Portugal may be temporarily transferred to the territory of another State for purposes of investigation in the framework of Portuguese criminal proceedings.

2. The agreement mentioned in paragraph 1 above shall not be required where the transfer is made under an international agreement, treaty or convention that does not impose it.

3. The provisions of the preceding paragraph shall apply mutatis mutandis to requests of assistance submitted to Portugal.

Article 157

Safe conduct

1. Any person appearing on the territory of a foreign State under the terms and for the purposes of the provisions of Articles 154, 155 or 156 above:

a) shall not be arrested, prosecuted, punished or subjected to any other restriction of his personal liberty in respect of any act anterior to his departure from the Portuguese territory other than those mentioned in the request for co-operation;

b) shall not be under an obligation to accept to be heard or make a statement at proceedings other than those mentioned in the request.

2. The immunity provided for in paragraph 1 above shall cease when the person voluntarily remains in the territory of the foreign State for more than 45 days from the date when his presence is no longer required or, having left that territory, voluntarily returned to it.

3. The provisions of the preceding paragraphs shall apply mutatis mutandis to any person habitually resident in a foreign State who comes to Portugal as a result of a summons to appear for purposes of criminal proceedings.

Article 158

Transit

1. The provisions of Article 43 shall apply mutatis mutandis to the transit of any person who is under custody in a foreign State and who must appear in the territory of a third State in order to take part at criminal proceedings.

2. Custody of a person in transit shall not remain if the State that authorised the transfer requests the person to be set free.

Article 159

Handing over of property, valuables, documents or files

1. At the request of the competent foreign authorities, any property, in particular documents or valuables, the seizure of which is consistent with the Portuguese law, may be put at the disposal of those authorities if they are relevant to the criminal proceedings.

2. Any proceeds from an offence may be returned to their owners regardless of criminal proceedings having been instituted in the requesting State.

3. Criminal files or other records which are of importance to criminal proceedings pending in a foreign State may be handed over to the competent authorities of that State, provided that they shall be returned within the time-limit fixed by the competent Portuguese authorities.
4. The handing over of any property, valuables, documents or criminal files may be delayed if they are required in connection with pending criminal proceedings.
5. Authenticated copies of the documents or files requested may be handed over instead of the originals; however, should the foreign authority expressly request the transmission of originals, the request shall as far as possible be complied with if the condition for their restitution provided in paragraph 3 above is met.

Article 160

Proceeds, objects and instrumentalities

1. At the request of a competent foreign authority, steps may be taken in order to trace the proceedings of an allegedly committed offence; the results thereof shall be communicated to the requesting authority.
2. The foreign authority must state the grounds on which it deems that such proceedings might be located in Portugal.
3. The Portuguese authority shall take such steps as are necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence; the provisions of Part IV shall apply *mutatis mutandis*.
4. When the foreign authority communicates its intention to request the enforcement of any decision as mentioned in the preceding paragraph, the Portuguese authority may take such steps as are consistent with the Portuguese law in order to prevent any dealing in, transfer or disposal of property which at a later stage shall be, or may be, the subject of that decision.
5. The provisions of this Article also apply to objects and instrumentalities of an offence.

Article 160-A

Controlled and surveyed deliveries

1. For the purposes of obtaining the identification of largest possible number of offenders and establishing their criminal liability, in co-operation with one or more foreign States, the Public Prosecution shall be empowered to authorise on a case by case basis, upon request from one or more foreign States, in particular where such is provided for in a conventional instrument, that criminal police bodies abstain from acting within the framework of trans-border criminal investigations concerning extraditable offences.
2. The Portuguese authorities shall have the legal powers to act as well as the supervision and control of the criminal investigation operations conducted within the framework of the provisions of the preceding paragraph, without prejudice to the necessary co-operation with the competent foreign authorities.
3. Authorisations given under paragraph 1 above shall be without prejudice to the exercise of criminal proceedings for the facts in respect of which the Portuguese law is applicable; they shall be given only where :
 - a) the competent foreign authorities have ensured that both their legislation provides adequate criminal sanctions for the offence at stake and criminal proceedings shall be exercised; and b)
 - the competent foreign authorities have ensured the security of the substances and goods at stake against the risks of flight and loss; and
 - c) the competent foreign authorities have undertaken urgently to communicate detailed information about the results of the operation as well as the acts performed by each of the offenders, in particular those who acted in Portugal.
4. Even where the above-mentioned authorisation has been granted, the criminal police bodies shall act if safety margins noticeably decrease or if any circumstance arise that renders the arrest of the culprits, or the seizure of the substances or goods, more difficult; where such action by the police bodies was not previously communicated to the authority that granted the authorisation, such shall be done in writing within the next 24 hours.

5. Subject to the existence of an agreement with the country of destination, where prohibited or dangerous substances are in transit, they may be partially replaced by innocuous; a written record shall be filed.
6. Non-compliance of obligations undertaken by foreign authorities may constitute grounds for refusal of authorisation in case of future requests.
7. International agreements are made by the National Bureau of INTERPOL, through the "Polícia Judiciária".
8. Any other entity that receives requests for controlled deliveries, in particular the "Direcção-Geral de Alfândegas" (Directorate General of Customs), either through the Customs Cooperation Council or through its foreign counterparts, without prejudice of processing of custom-specific data, shall address such a request to the "Polícia Judiciária" for action.
9. The Public Prosecution magistrate of the judicial circle of Lisbon shall be empowered to decide upon requests for controlled deliveries.

Article 160-B

Undercover action

1. Criminal investigation officials of other States may develop undercover action in Portugal, in accordance with the applicable law; in such cases, their status shall be similar to that of Portuguese criminal investigation officials.
2. Action as mentioned in paragraph 1 above is subject both to a request based on an international agreement, treaty or convention, and reciprocity.
3. The judge of the "Tribunal Central de Instrução Criminal" (Central Court of Criminal Investigation) shall be empowered to authorise such action, upon a proposal of the Public Prosecution magistrate at the "Departamento Central de Investigação e Acção Penal - DCIAP" (Central Department for Criminal Investigation and Prosecution).

Article 160-C

Interception of telecommunications

1. Upon request of the competent authorities of a foreign State, the interception of telecommunications effected in Portugal may be authorised, if such is provided for in an international agreement, treaty or convention and provided that, in similar national circumstances, interception would be admissible under the Portuguese criminal procedural law.
2. The "Polícia Judiciária" shall be empowered to receive requests for interception; it shall thereupon submit the requests to the Criminal Investigations' judge of Lisbon for authorisation.
3. The decision concerning the authorisation mentioned in the preceding paragraph shall include an authorization for the immediate transmission of the communication to the requesting State, should such transmission be provided for in the international agreement, treaty or convention under which the request was made.

Article 161

Information on the law applicable

1. Any information requested by a foreign judicial authority and relating to the provisions of Portuguese law that are applicable in the framework of criminal proceedings shall be given by the Bureau for Documentation and Comparative Law of the Attorney-General's Office.
2. Any Portuguese judicial authority requiring information on foreign law shall request such collaboration as is necessary from the Bureau mentioned in the preceding paragraph.

Article 162

Information from criminal records

Direct communication of requests relating to criminal records, as mentioned in paragraph 5 of Article 152, shall be addressed to the criminal identification services.

Article 163

Information about criminal judgments

1. Information about or copies of criminal judgments, as well as information about measures taken after criminal judgments or any other relevant information relating to any of those may be requested in respect of nationals of the requesting State.
2. Any requests submitted under the provisions of the preceding paragraph must be channelled through the Central Authority.

Article 164

End of the procedure

1. The authority in charge of executing a request shall forward the file and other documents to the requesting foreign authority as soon as it deems that the request has been fully complied with.
 2. If, however, the foreign authority does not deem that the request has been fully complied with, it may return the file, provided that it states its reasons.
 3. Should the Portuguese authority deem that such reasons are valid, it shall comply with the request.
- Portugal indicated that no information is available on cases related to mutual legal assistance in investigations, prosecutions and judicial proceedings granted or denied.

(b) Observations on the implementation of the article

Article 11 of the Criminal Code, Article 4 of the Law no. 20/2008 and Articles 145 to 165 of the Law no. 144/99 adequately answer to the matter of mutual legal assistance with respect to investigations, prosecutions and judicial proceedings in offences for which a legal person may be held liable, mainly since the articles in Law no. 144/99 do not establish any distinction in its enforcement to any kind of persons.

Article 46 Mutual legal assistance

Paragraph 3

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*
- (j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*
- (k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

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

Law no. 144/99, of 31 August

Article 145

Principle and scope

1. Assistance shall include: the communication of information; the service of writs; communication of procedural steps or other public law acts admitted by Portuguese law if they are necessary for the purposes of criminal proceedings; as well as steps that are necessary to seize or recover proceeds from, objects of or instrumentalities of an offence.
2. Assistance shall include in particular the following:
 - a) the notification of deeds and the service of documents;
 - b) the procuring of evidence;
 - c) searches, seizure of property, experts examination and analysis;
 - d) the service of writs to and hearing of suspects, accused persons, witnesses or experts;
 - e) the transit of persons;
 - f) the communication of information on Portuguese law or the law of a foreign State, as well as the communication of information relating to the judicial record of suspect, accused or sentenced persons.

As highlighted by the wording «in particular», paragraphs a) to f) are only examples and all other forms of modalities of mutual legal assistance are possible under Portuguese law.

The issue related to international judicial cooperation in criminal matters have been assessed within FATF evaluations but exclusively about the crimes of money laundering and terrorism financing. This sentence should apply to all the answers provided to in international cooperation chapter (Chapter IV). Please see the answer provided to Article 17 regarding the assessment of effectiveness of other domestic measures.

(b) Observations on the implementation of the article

Article 145 of Law no. 144/99 implements adequately paragraph 3 of Article 46.

Article 46 Mutual legal assistance

Paragraph 4

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

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

According to Law no. 144/99, of 31 August 1999 the assistance shall include the communication of information, the service of writs and the communication of procedural steps or other public law acts admitted by Portuguese law if they are necessary for the purposes of criminal proceedings, meaning that is not forbidden the communication or

transmission, without prior request, of information related to criminal matters to a competent authority in another State Party.

In addition, Article 145 (4) foresees the possibility of communication of information: «Within the framework of assistance in criminal matters, either upon authorization of the Minister of Justice or in conformity with the provisions of any agreement, treaty or convention to which Portugal is a Party, direct communication of information relating to criminal matters may be established between Portuguese and foreign authorities that assist judicial authorities». Therefore, Portugal complies with Article 46 (4) of UNCAC.

Law no. 144/99, in particular Article 145, applies also to law enforcement agencies, concept that could include public prosecutors and the police bodies (the Criminal Police, which is competent for the investigation of the crimes foreseen in UNCAC). However, this Law doesn't apply to the intelligence services, which use different channels of cooperation and communication due the kind of information they need to share. In addition, intelligence services in Portugal are not allowed to perform criminal investigation but only to gather intelligence information that, of course, whether if related to the potential commission of an offence and hence communicated to the criminal police, could be used in the framework of a criminal investigation.

(b) Observations on the implementation of the article

Article 145 of the Law no. 144/99 implements adequately the provision.

Article 46 Mutual legal assistance

Paragraph 5

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

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

The transmission of information could be made by Portugal without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing such information. The competent authorities receiving the information shall comply with the requests in order to keep the information confidential, even temporarily, or with restriction on its use. According to Articles 11 and 148 of Law no. 144/99, confidentiality should be protected and the use of information prohibited.

Law no.144/99, of 31 August

Article 11

Protection of confidentiality

1. In implementing a request for international co-operation submitted to Portugal, the provisions of the Code of Criminal Procedure and supplementary legislation concerning grounds of refusal to testify, seizure of property, telephone tapping, professional or State secrets, or any other cases in which confidentiality is protected, shall apply.

2. The provisions of the preceding paragraph shall apply to any information that according to the request, ought to be given by persons not involved in the foreign criminal proceedings

Article 148

Prohibition to use information obtained

1. Any information obtained in order to be used within the criminal proceedings mentioned in the foreign State's request shall not be otherwise used.

2. At the request of a foreign State or an international judicial entity, the Minister of Justice, after having sought the opinion of the Attorney-General, may exceptionally authorize that information to be used in the framework of other criminal proceedings.

3. Any authorization given to a foreign State to consult a Portuguese criminal proceedings file within the framework of which that State is an injured party, shall be made subject to the conditions mentioned in the preceding paragraphs.

(b) Observations on the implementation of the article

Article 11 and Article 148 of the Law no.144/99 are consistent with UNCAC.

Article 46 Mutual legal assistance

Paragraph 6

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

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

According to paragraph 1 of Article 3 the forms of co-operation mentioned in Article 1 of Law no. 144/99 shall be carried out in accordance with the provisions of the international treaties, conventions and agreements that bind the Portuguese State and, where such provisions are non-existent or do not suffice with the provisions of this law. Therefore Law no. 144/99 only applies where no treaty, convention or agreement exists or where Portugal is a Party.

Law no. 144/99, of 31 August

Article 3

Primacy of international treaties, conventions and agreements

1. The forms of co-operation mentioned in Article 1 above shall be carried out in accordance with the provisions of the international treaties, conventions and agreements that bind the Portuguese State and, where such provisions are non-existent or do not suffice the provisions of this law.

2. The provisions of the Code of Criminal Procedure shall apply as subsidiary provisions.

(b) Observations on the implementation of the article

The content of Article 3 (1) and Article 1 of the Law no. 144/99 are consistent with the UNCAC.

Article 46 Mutual legal assistance

Paragraph 7

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.

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

As stated in the previous answer Law no. 144/99 applies in a subsidiary way where no treaty, convention or agreement exists or due to the fact that Portugal is not a Party in these international treaties or a bilateral agreement on mutual legal assistance was not celebrated with other States.

Bilateral agreements on mutual legal assistance have been concluded with the following countries: Algeria, Australia, Brazil, Canada, China, Mexico, Morocco, Tunisia and São Tomé and Príncipe. Negotiations for the celebration of similar agreements with Ecuador, Paraguay and Uruguay are ongoing.

A multilateral agreement on mutual legal assistance on the framework of the Portuguese Speaking Countries Community (Angola, Brazil, Cape Verde, Guinea-Bissau, Mozambique, Portugal, São Tomé e Príncipe and Timor-Leste) has been concluded in 2005.

Regarding extradition, bilateral agreements have been celebrated with the following countries: Algeria, Australia, Bolivia, Botswana, Brazil, China, India, Mexico and the United States. The negotiation for the celebration of similar agreements with Uruguay is ongoing.

Argentina, Brazil, Portugal and Spain concluded a joint international agreement on Simplified Extradition.

In the framework of CPLP - Portuguese Speaking Countries Community (Angola, Cape Verde, Brazil, Guinea-Bissau, Portugal, São Tomé and Príncipe, Mozambique and Timor-Leste), two agreements have been celebrated: Mutual Legal Assistance and Extradition (as well as an on the transference of sentenced persons).

(b) Observations on the implementation of the article

The answer of the Portuguese authorities is consistent with the UNCAC.

Article 46 Mutual legal assistance

Paragraph 8

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

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

Portugal indicated that bank secrecy is not included in the grounds for refusal foreseen in Articles 6, 7, 8, 10, 18 and 32 of Law no. 144/99.

(b) Observations on the implementation of the article

The answer of the Portuguese authorities, read together with its answer under Article 40, is consistent with the UNCAC.

Article 46 Mutual legal assistance

Subparagraph 9 (a)

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

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

Law no. 144/99, of 31 August

Article 4

Principle of reciprocity

1. International co-operation in criminal matters, as provided for in this law, falls within the province of the principle of reciprocity.
2. Where circumstances so require, the Ministry of Justice shall demand an undertaking to the effect that reciprocity shall apply; within the limits set out in the provisions of this law, it may provide other States with such an undertaking.
3. The absence of reciprocity shall not prevent compliance with a request for co-operation where such co-operation:
 - 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;
 - c) may serve to shed light on facts endorsed to a Portuguese national.

Usually dual criminality is a condition to render international cooperation in criminal matters. That's for instance the case of extradition, set forth in paragraph 2 of Article 1 of Law no. 144/99 stating that the surrender of a person shall be possible only in respect of offences, including attempted *offences that are punishable under both the Portuguese law and the law of the requesting State* by a sanction or measure involving deprivation of liberty for a maximum period of at least one year.

However, mentioned Law includes a provision - Article 4 - related to the principle of reciprocity, allowing for the rendering of international cooperation in criminal matters regardless of the verification of the dual criminality clause, also stating that absence of reciprocity shall not prevent compliance with a request for co-operation where such co-operation is particularly needed.

(b) Observations on the implementation of the article

The provision is adequately implemented.

Article 46 Mutual legal assistance

Subparagraph 9 (b)

9.(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

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

According to Law no. 144/99 - Article 4 - the rendering of international cooperation in criminal matters regardless of the verification of the dual criminality clause is allowed. The absence of reciprocity shall not prevent compliance with a request for co-operation where such co-operation is particularly needed.

(b) Observations on the implementation of the article

Article 4 of the Law no.144/99 is consistent with UNCAC.

Article 46 Mutual legal assistance

Subparagraph 9 (c)

9. (c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

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

According to Law no. 144/99 - Article 4 - the rendering of international cooperation in criminal matters regardless of the verification of the dual criminality clause is allowed. The absence of reciprocity shall not prevent compliance with a request for co-operation where such co-operation is particularly needed.

(b) Observations on the implementation of the article

Article 4 of the Law no. 144/99 seems to be consistent with UNCAC.

Article 46 Mutual legal assistance

Paragraph 10 a

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

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

Law no. 144/99, of 31 of August

Article 27

Transfer of persons

1. Any transfer of persons arrested or sentenced to a sanction involving deprivation of liberty, where that transfer should be executed as a result of a decision taken pursuant to the provisions of this law, shall be carried out by the Ministry of Justice, in agreement, as to the means of transport, the date, the hour and the place of surrender, with the authorities of the foreign State on whose territory the person concerned is, or to whose territory the person concerned should be transferred.
2. Transfer shall be carried out within the shortest possible delay as from the date of the decision ordering it.
3. The provisions of this Article, adapted as appropriate, shall apply to any transfer requested by any international judicial entity.

Article 114

Scope

This Chapter applies to the enforcement of criminal judgements where such enforcement carries with it the transfer of a person sentenced to a sanction or measure involving deprivation of liberty and where the transfer results from the person's request or depends on the person's consent.

Article 115

Principles

1. If the general requirements provided for in this law and in the following articles are met, any person sentenced by a foreign court to a sanction or a measure involving deprivation of liberty may be transferred to Portugal in order to serve the sentence imposed on him.
2. In the same way and for the same purposes, any person sentenced in Portugal to a sanction or measure involving deprivation of liberty may be transferred to the territory of a foreign State.
3. The transfer may be requested either by a foreign State or by Portugal, in both cases provided that it is either at the request or with the express consent of the sentenced person.
4. The transfer is also subject to the existence of an agreement between the State in which the person was sentenced and the State to which the transfer should be requested.

Article 116

Information to sentenced persons

The prison administration shall inform all foreign persons sentenced in Portugal of their right to request their transfer in conformity with this law.
and supporting documents

1. Where the person concerned expresses his interest in being transferred to a foreign State, the Central Authority shall so inform that State with a view to obtaining its agreement; that information shall include:

- a) name, date and place of birth, and nationality of the person concerned;
- b) his address in that State, where applicable;
- c) a statement of the facts upon which the sentence was based;

d) the nature and duration of and date in which the person started serving the sanction or measure.

2. The following information shall also be forwarded to the foreign State:

a) a certificate or an authenticated copy of the sentence and of the text of the legal provisions that apply to the case;

b) a statement indicating the duration of the sanction or measure that was already served, duration of provisional arrest, reduction of the sentence and any other facts pertaining to the enforcement of the sentence;

c) a statement on the consent of the person concerned to be transferred;

d) if applicable, any medical or social report relating to the person concerned and in particular to any medical treatment undergone by that person in Portugal and any recommendations as to the continuation of such treatment.

Article 118

Powers

1. The public prosecutor attached to the court that rendered the sentence shall be empowered, at his initiative or at the request of the sentenced person, to implement any request for transfer.

2. Requests for transfer must be forwarded as soon as the sentence becomes enforceable.

3. Requests shall be forwarded by the Attorney-General's Office to the Minister of Justice for examination.

4. Where the circumstances of the case so justify, the Minister of Justice may request an opinion from the Attorney-General's Office, the prison administration and the Institute for Social Rehabilitation; the opinions requested shall be produced within 10 days.

5. The person concerned shall be informed in writing of all the decisions taken subsequent to the request.

Article 119

Request and supporting documents

1. Where a person expressed to a foreign State the wish to be transferred, that State should forward, with the request, the following documents:

a) a statement indicating that the sentenced person either is a national of that State or has his habitual residence on its territory;

b) a copy of the legal provisions from which it can be assumed that the facts upon which the Portuguese sentence was based also amount to a punishable offence in that State;

c) any other pertinent documents.

2. The information listed in paragraph 2 of Article 117 shall be forwarded to the foreign State, save if the request is summarily rejected.

Article 120

Decision

1. Where the Minister of Justice deems the request to be admissible, it shall be forwarded by the Attorney-General's Office to the public prosecutor attached to the "Tribunal da Relação" that has jurisdiction in the area of the prison where the person concerned is.

2. The public prosecutor shall take steps to ensure that the person concerned is heard by the judge; the provisions of the Code of Criminal Procedure relating to the hearing of arrested persons shall apply.

3. The "Tribunal da Relação" shall take a decision on the request, after having determined that the person concerned, fully knowledgeable of the legal consequences thereof, voluntarily consented to his transfer.

4. A consular agent or any official appointed with the agreement of the foreign state shall be granted the possibility of verifying whether or not the consent was given in conformity with the provisions of the preceding paragraph.

Article 121
Effects of transfer

1. The transfer of the person to a foreign State shall have the effect of suspending the enforcement of the sentence in Portugal.
2. Portugal may no longer enforce the sentence after the person has been transferred if the foreign State communicates that a judicial decision has deemed the sentence as having been fully enforced.
3. Where any court applies a measure of amnesty, pardon or commutation, the foreign State shall be informed accordingly through the Central Authority.

Article 122
Request

1. Where a person sentenced in a foreign State expresses his wish to be transferred to Portugal, the Attorney-General shall forward to the Minister of Justice the information mentioned in Article 117 that he will have received from that State for the purpose of the Minister examining the admissibility of the request.
2. The provisions of the preceding paragraph shall also apply in the cases in which the request comes from the foreign State.
3. The Minister of Justice may request an opinion from the Attorney-General's Office, the prison administration and the Institute for Social Rehabilitation; the opinions requested shall be produced within 10 days.
4. The provisions of paragraph 5 of Article 118 shall apply *mutatis mutandis*.

Article 123
Specific requirements

1. Once a request for transfer to Portugal is accepted, the file shall be forwarded through the Attorney-General's Office to the public prosecutor at the "Tribunal da Relação" which has jurisdiction in the place of residence indicated by the person concerned, in order to engage a procedure of revision and confirmation of foreign sentence.
2. When the judicial decision on the review and confirmation of the foreign sentence becomes enforceable, that decision shall be transmitted by the Central Authority to the requesting State for the purpose of the transfer being carried out.

Article 124
Information on the enforcement

1. All information concerning the enforcement of the sentence shall be transmitted to the requesting State; that information shall include:
 - a) the date on which enforcement of the sentence has been completed, as decided upon by way of a judicial decision;
 - b) if applicable, notice of the escape of the person concerned prior to the sentence having been fully enforced.
2. At the request of the State that requested the transfer, a special report on the way in which enforcement took place and the results thereof, shall be forwarded to it.

Article 125
Transit

Authorisation for the transit through the Portuguese territory of a person being transferred from one State to another may be granted, at the request of any such State; the provisions of Article 43 shall apply *mutatis mutandis*.

(b) Observations on the implementation of the article

Articles 27 and 114 to 125, particularly Article 117 (2) c), of the Law no. 144/99, seem to be consistent with UNCAC.

Article 46 Mutual legal assistance

Paragraph 11 (a)

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

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

According to Articles 4 and 154 to 156 of Law no. 144/99, Portugal has the authority and obligation to keep the person transferred in custody, meaning that the same rules apply where Portugal is requested to surrender persons in custody temporarily or receive a person in custody temporarily transferred for purposes of investigation.

Law no. 144/99, of 31 August

Article 154

Summons to appear

1. Suspect or accused persons, witnesses or experts who are summoned to appear for the purposes of foreign criminal proceedings, service of which has been requested, may fail to appear.
2. When the summonses are served, the person concerned shall be informed of his right not to appear.
3. The Portuguese authority shall refuse to service any summons where the person concerned is threatened with sanctions or where the safety of the person concerned is not safeguarded.
4. Consent to appear, if it is given, shall be freely given by way of a written statement.
5. Requests shall indicate the allowances and remunerations, as well as the travelling and subsistence expenses, to be paid out; they ought to be transmitted reasonably in advance so that they can be received 50 days at least before the date at which the person should appear.
6. In urgent cases, the time-limits indicated in the preceding paragraph may be shortened.
7. The allowances, remunerations and expenses mentioned in paragraph 5 above shall be calculated as from the place of residence of the person concerned and shall be at the rates provided for in the law of the State where the hearing is intended to take place.

Article 155

Temporary surrender of persons in custody

1. A person arrested or imprisoned in Portugal may be temporarily surrendered to an authority of a foreign State for the purposes mentioned in the preceding Article, provided that that person consents, that his remaining in custody is guaranteed and that he shall be returned within the period stipulated by the Portuguese authorities or when his presence in that State is no longer necessary.
2. Without prejudice to the provisions of the preceding paragraph, surrender shall be refused if:
 - a) the presence of the person concerned is necessary at criminal proceedings pending in Portugal;
 - b) it is liable to prolong the provisional arrest of the person concerned;

c) regarding the circumstances of the case, the Portuguese judicial authority does not deem surrender to be convenient.

3. The provisions of sub-paragraphs 1 and 2 of Article 21 shall apply to the requests mentioned in this Article.

4. The time during which the person remains out of Portugal shall be taken into consideration for the purposes of provisional arrest or sentence imposed in Portugal.

5. If the sentence imposed on the person surrendered expires while that person is on the territory of a foreign State, that person shall be set free and shall as from that moment enjoy such rights as enjoy the persons who are not under custody.

6. The Minister of Justice may grant the assistance requested subject to specified requirements.

Article 156

Temporary transfer of persons in custody for purposes of investigation

1. The provisions of Article 155 shall apply to cases in which, upon agreement, a person arrested or imprisoned in Portugal may be temporarily transferred to the territory of another State for purposes of investigation in the framework of Portuguese criminal proceedings.

2. The agreement mentioned in paragraph 1 above shall not be required where the transfer is made under an international agreement, treaty or convention that does not impose it.

3. The provisions of the preceding paragraph shall apply *mutatis mutandis* to requests of assistance submitted to Portugal.

(b) Observations on the implementation of the article

Articles 154 to 156 of the Law no.144/99 seem to be consistent with UNCAC.

Article 46 Mutual legal assistance

Paragraph 11 (b)

11. For the purposes of paragraph 10 of this article:

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

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

Law no. 144/99, of 31 August

Article 155

Temporary surrender of persons in custody

1. A person arrested or imprisoned in Portugal may be temporarily surrendered to an authority of a foreign State for the purposes mentioned in the preceding Article, provided that that person consents, that his remaining in custody is guaranteed and that he shall be returned within the period stipulated by the Portuguese authorities or when his presence in that State is no longer necessary.

According to Article 4 and paragraph 1 of Article 155 of Law no. 144/99, Portugal implemented the obligation to return the person in custody to the State from which that person has been transferred.

(b) Observations on the implementation of the article

The provisions of Portuguese Law are consistent with UNCAC.

Article 46 Mutual legal assistance

Paragraph 11 (c)

11. For the purposes of paragraph 10 of this article:

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

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

According to Article 4 and Article 157 of Law no. 144/99 Portugal will not require in any situation the State Party which the person was transferred to initiate extradition proceedings for the return of that person.

Law no. 144/99, of 31 August
Article 155

Temporary surrender of persons in custody

1. A person arrested or imprisoned in Portugal may be temporarily surrendered to an authority of a foreign State for the purposes mentioned in the preceding Article, provided that that person consents, that his remaining in custody is guaranteed and that he shall be returned within the period stipulated by the Portuguese authorities or when his presence in that State is no longer necessary.

Article 156

Temporary transfer of persons in custody for purposes of investigation

1. The provisions of Article 155 shall apply to cases in which, upon agreement, a person arrested or imprisoned in Portugal may be temporarily transferred to the territory of another State for purposes of investigation in the framework of Portuguese criminal proceedings.
2. The agreement mentioned in paragraph 1 above shall not be required where the transfer is made under an international agreement, treaty or convention that does not impose it.
3. The provisions of the preceding paragraph shall apply mutatis mutandis to requests of assistance submitted to Portugal.

Article 157

Safe conduct

1. Any person appearing on the territory of a foreign State under the terms and for the purposes of the provisions of Articles 154, 155 or 156 above:
 - a) shall not be arrested, prosecuted, punished or subjected to any other restriction of his personal liberty in respect of any act anterior to his departure from the Portuguese territory other than those mentioned in the request for co-operation;
 - b) shall not be under an obligation to accept to be heard or make a statement at proceedings other than those mentioned in the request.
2. The immunity provided for in paragraph 1 above shall cease when the person voluntarily remains in the territory of the foreign State for more than 45 days from the date when his presence is no longer required or, having left that territory, voluntarily returned to it.

3. The provisions of the preceding paragraphs shall apply mutatis mutandis to any person habitually resident in a foreign State who comes to Portugal as a result of a summons to appear for purposes of criminal proceedings.

(b) Observations on the implementation of the article

The Portuguese legislation is consistent with UNCAC.

Article 46 Mutual legal assistance

Paragraph 11 (d)

11. For the purposes of paragraph 10 of this article:

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

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

According to Article 4 and paragraph 4 of Article 155, also applicable to Article 156, the person transferred shall receive credit for service of the sentence being served in the State from which he or she has been transferred for time spent in the custody of the State Party to which he or she has been transferred.

Law no. 144/99, of 31 August

Article 155

Temporary surrender of persons in custody

1. to 4. (...)

4. The time during which the person remains out of Portugal shall be taken into consideration for the purposes of provisional arrest or sentence imposed in Portugal.

(b) Observations on the implementation of the article

Article 155 (4) of the Law no.144/99 is consistent with UNCAC.

Article 46 Mutual legal assistance

Paragraph 12

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

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

According to Article 4 and Article 157 of Law no. 144/99, a person is not prosecuted nor punished for offences prior to departure from the territory of the State from which he or she was transferred.

Law no. 144/99, of 31 August

Article 157

Safe conduct

1. Any person appearing on the territory of a foreign State under the terms and for the purposes of the provisions of Articles 154, 155 or 156 above:

a) shall not be arrested, prosecuted, punished or subjected to any other restriction of his personal liberty in respect of any act anterior to his departure from the Portuguese territory other than those mentioned in the request for co-operation;

b) shall not be under an obligation to accept to be heard or make a statement at proceedings other than those mentioned in the request.

2. The immunity provided for in paragraph 1 above shall cease when the person voluntarily remains in the territory of the foreign State for more than 45 days from the date when his presence is no longer required or, having left that territory, voluntarily returned to it.

3. The provisions of the preceding paragraphs shall apply *mutatis mutandis* to any person habitually resident in a foreign State who comes to Portugal as a result of a summons to appear for purposes of criminal proceedings.

(b) Observations on the implementation of the article

Article 157 of the Law no.144/99 is consistent with UNCAC.

Article 46 Mutual legal assistance

Paragraph 13

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

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

The Attorney-General's Office (*Procuradoria-Geral da República*) is the Portuguese central authority for receiving and transmitting any requests for international judicial co-operation, according to Article 21 of Law no. 144/99.

The identification of the Portuguese central authority for receiving and transmitting any requests for international judicial co-operation has been made in the framework of the procedure of ratification of the UNCAC. However, at the time of the deposit of the instrument of ratification, this notification was not made. Therefore, the notification to the Secretary-General of the United Nations is ongoing, through the Mission of Portugal in New York. According to paragraph 4 of Article 21 and Article 152 of Law no. 144/99 the request for mutual legal assistance and any related communications can be directly transmitted to the Portuguese central authority.

The requests for mutual legal assistance and any related communications can be directly transmitted to the Portuguese central authority and the transmission through diplomatic channels is no need. However, it is up to the requesting State to decide whether the transmission of such requests is made directly or through diplomatic channels.

According to Article 29 of Law no. 144/99, in case of urgency, the foreign judicial authorities may communicate with the Portuguese judicial authorities, either directly or through the International Criminal Police Organization - INTERPOL or through central agencies designated to that effect, for the purpose of requesting provisional measures or measures that cannot be delayed

Law no. 144/99, of 31 August

Article 21 Procedure

1. The "Procuradoria-Geral da República" (Attorney-General's Office) is hereby designated to be the Central Authority for the purpose of receiving and transmitting any requests for co-operation covered by this law, as well as for all communications relating thereto.
2. Any request for co-operation made to Portugal shall be forwarded to the Minister of Justice by the Attorney-General with a view to its admissibility being decided upon.
3. Any request for co-operation made by Portuguese authorities shall be forwarded to the Minister of Justice by the Attorney-General.
4. The provisions of paragraph 1 shall not prejudice direct contacts relating to requests for co-operation, as mentioned in Article 1 paragraph 1 (f).

Article 29 Urgent provisional measures

1. In case of urgency, the foreign judicial authorities may communicate with the Portuguese judicial authorities, either directly or through the International Criminal Police Organization - INTERPOL or through central agencies designated to that effect, for the purpose of requesting provisional measures or measures that cannot be delayed; the request shall state the reasons for the urgency and shall be in accordance with the provisions of Article 23 above.
2. Requests shall be transmitted by post, by electronic means, by telegraph or by any other means allowing for a written record provided that it is admitted by the Portuguese law.
3. Where the Portuguese judicial authorities deem the request to be admissible, they shall execute it; however, where prescribed by this law, they must seek to obtain from the Minister of Justice, through the Central Authority, previous clearance- should that be possible - or ratification otherwise.
4. Where under this Article co-operation involves Portuguese and foreign authorities of a different nature, the request shall be channelled through the Central Authority.

Article 152

Procedure

1. Requests for assistance that take the form of letters rogatory may be transmitted directly between competent judicial authorities, without prejudice to the possibility of using the channels mentioned in Article 29.
2. In accordance with the criminal procedure law, the judge or the public prosecutor shall be empowered to take decisions to the effect of executing letters rogatory.
3. Where a letter rogatory is received that should not be executed by the public prosecutor, the public prosecutor shall be given the possibility to state his opinion.
4. The execution of letters rogatory shall be refused in the following cases:
 - a) where the requested authority is not empowered to execute the measures sought, without prejudice of the transmission of the letter rogatory to the competent judicial authority if such authority is a Portuguese authority;
 - b) where the measures sought are forbidden by law or contrary to the Portuguese "ordre public";
 - c) where the execution of the letter rogatory offends the sovereignty or the security of the State;
 - d) where the measures imply the execution of a decision of a foreign court, and that decision must have previously been reviewed and confirmed and that decision has not been reviewed and confirmed.
5. Other requests, in particular requests relating to criminal records, to the verification of the identity of a person and mere requests for information, may be directly forwarded to the competent authorities or entities and, once complied with, the result communicated back through the same channels.
6. The provisions of paragraph 4 above shall apply mutatis mutandis to requests that do not take the form of a letter rogatory.
7. The provisions of paragraph 3 above shall apply mutatis mutandis to letters rogatory addressed by any competent Portuguese judicial authority to any foreign authorities; letters rogatory shall be issued in every instance where any competent Portuguese judicial authority deems that such is necessary in order to obtain evidence of any fact that is essential either to the prosecution or to the defence.

The requests for mutual legal assistance and any related communications can be directly transmitted to the Portuguese central authority and the transmission through diplomatic channels is no need. However, it is up to the requesting State to decide whether the transmission of such requests is made directly or through diplomatic channels.

(b) Observations on the implementation of the article

Articles 21, 29 and 152 of the Law no. 144/99 are consistent with UNCAC.

Article 46 Mutual legal assistance

Paragraph 14

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

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

Law no. 144/99, of 31 August

Article 20

Language to be used

1. Requests for co-operation shall be accompanied by a translation into the official language of the requested State, unless otherwise stipulated in a convention or agreement, or unless that State exempts from the need for a translation.
2. The provisions of the preceding paragraph shall also apply to the requests addressed to Portugal.
3. The decisions concerning the admissibility or the refusal of a request for co-operation shall be notified to the authority of the requesting State, accompanied by a translation into the official language of that State, save in the cases mentioned in paragraph 1 above.
4. The provisions of this Article shall also apply to the documents that accompany the request.

Portugal has not notified the Secretary-General of such information.

(b) Observations on the implementation of the article

Article 20 of the Law no.144/99 is consistent with UNCAC.

Article 46 Mutual legal assistance

Paragraph 15

- 15. A request for mutual legal assistance shall contain:*
- (a) The identity of the authority making the request;*
 - (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*
 - (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*
 - (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*
 - (e) Where possible, the identity, location and nationality of any person concerned; and*
 - (f) The purpose for which the evidence, information or action is sought.*

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

Regarding the content of a mutual legal assistance, Article 23 (general contents of the request) and Article 151 of Law no. 144/99 apply:

Article 23

Requests

1. Requests for international co-operation shall indicate:
 - a) the requesting as well as the requested authorities, even if the indication of the latter may be in general terms;
 - b) the purpose of and the reasons for the request;
 - c) the legal qualification of the facts on the grounds of which the request is made;
 - d) the identification of the suspect, the accused or the sentenced person, of the person whose extradition or transfer is requested, as well as the identification of the witness or the expert whose evidence is sought;
 - e) a description of the facts, including time and place, proportional to the importance of the co-operation requested;
 - f) the text of the legal provisions applicable in the requesting State;

- g) any relevant documents.
- 2. The authentication of the documents shall not be required.
- 3. The competent authority may require that a formally irregular or an incomplete request be modified or completed, without that precluding the possibility of taking provisional measures whenever such measures should not await the revised request.
- 4. The requirement mentioned in sub-paragraph f) of paragraph 1 above may be dispensed with where the form of co-operation requested is that which is mentioned in Article 1.1.f).

Article 151

Contents of the request and supporting documents

Other than the documents and statements mentioned in Article 23 above, requests shall include, as applicable:

- a) the name, address and capacity of the person to whom the writ or the document should be serviced, as well as specification of the nature of such document;
- b) a statement to the effect of certifying that search, seizure or handing of property, as requested, are admissible under the law of the requesting State;
- c) any reference to particulars of the proceedings or to requirements, including time-limits and confidentiality, that the foreign State or judicial entity wishes to be met.

(b) Observations on the implementation of the article

Article 23 and Article 151 of the Law no.144/99 are consistent with UNCAC

Article 46

Paragraph 16

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

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

Law no. 144/99, of 31 August **Article 23** Requests

- 1. (...)
- 2. (...)
- 3. The competent authority may require that a formally irregular or an incomplete request be modified or completed, without that precluding the possibility of taking provisional measures whenever such measures should not await the revised request.

According to Article 23 of Law no.144/99 the competent authority may request additional information.

(b) Observations on the implementation of the article

Article 23 (3) of the Law no.144/99 is consistent with UNCAC.

Article 46 Mutual legal assistance

Paragraph 17

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

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

According to Article 2, Article 150, paragraph c) of Article 151 and paragraph 1 of Article 146 of Law no. 144/99, all the requests for cooperation submitted to Portugal should be executed in accordance with domestic law and where possible, in accordance with the requests or procedures specified in the request by the requesting State.

There is no information on requests executed in different ways from those specified in the requests.

Law no. 144/99, of 31 August

Article 2

Scope

1. Enforcement of this law shall be subject to the protection of the interests of sovereignty, security, ordre public, or other, constitutionally defined, interests of the Portuguese Republic.
2. No right to compel any form of international co-operation in criminal matters shall derive from this law.

Article 150

Powers

Any foreign authority or entity that has powers to take criminal proceedings under the law of the State or the International Organization involved, may request assistance.

Article 151

Contents of the request and supporting documents

Other than the documents and statements mentioned in Article 23 above, requests shall include, as applicable:

- a) and b) (...)
- c) any reference to particulars of the proceedings or to requirements, including time-limits and confidentiality, that the foreign State or judicial entity wishes to be met.

Article 146

Applicable law

1. Requests for assistance addressed to Portugal shall be carried out in conformity with the Portuguese law.
2. However, where the foreign State so requests explicitly or where it results from an international agreement, treaty or convention, the assistance sought may be given in conformity with the law of that State, if such is not incompatible with the fundamental principles of Portuguese law and if it does not carry serious prejudice to the parties involved.

(b) Observations on the implementation of the article

Article 146 of the Law no. 144/99 is consistent with UNCAC.

Article 46 Mutual legal assistance

Paragraph 18

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

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

Portugal stated that it is in compliance with the provision under review. According to Article 145 (3) of Law no.144/99 the videoconference could be used for the hearing of witnesses or experts by the judicial authorities of another State Party.

Law no. 144/99, of 31 August

Article 145

Principle and scope

1. Assistance shall include: the communication of information; the service of writs; communication of procedural steps or other public law acts admitted by Portuguese law if they are necessary for the purposes of criminal proceedings; as well as steps that are necessary to seize or recover proceeds from, objects of or instrumentalities of an offence.

2. (...)

3. Where the circumstances of the case so require, subject to an agreement between Portugal and a foreign State or an international judicial entity, any hearings as mentioned in subparagraph d) of paragraph 2 above may take place by using telecommunication means in real time, in accordance with Portuguese criminal procedure law and without prejudice to the provisions of paragraph 10 ahead.

(b) Observations on the implementation of the article

Article 145 (3) of the Law no.144/99 seems to be consistent with UNCAC.

Article 46 Mutual legal assistance

Paragraph 19

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

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

According to Articles 148 and 149 of Law no. 144/99 the information or evidence provided by other State shall not be used or transmitted for investigations, prosecutions or judicial proceedings other than those stated in the request without prior consent of the other State.

Law no. 144/99, of 31 August

Article 148

Prohibition to use information obtained

1. Any information obtained in order to be used within the criminal proceedings mentioned in the foreign State's request shall not be otherwise used.
2. At the request of a foreign State or an international judicial entity, the Minister of Justice, after having sought the opinion of the Attorney-General, may exceptionally authorize that information to be used in the framework of other criminal proceedings.
3. Any authorization given to a foreign State to consult a Portuguese criminal proceedings file within the framework of which that State is an injured party, shall be made subject to the conditions mentioned in the preceding paragraphs.

Article 149

Confidentiality

1. Upon application of a foreign State or an international judicial entity, the request for assistance, its purpose, the measures taken upon the request, as well as the documents involved, shall be kept confidential.
2. If the assistance requested cannot be carried out without unveiling information thereupon, the Portuguese authority shall invite the interested authority to confirm or annul its request for assistance.

(b) Observations on the implementation of the article

Articles 148 and 149 of the Law no. 144/99 are consistent with UNCAC.

Article 46 Mutual legal assistance

Paragraph 20

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

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

According to Article 149 the confidentiality of the requests of assistance could be kept.

Law no. 144/99, of 31 August

Article 149

Confidentiality

1. Upon application of a foreign State or an international judicial entity, the request for assistance, its purpose, the measures taken upon the request, as well as the documents involved, shall be kept confidential.

2. If the assistance requested cannot be carried out without unveiling information thereupon, the Portuguese authority shall invite the interested authority to confirm or annul its request for assistance.

(b) Observations on the implementation of the article

Article 149 of the Law no.144/99 is consistent with UNCAC.

Article 46 Mutual legal assistance

Paragraph 21

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

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

The grounds for refusal of a request of international judicial cooperation are foreseen in Articles 2, 6 to 10, 18 and 32 of Law no. 144/99.

Law no. 144/99, of 31 August

Article 2

Scope

1. Enforcement of this law shall be subject to the protection of the interests of sovereignty, security, ordre public, or other, constitutionally defined, interests of the Portuguese Republic.

Article 6

Mandatory grounds for refusal

1. Requests for co-operation shall be refused:

a) where the proceedings do not comply with the requirements laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, or other relevant international instruments ratified by Portugal;

b) where there are well-founded reasons for believing that co-operation is sought for the purpose of persecuting or punishing a person on account of that person's race, religion, sex, nationality, language, political or ideological beliefs, or his belonging to a given social group;

c) where the risk exists that the procedural situation of the person might be impaired on account of any of the factors indicated in the preceding sub-paragraph;

d) where the co-operation sought might lead to a trial by a court of exceptional jurisdiction or where it concerns the enforcement of a sentence passed by such a court;

e) where any of the facts in question is punishable with the death sentence or with a sentence resulting in any irreversible injury of the person's integrity;

f) where any of the offences in question carries a life-long or indefinite sentence or measure.

2. The provisions in sub-paragraphs e) and f) of the preceding paragraph shall not preclude co-operation:

should the requesting State, by way of an irreversible decision that binds its courts or any other authority with powers to execute the sentence, have either commuted the death sentence or the sentence resulting in any irreversible injury of the person's integrity, or withdrawn the life-long nature of the sentence or measure;

where the co-operation sought is in the form of extradition for offences that, under the law of the requesting State, carry a life-long or indefinite sentence or measure involving deprivation of or restrictions to liberty, should the requesting State offer assurances that such a sentence or measure shall not be imposed or shall not be executed;

should the requesting State accept the conversion of the sentence or the detention order, by a Portuguese court and under the Portuguese law applicable to the offence or offences for which the person was sentenced; or

where co-operation is sought on the basis of the provisions of Article 1.1.f), on grounds that it will presumably be relevant for the purpose of preventing such sentences or orders to be rendered.

3. In assessing the sufficiency of the assurances mentioned in sub-paragraph b) of paragraph 2 above, account shall be taken, in the light of the law and practice of the requesting State, inter alia, of the possibility that the sentence is not executed, of a reconsideration of the situation of the person sought and his conditional release, as well as of the possibilities that pardon, amnesty, commutation of the sentence or similar measure be granted, as provided in the law of the requesting State.

4. A request for co-operation shall also be refused where reciprocity is not ensured, without prejudice to the provisions of Article 4. 3.

5. Where co-operation is refused on the grounds offered by the provisions of sub-paragraphs d), e) or f) of paragraph 1 above, the method of co-operation provided for in Article 32.5 shall apply.

Article 7

Refusal on grounds relating to the nature of the offence

1. A request for co-operation shall also be refused where the proceedings concern:

- a) Any facts that, according to the concepts of Portuguese law, constitute a political offence or an offence connected with a political offence;
- b) any facts that constitute a military offence and do not constitute an offence under ordinary criminal law.

2. The following shall not be regarded as political offences:

- a) genocide, crimes against humanity, war crimes and serious offences under the 1949 Geneva Conventions;
- b) the offences mentioned in Article 1 of the European Convention on the Suppression of Terrorism, opened to signature on 27 January 1977;
- c) the acts mentioned in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 17 December 1984;
- d) any other offences that ought not to be regarded as political under the terms of an international treaty, convention or agreement to which Portugal is a Party.

Article 8

Discontinuation of criminal proceedings

1. Co-operation shall not be admissible where, either in Portugal or in another State in which criminal proceedings concerning the same facts have been initiated:

- a) Either the proceedings ended with a final sentence of acquittal, or were otherwise definitively discontinued;

- b) either the sentence was carried out, or it cannot be carried out according to the law of the State in which it was passed;
 - c) the criminal proceedings were discontinued on any other grounds, unless an international convention provides that discontinuation of proceedings under such grounds does not prevent the requested State from engaging in co-operation.
2. The provisions of sub-paragraphs a) and b) of the preceding paragraph shall have no effect where the request by the foreign authority is made for purposes of the judicial review of a sentence and the grounds for such a review are identical to those that are provided for under Portuguese law.
3. The provisions of sub-paragraph a) of paragraph 1 above shall not preclude co-operation where the latter is sought for the purpose of re-opening proceedings, in accordance with the law.

Article 9

Concurrent admissibility and inadmissibility of co-operation

1. If the conduct attributed to the person against whom criminal proceedings are taken falls under several provisions of the Portuguese criminal law, the request for co-operation may be complied with only with respect to such offence or offences in respect of which the request is admissible, provided that the requesting State undertakes to abide by the conditions imposed.
2. However, co-operation shall not be granted if the conduct falls under several provisions of the Portuguese or the foreign criminal law, one of which concerns the conduct in its entirety and the nature of which excludes the possibility of co-operation.

Article 10

Minor offences

Co-operation may be refused where the minor importance of the offence does not justify it.

Article 18

Optional refusal of international co-operation

1. International co-operation may be refused if the facts that substantiate the request are the subject of criminal proceedings, or if they should or may be the subject of criminal proceedings for which a Portuguese judicial authority has jurisdiction.
2. International co-operation may also be refused if, in view of the circumstances of the case, granting the request might entail serious consequences for the person concerned on account of his age, health or other reasons of a personal nature.

Article 32

Cases in which extradition is excluded

1. Extradition shall be excluded in the cases mentioned in Articles 6 to 8 above, as well as in the following cases:
- a) where the offence was committed on the Portuguese territory;
 - b) where the person claimed is a Portuguese national, without prejudice to the provisions of the following paragraph.
2. The extradition of Portuguese nationals shall however not be excluded where: extradition of nationals is provided for in a treaty, convention or agreement to which Portugal is a Party, and extradition is sought for offences of terrorism or international organised crime, and the legal system of the requesting State embodies guarantees of a fair trial.
3. In the circumstances covered by the preceding paragraph, extradition may only take place for purposes of criminal proceedings and provided that the requesting State gives assurances that it will return the extradited person to Portugal for that person to serve in Portugal the sanction or measure eventually imposed on him, once the sentenced is reviewed and confirmed in

accordance with the Portuguese law, unless the extradited person expressly refuses to be returned.

4. For the purpose of assessing the guarantees mentioned in sub-paragraph c) of paragraph 2 above, account shall be taken of the European Convention of Human Rights and other relevant international instruments ratified by Portugal, as well as the conditions under which protection is ensured against the situations mentioned in sub-paragraphs b) and c) of paragraph 1 of Article 6.

5. Where extradition is not granted on any of the grounds stated in paragraph 1 above or in sub-paragraphs d), e) or f) of paragraph 1 of Article 6, criminal proceedings shall be instituted for the offence on the grounds of which the request was made; the requesting State shall be asked to provide such information as is necessary. The judge may impose such provisional measures as he deems adequate.

6. The question of whether the person claimed is or is not a Portuguese national shall be examined at the time of the decision on the extradition request.

7. Special arrangements, within the framework of military or other alliances, may provide that offences under military law which are not offences under ordinary criminal law shall be extraditable offences.

(b) Observations on the implementation of the article

The Portuguese Law is consistent with the provisions of UNCAC.

Article 46 Mutual legal assistance

Paragraph 22

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

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

Fiscal matters are not included in the grounds for refusal international judicial cooperation, including mutual legal assistance, in Articles 6 to 10 and Article 32 of Law no. 144/99.

(b) Observations on the implementation of the article

The Portuguese Law is consistent with the provisions of UNCAC.

Article 46 Mutual legal assistance

Paragraph 23

23. Reasons shall be given for any refusal of mutual legal assistance.

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

Paragraph 3 of Article 20 of Law no. 144/99 states that reasons shall be given for any refusal of mutual legal assistance referring that the decisions concerning the admissibility or the refusal of a request for cooperation shall be notified to the authority of the requesting State, accompanied by a translation into the official language of that State, except in the cases mentioned in paragraph 1 of the same provision. According to Article 97 (5) all the decisions should be motivated and the rationale *de factum* and derived from law that are used to take such decision should be described. Article 24 (2) of Law no. 144/99 is a good example of the

duty of motivation: «Any decision that declares the request inadmissible must be motivated and may not be appealed against».

Law no. 144/99, of 31 August

Article 20

Language to be used

1. Requests for co-operation shall be accompanied by a translation into the official language of the requested State, unless otherwise stipulated in a convention or agreement, or unless that State exempts from the need for a translation.
2. The provisions of the preceding paragraph shall also apply to the requests addressed to Portugal.
3. The decisions concerning the admissibility or the refusal of a request for co-operation shall be notified to the authority of the requesting State, accompanied by a translation into the official language of that State, save in the cases mentioned in paragraph 1 above.
4. The provisions of this Article shall also apply to the documents that accompany the request.

Article 24

Admissibility

1. Any decision by the Minister of Justice that declares the request admissible shall not bind the judicial authorities.
2. Any decision that declares the request inadmissible must be motivated and may not be appealed against.
3. The decisions mentioned in the preceding

(b) Observations on the implementation of the article

The Portuguese Law is consistent with the provisions of UNCAC.

Article 46 Mutual legal assistance

Paragraph 24

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

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

There are no special provision stating that the Portuguese State shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State and for which reasons are given, preferably in the request directly foreseen in Law no. 144/99.

However, according to Chapter II, on general provisions of the procedure for international cooperation - Articles 20 to 30 - this cooperation should be provided in an expedite way taking especially into account the particularities or requests for urgency highlighted by the requesting States. A special provision stating that the Portuguese State shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State and for which reasons are given, preferably in the request is not directly foreseen in Law no. 144/99.

As a general rule, the mutual legal assistance requests should be executed without undue delays. Regardless of the fact that no express reference is made in Law no. 144/99, Article 145 (11) states that the provisions of this Article shall not prejudice the application of more favourable provisions set forth in agreements, treaties or conventions to which Portugal is a party meaning that in this situation Portugal should rely on UNCAC.

Article 29 of the Law no.144/99 envisages an expedite system for the adoption of provisional measures.

Law no. 144/99, of 31 August

Article 29

Urgent provisional measures

1. In case of urgency, the foreign judicial authorities may communicate with the Portuguese judicial authorities, either directly or through the International Criminal Police Organization - INTERPOL or through central agencies designated to that effect, for the purpose of requesting provisional measures or measures that cannot be delayed; the request shall state the reasons for the urgency and shall be in accordance with the provisions of Article 23 above.

2. Requests shall be transmitted by post, by electronic means, by telegraph or by any other means allowing for a written record provided that it is admitted by the Portuguese law. 3. Where the Portuguese judicial authorities deem the request to be admissible, they shall execute it; however, where prescribed by this law, they must seek to obtain from the Minister of Justice, through the Central Authority, previous clearance- should that be possible - or ratification otherwise. 4. Where under this Article co-operation involves Portuguese and foreign authorities of a different nature, the request shall be channelled through the Central Authority.

(b) Observations on the implementation of the article

Although article 29 of the Law no.144/99 envisages an expedite system for the adoption of provisional measures, the provision of the UNCAC according to which the requested State Party shall execute the request for mutual legal assistance as soon as possible is not directly foreseen in the aforementioned Law. The experts, however, take good note of the general rule, the mutual legal assistance requests should be executed without undue delays.

Article 46 Mutual legal assistance

Paragraph 25

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

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

According to Article 18 of Law no. 144/99, of 31 August, mutual legal assistance could be postponed or refused (optional refusal) by Portugal on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

Law no. 144/99, of 31 August

Article 18

Optional refusal of international co-operation

1. International co-operation may be refused if the facts that substantiate the request are the subject of criminal proceedings, or if they should or may be the subject of criminal proceedings for which a Portuguese judicial authority has jurisdiction.
2. International co-operation may also be refused if, in view of the circumstances of the case, granting the request might entail serious consequences for the person concerned on account of his age, health or other reasons of a personal nature.

(b) Observations on the implementation of the article

Article 18 of the Law no.144/99 seems to be consistent with UNCAC.

Article 46 Mutual legal assistance

Paragraph 26

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

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

According to the general provisions of the international judicial cooperation, foreseen in paragraph 3 of Article 23 of Law no. 144/99, the competent authority may require that a formally irregular or an incomplete request be modified or completed, without that precluding the possibility of taking provisional measures whenever such measures should not await the revised request, meaning that consultations between the requested State and the requesting State, even informally and directly (paragraph 4 of Article 21 of the same Law), could be promoted in order to opinions be presented and relevant information to the allegation of the requesting State be provided. Both requested State and requesting State could promote informally the consultations need in order to take a decision on the postponement or refusal of a cooperation request.

Law no. 144/99, of 31 August

Article 21

Procedure

1. The "Procuradoria-Geral da República" (Attorney-General's Office) is hereby designated to be the Central Authority for the purpose of receiving and transmitting any requests for co-operation covered by this law, as well as for all communications relating thereto.
2. Any request for co-operation made to Portugal shall be forwarded to the Minister of Justice by the Attorney-General with a view to its admissibility being decided upon.

3. Any request for co-operation made by Portuguese authorities shall be forwarded to the Minister of Justice by the Attorney-General.
4. The provisions of paragraph 1 shall not prejudice direct contacts relating to requests for co-operation, as mentioned in Article 1.1.f).

Article 23

Requests

1. and 2. (...)
3. The competent authority may require that a formally irregular or an incomplete request be modified or completed, without that precluding the possibility of taking provisional measures whenever such measures should not await the revised request.

(b) Observations on the implementation of the article

Articles 23 (3) and 21 (4) of the Law no.144/99 seem to be consistent with UNCAC.

Article 46 Mutual legal assistance

Paragraph 27

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

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

According to Articles 154 to 156 of Law no. 144/99, as well the principle of reciprocity set forth in Article 4, witnesses, experts or other persons who consents or give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding shall not be prosecuted, detained, punished or subject to any other restriction of his or her personal liberty in the territory of the requested State. Article 16 deals with the principle of specialty.

Law no. 144/99, of 31 August

Article 4

Principle of reciprocity

1. International co-operation in criminal matters, as provided for in this law, falls within the province of the principle of reciprocity.
2. Where circumstances so require, the Ministry of Justice shall demand an undertaking to the effect that reciprocity shall apply; within the limits set out in the provisions of this law, it may provide other States with such an undertaking.
3. The absence of reciprocity shall not prevent compliance with a request for co-operation where such co-operation:
 - 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;
- c) may serve to shed light on facts endorsed to a Portuguese national.

Article 16

Rule of speciality

1. No person who, as a consequence of international co-operation, appears in Portugal for the purpose of participating in criminal proceedings, either as a suspect an accused or a sentenced person, shall be proceeded against, sentenced or detained nor shall he be in any way restricted in his personal freedom, for any act committed prior to his/her presence on the national territory, other than the act or acts on the grounds of which the request for co-operation was made by a Portuguese authority.
2. No person who, in the same terms as above, appears before a foreign authority shall be proceeded against, sentenced, detained, nor shall he be in any way restricted in his personal freedom, for any act committed, or any sentence passed, prior to his leaving the Portuguese territory, other than those mentioned in the request for co-operation.
3. The surrender of a person to the requesting State as mentioned in the preceding paragraph shall not be authorized unless that State provides the necessary guarantees to the effect that the rule of speciality shall be complied with.
4. The immunity that results from the provisions of this Article shall cease to have effect:
 - a) where it became possible for the person concerned to leave the Portuguese territory or the territory of another State, as applicable, and that person does not avail himself of that possibility within a period of 45 days, or that person voluntarily returns to one of the said territories;
 - b) where the State that authorized the transfer, once the suspect, the accused or the sentenced person have been heard, consents to a derogation to the rule of speciality.
5. The provisions of paragraphs 1 and 2 above do not preclude the possibility of extending the co-operation previously sought, by way of a new request, to facts other than those on the grounds of which the original request was made; the new request shall be prepared or examined, as applicable, in accordance with the provisions of this law.
6. Any request made under the provisions of the preceding paragraph shall be accompanied by a document established by the competent authority, containing the statements made by the person who benefits from the rule of speciality.
7. Where the request is submitted to a foreign State, the document mentioned in the preceding paragraph shall be established before the "Tribunal da Relação" (court of appeal) that has jurisdiction over the area where the person who benefits from the rule of speciality resides or is staying.

Article 154

Summons to appear

1. Suspect or accused persons, witnesses or experts who are summoned to appear for the purposes of foreign criminal proceedings, service of which has been requested, may fail to appear.
2. When the summonses are served, the person concerned shall be informed of his right not to appear.
3. The Portuguese authority shall refuse to service any summons where the person concerned is threatened with sanctions or where the safety of the person concerned is not safeguarded.
4. Consent to appear, if it is given, shall be freely given by way of a written statement.
5. Requests shall indicate the allowances and remunerations, as well as the travelling and subsistence expenses, to be paid out; they ought to be transmitted reasonably in advance so that they can be received 50 days at least before the date at which the person should appear.
6. In urgent cases, the time-limits indicated in the preceding paragraph may be shortened.

7. The allowances, remunerations and expenses mentioned in paragraph 5 above shall be calculated as from the place of residence of the person concerned and shall be at the rates provided for in the law of the State where the hearing is intended to take place.

Article 155

Temporary surrender of persons in custody

1. A person arrested or imprisoned in Portugal may be temporarily surrendered to an authority of a foreign State for the purposes mentioned in the preceding Article, provided that that person consents, that his remaining in custody is guaranteed and that he shall be returned within the period stipulated by the Portuguese authorities or when his presence in that State is no longer necessary.
2. Without prejudice to the provisions of the preceding paragraph, surrender shall be refused if:
 - a) the presence of the person concerned is necessary at criminal proceedings pending in Portugal;
 - b) it is liable to prolong the provisional arrest of the person concerned;
 - c) regarding the circumstances of the case, the Portuguese judicial authority does not deem surrender to be convenient.
3. The provisions of sub-paragraphs 1 and 2 of Article 21 shall apply to the requests mentioned in this Article.
4. The time during which the person remains out of Portugal shall be taken into consideration for the purposes of provisional arrest or sentence imposed in Portugal.
5. If the sentence imposed on the person surrendered expires while that person is on the territory of a foreign State, that person shall be set free and shall as from that moment enjoy such rights as enjoy the persons who are not under custody.
6. The Minister of Justice may grant the assistance requested subject to specified requirements.

Article 156

Temporary transfer of persons in custody for purposes of investigation

1. The provisions of Article 155 shall apply to cases in which, upon agreement, a person arrested or imprisoned in Portugal may be temporarily transferred to the territory of another State for purposes of investigation in the framework of Portuguese criminal proceedings.
2. The agreement mentioned in paragraph 1 above shall not be required where the transfer is made under an international agreement, treaty or convention that does not impose it.
3. The provisions of the preceding paragraph shall apply mutatis mutandis to requests of assistance submitted to Portugal.

Article 157

Safe conduct

1. Any person appearing on the territory of a foreign State under the terms and for the purposes of the provisions of Articles 154, 155 or 156 above:
 - a) shall not be arrested, prosecuted, punished or subjected to any other restriction of his personal liberty in respect of any act anterior to his departure from the Portuguese territory other than those mentioned in the request for co-operation;
 - b) shall not be under an obligation to accept to be heard or make a statement at proceedings other than those mentioned in the request.
2. The immunity provided for in paragraph 1 above shall cease when the person voluntarily remains in the territory of the foreign State for more than 45 days from the date when his presence is no longer required or, having left that territory, voluntarily returned to it.
3. The provisions of the preceding paragraphs shall apply mutatis mutandis to any person habitually resident in a foreign State who comes to Portugal as a result of a summons to appear for purposes of criminal proceedings.

(b) Observations on the implementation of the article

The rule of specialty provides the adequate protection with regards to people called to participate in proceedings as suspect an accused or a sentenced person, while Articles 154 and 157 of Law no. 144/99 provides a safe conduct for suspects or accused persons, witnesses or experts. Therefore the Portuguese Law seem to be consistent with UNCAC.

Article 46 Mutual legal assistance

Paragraph 28

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

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

Article 26 of Law no. 144/99 states as general rule, that the execution of a request for international co-operation shall be free of charge, meaning that Portugal, as requested State will support the expenses derived from a request of cooperation submitted by other State. However, exceptions apply, as foreseen in paragraph 2 of the same provision.

Law no. 144/99, of 31 August

Article 26

Expenses

1. As a general rule, the execution of a request for international co-operation shall be free of charge.
2. The requesting State or the requesting international judicial entity shall however bear the following expenses:
 - a) compensation and remuneration, as well as travel and subsistence allowances, due to witnesses and experts;
 - b) expenses incurred by reason of sending or handing over property;
 - c) expenses incurred with the transfer of persons to the territory of that State or the seat of that entity;
 - d) expenses incurred with the transit of persons coming from a foreign State or from the seat of that entity, en route to a third State or to the seat of that entity;
 - e) expenses incurred with carrying out video-conferences at the request of third parties;
 - f) other expenses deemed by the requested State to be of relevance on account of the human or technological means used.
3. For the purposes mentioned in sub-paragraph a) of the preceding paragraph, an advance payment may be made to a witness or an expert; such an advance shall be notified to the other party and reimbursed after the execution of the request.
4. The provisions of paragraph 2 above may be departed from by way of an agreement between Portugal and the relevant foreign State, or international judicial entity.

As an example, the bilateral agreement between Portugal and Uruguay on mutual legal assistance foresees in article 20 the sharing of expenses by both states where necessary and upon previous consultation of the parties.

(b) Observations on the implementation of the article

Article 26 of the Law no.144/99 seems to be consistent with UNCAC.

Article 46 Mutual legal assistance

Subparagraph 29 (a)

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

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

Law no. 144/99, of 31 August

Article 159

Handing over of property, valuables, documents or files

1. At the request of the competent foreign authorities, any property, in particular documents or valuables, the seizure of which is consistent with the Portuguese law, may be put at the disposal of those authorities if they are relevant to the criminal proceedings.
2. Any proceeds from an offence may be returned to their owners regardless of criminal proceedings having been instituted in the requesting State.
3. Criminal files or other records which are of importance to criminal proceedings pending in a foreign State may be handed over to the competent authorities of that State, provided that they shall be returned within the time-limit fixed by the competent Portuguese authorities.
4. The handing over of any property, valuables, documents or criminal files may be delayed if they are required in connection with pending criminal proceedings.
5. Authenticated copies of the documents or files requested may be handed over instead of the originals; however, should the foreign authority expressly request the transmission of originals, the request shall as far as possible be complied with if the condition for their restitution provided in paragraph 3 above is met.

Portugal is able to provide to the requesting States copies of records, documents or information in the framework of a request for mutual legal assistance, according to Article 159 of Law no. 144/99.

(b) Observations on the implementation of the article

Article 159 of the Law no.144/99 seems to be consistent with UNCAC.

Article 46 Mutual legal assistance

Subparagraph 29 (b)

29. The requested State Party:

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

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

Portugal is able to provide to the requesting States copies of records, documents or information in the framework of a request for mutual legal assistance, according to Article 159 of Law no. 144/99.

Law no. 144/99, of 31 August

Article 159

Handing over of property, valuables, documents or files

1. At the request of the competent foreign authorities, any property, in particular documents or valuables, the seizure of which is consistent with the Portuguese law, may be put at the disposal of those authorities if they are relevant to the criminal proceedings.
2. Any proceeds from an offence may be returned to their owners regardless of criminal proceedings having been instituted in the requesting State.
3. Criminal files or other records which are of importance to criminal proceedings pending in a foreign State may be handed over to the competent authorities of that State, provided that they shall be returned within the time-limit fixed by the competent Portuguese authorities.
4. The handing over of any property, valuables, documents or criminal files may be delayed if they are required in connection with pending criminal proceedings.
5. Authenticated copies of the documents or files requested may be handed over instead of the originals; however, should the foreign authority expressly request the transmission of originals, the request shall as far as possible be complied with if the condition for their restitution provided in paragraph 3 above is met.

(b) Observations on the implementation of the article

Article 159 of the Law no. 144/99 seems to be consistent with UNCAC.

Article 46 Mutual legal assistance

Paragraph 30

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

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

Portugal concluded a number of bilateral agreements on mutual legal assistance with other States. A multilateral on the same matter has been celebrated in the framework of CPLP - the Portuguese Speaking Countries Community.

Such treaties were concluded with Australia (20 June 1991), Canada (26 March 1999), Tunisia (2 December 1999), Spain (19 November 2007), Algeria (22 January 2007), Morocco (14 November 1998), Argentina (7 April 2003), Brazil (7 May 1991), United States of America (25 June 2003), Mexico (20 October 1998) and China (1 April 2009)

Portugal does not require a treaty for international cooperation; however, it has previously used United Nations Instruments as legal basis for international cooperation.

(b) Observations on the implementation of the article

This provision is implemented adequately.

(c) Successes and good practices

The experts note with satisfaction the use of a UN instrument as basis for international cooperation.

Article 47 Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

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

Portugal stated that it does not consider transferring criminal proceedings.

The transfer of criminal proceedings is foreseen in Articles 79 to 94 of Law no 144/99, of 31 August. Article 80 (1) f) and Article 90 (1) d) foresee the possibility to transfer the criminal proceeding from or to Portugal where such transfer is motivated in terms of the interest of good administration of justice, as foreseen in Article 47 of UNCAC. For that reason, both provisions are applicable in order to allow the Portuguese authorities to determine if several jurisdictions are or could be involved, in order to identify the jurisdiction that is best placed to take care or to continue with the criminal proceeding.

Law no. 144/99, of 31 August

**Part III
Transfer of criminal proceedings**

**CHAPTER I
Delegation of competence in criminal proceedings in favour of the Portuguese judicial authorities**

**Article 79
Principle**

At the request of a foreign State, under the conditions and with the effects set out in the following Articles, proceedings may be taken or continued in Portugal for an offence committed outside the Portuguese territory.

**Article 80
Specific requirements**

1. Criminal proceedings may be taken or continued in Portugal for an act committed outside the Portuguese territory, subject to the general requirements provided for in this law, as well as the specific requirements that follow:

- a) recourse to extradition is excluded;
- b) the foreign State must have provided guarantees that it shall not take proceedings against the person concerned, for the same facts, if a final judgment is rendered by a Portuguese court in respect of the same person and for the same facts;
- c) the facts for which criminal proceedings are requested must amount to an offence under both the law of the foreign State and under Portuguese law;
- d) the maximum period of the punishment, or the measure, involving deprivation of liberty that is applicable with respect to the facts must be at least one year, or the maximum level of the pecuniary sanction involved must be at least the equivalent of 30 units of account in criminal procedure;
- e) the person concerned must be a Portuguese national, or otherwise must have his habitual residence in Portugal;
- f) acceptance of the request must be justified in terms of either the interest of good administration of justice or a better chance of rehabilitation of the person concerned should that person be sentenced.

2. Should the requirements laid down in the preceding paragraph be met, criminal proceedings may also be taken or continued in Portugal if:

- a) criminal proceedings have already been instituted in Portugal against the same person for other facts, the latter being punishable with deprivation of liberty of at least one year, and the presence of the person before the court is guaranteed;
- b) the person concerned is an alien or a stateless person habitually resident in Portugal and his extradition has been refused;
- c) the requesting State deems that the presence in court of the person concerned cannot be ensured in that State but can be ensured in Portugal;
- d) the requesting State deems that circumstances do not allow for the execution of an eventual sentence in that State, even through extradition, and circumstances allow for the execution of an eventual sentence in Portugal.

3. The provisions of the preceding paragraphs shall have no effect if the criminal reaction on the grounds of which the request was made already falls under the jurisdiction of the Portuguese courts by virtue of any other legal provision concerning the territorial jurisdiction of Portuguese courts.

4. The requirement of sub-paragraph e) of paragraph 1 may be dispensed with in the cases described in paragraph 4 of Article 32, if the circumstances of the case so require, in particular in order to avoid a situation where the trial cannot be held neither in Portugal nor abroad.

Article 81

Applicable law

The criminal reaction provided in the Portuguese law shall be applicable to the act for which criminal proceedings are taken or are continued in Portugal under the conditions mentioned in the preceding Article, save if the law of the requesting State is more favourable.

Article 82

Effects in the requesting State

1. The acceptance by Portugal of a request made by a foreign State implies that the latter relinquishes the proceedings for the same facts.

2. Once criminal proceedings are taken or continued in Portugal, the requesting State, after having been duly notified that the person left the Portuguese territory, regains the right to prosecute that person for the same facts.

Article 83

Procedure

1. The request made by the foreign State shall include the original or an authenticated copy of the criminal file, if it exists; it shall be submitted by the Attorney-General to the Minister of Justice.
2. Should the Minister of Justice decide that the request is admissible, he shall forward the file to the competent court; the latter shall summon the person concerned to appear in court and, if applicable, shall notify his counsel.
3. If the person does not appear in court, the court shall make sure that the summons were legally carried out and, if the person is not represented by a lawyer or, if represented, the lawyer did not appear either, shall appoint a counsel; every such step shall be recorded in writing.
4. The judge may, ex officio or at the request of the public prosecutor, the person concerned or that person's counsel, order that the summons and notifications mentioned in paragraph 2 above shall be repeated.
5. The person concerned, or his counsel, shall be invited to state reasons for or against the acceptance of the request; the public prosecutor shall enjoy the same right.
6. If necessary, the judge, at his own initiative or at the request of the public prosecutor, the person concerned or his counsel, shall take such steps as he deems indispensable with a view to the producing of evidence; for this purpose he will fix a time-limit not in excess of 30 days.
7. Once such steps have been taken or once that time-limit has expired, the file shall be handed for examination, first to the public prosecutor, then to the person concerned; each shall be given ten days to produce submissions in writing.
8. The judge shall then give his decision within the eight following days; the decision may be appealed against.
9. Whilst the procedure provided for in this Article runs, the judge may decide to adopt any provisional coercive measures, including financial guarantees, provided for in the Code of Criminal Procedure.

Article 84

Effects of the decision with respect to the request

Where the decision is in favour of the request, the judge, as appropriate, either:

- a) forwards the file to the judicial authority that is competent to take or continue proceedings,
- or b) takes steps to continue the proceedings if it is within his powers to do so.

Article 85

Validation of the procedural steps taken abroad

The judicial decision to the effect of continuing the foreign criminal proceedings automatically gives the same validity to the procedural steps taken abroad, as those taken before a Portuguese judicial authority, save where such steps would be considered inadmissible under the terms of the Portuguese criminal procedure law.

Article 86

Revocation of the decision

1. At the request of the public prosecutor, the person concerned or his counsel, the judicial authority may revoke the decision if, while the proceedings are pending:
 - a) any of the grounds justifying inadmissibility that are provided for in this law come to the knowledge of the parties;
 - b) the presence of the person concerned at his trial cannot be ensured, or the presence of that person for the purpose of carrying out a sentence involving deprivation of liberty in the cases mentioned in paragraph 2 of Article 82 in which the person left the Portuguese territory cannot be ensured.
2. Such a decision shall be open to an appeal.

3. Once such a decision becomes enforceable, it puts an end to the jurisdiction of the Portuguese judicial authority and implies the return of the criminal file to the requesting State.

Article 87

Notification

1. The following shall be communicated to the Central Authority for the purpose of being notified to the requesting State:

- a) the decision on the admissibility of the request;
- b) the decision to quash the former;
- c) the judgment passed;
- d) any other decision that terminates the proceedings.

2. Notification shall be accompanied by a certificate or an authenticated copy of the decision that is notified.

Article 88

Territorial jurisdiction

The provisions of Article 22 of the Code of Criminal Procedure shall apply to the acts of international co-operation provided for in this Chapter, save the cases in which the question of territorial jurisdiction is already settled.

CHAPTER II

Delegation of competence in criminal proceedings in favour of a foreign State

Article 89

Principle

The power to take criminal proceedings or to continue criminal proceedings pending in Portugal, for an act that constitutes an offence under Portuguese law may be delegated to a foreign State that accepts it, subject to the requirements laid down in the following Articles.

Article 90

Specific requirements

1. Delegation in favour of a foreign State of the powers to take or to continue criminal proceedings shall be subject to the general requirements provided for in this law, as well as the specific requirements as follows:

- a) the facts must be an offence under both the Portuguese law and the law of the other State;
- b) the maximum period of the punishment, or the measure, involving deprivation of liberty that is applicable must be at least one year, or the maximum level of the pecuniary penalty involved must be at least the equivalent of 30 units of account in criminal procedure;
- c) the person concerned must either be a national of the foreign State involved or, if he is either a national of a third State or a stateless person, must have his habitual residence in that former State;

d) the delegation of powers must be justified in terms of either the interests of good administration of justice or a better chance of rehabilitation of the person- concerned should that person be sentenced.

2. Should the requirements laid down in the preceding paragraph apply, delegation of powers may also take place if:

- a) the person concerned is serving a sentence in the foreign State, for an offence which is more serious than the offence committed in Portugal;
- b) the person concerned has his habitual residence in a foreign State and the extradition of that person, either cannot be obtained for reasons pertaining to the national law of that State, or was requested and refused by that State;

c) the person concerned has been extradited to the foreign State for an offence other than the offence under consideration and it is deemed that the delegation of powers allows for a better chance of rehabilitation of that person.

3. The delegation of powers may also take place, regardless of the nationality of the person concerned, if the Portuguese authorities deem that the presence of that person in court for his trial in Portugal cannot be ensured, whilst his presence in court for his trial in the foreign State can be ensured.

4. Exceptionally, the delegation of powers may also take place regardless of the requirement relating to habitual residence, if the circumstances of the case so require, in particular in order to avoid a situation where the trial cannot be held neither in Portugal nor abroad.

Article 91

Procedure for the delegation of powers

1. At the request of either the public prosecutor or the person concerned, and after adversarial proceedings during which reasons for and against the use of this form of international co-operation may be given, the court which has jurisdiction over the facts involved shall assess the need for the delegation of powers.

2. The public prosecutor or the person concerned, as appropriate, shall each be given a period of ten days within which they may react to the request mentioned in paragraph 1.

3. After such reaction or after the period of ten days, the judge shall take a decision within eight days, granting or refusing the request.

4. If the person concerned is on the territory of a foreign State, he may request the transfer of proceedings, either before an authority of that State, or before the Portuguese consular authority; the request may be made by the person concerned, by a person who legally represents him or by his counsel.

5. The judicial decision shall be open to an appeal.

6. Any final decision to grant the request shall have the effects of suspending the time-limitation period and discontinuing the proceedings, without prejudice of any urgent measures eventually required; that decision shall be forwarded by the Attorney-General to the Minister of Justice, along with a certified copy of the file, for the purpose of being examined by the latter.

Article 92

Communication of requests

The request from the Minister of Justice to the foreign State shall be transmitted through the channels provided for in this law.

Article 93

Effects of the delegation of powers

1. Once the delegation of powers to take or to continue criminal proceedings has been accepted by a foreign State, no new proceedings shall be taken in Portugal for the same facts.

2. The time-limitation period under Portuguese law shall be suspended until termination of the proceedings in the foreign State, including the enforcement of the sentence, if any.

3. Portugal shall, however, re-acquire the right to take proceedings for the same facts if, either:

a) the foreign State involved sends notification that it cannot conclude the proceedings transferred to it, or

b) any reason is disclosed that, according to this law, would have prevented the request for delegation from being granted.

4. Any judgment involving a sanction or a measure, rendered in a foreign State upon proceedings that were transferred to that State, shall be recorded in the Portuguese criminal records and have the same effects as if it had been rendered by a Portuguese court.

5. The provision of the preceding paragraph shall apply to any decision that terminates the criminal proceedings in the foreign State.

CHAPTER III

Common provisions

Article 94

Legal costs

1. Any legal costs due for proceedings abroad, before the transfer of such proceedings to Portugal, shall add to the legal costs due for the proceedings continued in Portugal and shall be claimed together with latter; such costs shall not be reimbursed to the foreign State concerned.
2. Portugal shall inform the foreign State of the amount of legal costs due for the proceedings, before the latter are transferred to that State; Portugal shall not require the reimbursement of such legal costs.

(b) Observations on the implementation of the article

Article 80 (1) c) and Article 90 (1) a) of the Law no.144/99 consider the possibility of transfer of criminal proceedings in cases where the facts are an offence under both the Portuguese law and the law of the other State. However, illicit enrichment for example is not punished under Portuguese Criminal Law. Therefore, in these cases the UNCAC would be unenforceable in Portugal. The experts take note however of the non mandatory nature of Article 47.

Article 48 Law enforcement cooperation

Subparagraph 1 (a)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

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

According to Article 8 of the Constitution of the Portuguese Republic, (1) the rules and principles of general or customary international law are an integral part of Portuguese law; (2) Rules provided for in international conventions that have been duly ratified or approved, shall apply in national law, following their official publication, so long as they remain internationally binding with respect to the Portuguese State. (3) Rules made by the competent organs of international organizations to which Portugal belongs apply directly in national law to the extent that the constitutive treaty provides.

According to Article 229 of the Code of Criminal Procedure and Article 3 of Law no. 144/99, of 31 August approving the law on international judicial co-operation in criminal matters, the forms of co-operation mentioned in Article 1 above shall be carried out in accordance with the provisions of the international treaties, conventions and agreements that bind the Portuguese State and, where such provisions are non-existent or do not suffice, with the provisions of this law.

That means that the Portuguese law foresees the primacy of international treaties, conventions and agreements and the provisions of UNCAC prevail in relation to domestic law, namely mentioned Law no.144/99.

Regarding the international information exchanging channels, the Portuguese law enforcement authorities and the Public prosecution Service can use the INTERPOL, EUROPOL and EUROJUST as well as the provisions of bilateral agreements concluded with some countries and in force for the prevention and fight against crime, in particular international organized crime.

Domestically, as stated in previous answers the police bodies, particularly the Criminal Police, operates under the authority and coordination of the Public Prosecution Service. The Criminal Police conduct criminal investigations delegated by any Public Prosecutor. For this purpose the Public Prosecution Service has the central direction of the criminal investigations. This direction is on criminal files (criminal and correctional) and can direct the investigations carried out by specialized services of investigation.

The DCIAP - Central Department for Criminal Investigation and Prosecution, the Criminal Police and the FIU have regular and periodic contacts and meetings on financial and others investigation issues. So, direct channels of communication exists between the law enforcement authorities and the judiciary (Public Prosecution) in order to facilitate the secure and rapid exchange of information concerning all the aspects of crimes suspected or under investigation.

The criminal investigation can be shared through a central database within the Criminal police - the so-called SIIC - Integrated System for Criminal Information.

The issue of enhancing and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities don't seems to need the definition of policies of the Ministry of Foreign Affairs.

Article 88 (1) a) establishes the duty of judiciary and police authorities to cooperate internationally and, according to international treaties and conventions, bilateral agreements and Law no. 144/99 as well as within the European Union legislation, Portugal complies with this duty.

The legal framework on mutual legal assistance is comprehensive and Portugal can use multilateral treaties and conventions as the legal basis to request and to answer to requests on this issue. At the same time, a number of bilateral agreements have been celebrated. In the absence of such legal instruments, Law no. 144/99, of 31 of August can be applicable and Portugal can provide international cooperation in criminal matters on the basis of reciprocity. Bilateral treaties were concluded with Russia (29 May 2000), South Africa (25 June 2002), and Ukraine (18 June 2010).

Regarding law enforcement cooperation, judicial authorities are able to cooperate directly with counterparts using the multilateral and bilateral treaties and conventions or in the

previously mentioned Law no. 144/99, of 31 August. The existing networks – European Judicial Network (EJN), Ibero-American Judicial Network (IBERRed) and Portuguese Speaking Countries Judicial Network (RJCPLP) – can be used as well to facilitate the cooperation.

At police level Portugal cooperates bilaterally with other countries and through EUROPOL and INTERPOL. The most recent example of such cooperation is the request submitted by Peru in order to investigate if some stolen cultural goods can be found in Portugal.

INTERPOL red notices are granted the value of requests for provisional arrest directly enforceable in Portugal.

(b) Observations on the implementation of the article

The experts take good note of the information provided and of the channels of communication opened by the Portuguese authorities. They encourage Portugal to continue seeking and developing channels of communication between law enforcement authorities.

(c) Successes and good practices

The experts note with satisfaction the fact that INTERPOL red notices had the value of requests for provisional arrest, directly enforceable.

Article 48 Law enforcement cooperation

Subparagraph 1 (b)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

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

Portugal is able to provide information about the identity, whereabouts and activities of persons suspected of involvement in the offences foreseen in the UN Convention against Corruption as well about the location of other persons concerned, according to Article 145 of Law no. 144/99.

Law no. 144/99, of 31 August

Part VI

Mutual legal assistance in criminal matters

CHAPTER I

Provisions common to different forms of assistance

Article 145

Principle and scope

1. Assistance shall include: the communication of information; the service of writs; communication of procedural steps or other public law acts admitted by Portuguese law if they are necessary for the purposes of criminal proceedings; as well as steps that are necessary to seize or recover proceeds from, objects of or instrumentalities of an offence.
2. Assistance shall include namely the following:
 - a) the notification of deeds and the service of documents;
 - b) the procuring of evidence;
 - c) searches, seizure of property, experts examination and analysis;
 - d) the service of writs to and hearing of suspects, accused persons, witnesses or experts;
 - e) the transit of persons;
 - f) the communication of information on Portuguese law or the law of a foreign State, as well as the communication of information relating to the judicial record of suspect, accused or sentenced persons.
3. Where the circumstances of the case so require, subject to an agreement between Portugal and a foreign State or an international judicial entity, any hearings as mentioned in subparagraph d) of paragraph 2 above may take place by using telecommunication means in real time, in accordance with Portuguese criminal procedure law and without prejudice to the provisions of paragraph 10 ahead.
4. Within the framework of assistance in criminal matters, either upon authorisation of the Minister of Justice or in conformity with the provisions of any agreement, treaty or convention to which Portugal is a Party, direct communication of information relating to criminal matters may be established between Portuguese and foreign authorities that assist judicial authorities.
5. The Minister of Justice shall be empowered to authorize the participation of foreign judicial authorities and foreign criminal police authorities in criminal proceedings that take place on Portuguese territory, in particular within the framework of joint criminal investigation teams made up of both national and foreign members.
6. Unless provided for by international agreements, treaties or conventions, setting up joint criminal investigation teams requires authorization from the Minister of Justice.
7. Participation as mentioned in paragraph 5 shall be authorized only if reciprocity applies and where its purpose is to assist a Portuguese or foreign judicial authority or a Portuguese or foreign criminal police authority; under the authority and in the presence of Portuguese authorities; the provisions of the Portuguese criminal procedure law shall apply; all must be recorded in writing.
8. The provisions of Article 29 above shall apply to any measures that come under the competence of the criminal police authorities where such measures are undertaken under the conditions and within the limits provided for in the Code of Criminal Procedure.
9. The powers mentioned in paragraph 5 above may be delegated upon the Central Authority or, where the participation sought is exclusively that of a foreign criminal police authority or body, upon the national Director of the Criminal Police (Polícia Judiciária).
10. The provisions of paragraph 5 shall apply mutatis mutandis to requests for assistance submitted by Portugal.
11. The provisions of this Article shall not prejudice the application of more favourable provisions in agreements, treaties or conventions to which Portugal is a party.

Article 145 of Law no. 144/99 doesn't make any distinction and is applicable both to the investigation (pre-trial), the prosecution and the judicial stage. For instance, under the Portuguese system, the gathering of evidence and the searches, seizure of property, experts' examination and analysis are usually performed by the Criminal Police, acting under the direction of the Public Prosecutor that is in charge with the criminal proceeding.

(b) Observations on the implementation of the article

Taking into account the explanation of Portugal regarding the applicability of the above provisions in the pre-trial stage by law-enforcement authorities, Article 145 of the Law no. 144/99 seems to be consistent with UNCAC.

Article 48 Law enforcement cooperation

Subparagraph 1 (b)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

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

Portugal is able to provide information about the movement of proceeds of crime or property derived from the commission of offences lay down in the UN Convention against Corruption, according Articles 145 and 160 of Law no. 144/99.

Law no. 144/99, of 31 August

Article 160

Proceeds, objects and instrumentalities

1. At the request of a competent foreign authority, steps may be taken in order to trace the proceedings of an allegedly committed offence; the results thereof shall be communicated to the requesting authority.
2. The foreign authority must state the grounds on which it deems that such proceedings might be located in Portugal.
3. The Portuguese authority shall take such steps as are necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence; the provisions of Part IV shall apply mutatis mutandis.
4. When the foreign authority communicates its intention to request the enforcement of any decision as mentioned in the preceding paragraph, the Portuguese authority may take such steps as are consistent with the Portuguese law in order to prevent any dealing in, transfer or disposal of property which at a later stage shall be, or may be, the subject of that decision.
5. The provisions of this Article also apply to objects and instrumentalities of an offence.

(b) Observations on the implementation of the article

Article 160 of the Law no. 144/99 seems to be consistent with the UNCAC.

Article 48 Law enforcement cooperation

Subparagraph 1 (b)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

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

Portugal is able to provide information about the movement of property, equipment or other instrumentalities used or intended for use in the commission of offences lay down in the UN Convention against Corruption, according Articles 145 and 160 of Law no. 144/99.

Law no. 144/99, of 31 August

Article 160

Proceeds, objects and instrumentalities

1. At the request of a competent foreign authority, steps may be taken in order to trace the proceedings of an allegedly committed offence; the results thereof shall be communicated to the requesting authority.
2. The foreign authority must state the grounds on which it deems that such proceedings might be located in Portugal.
3. The Portuguese authority shall take such steps as are necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence; the provisions of Part IV shall apply mutatis mutandis.
4. When the foreign authority communicates its intention to request the enforcement of any decision as mentioned in the preceding paragraph, the Portuguese authority may take such steps as are consistent with the Portuguese law in order to prevent any dealing in, transfer or disposal of property which at a later stage shall be, or may be, the subject of that decision.
5. The provisions of this Article also apply to objects and instrumentalities of an offence.

(b) Observations on the implementation of the article

Article 160 of the Law no.144/99 seems to be consistent with UNCAC.

Article 48 Law enforcement cooperation

Subparagraph 1 (c)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

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

For the provision, where appropriate, necessary items or quantities of substances for analytical or investigative purposes, same provisions apply, that's to say, Articles 145 and 160 of Law no. 144/99.

Law no. 144/99, of 31 August

Article 160

Proceeds, objects and instrumentalities

1. At the request of a competent foreign authority, steps may be taken in order to trace the proceedings of an allegedly committed offence; the results thereof shall be communicated to the requesting authority.
2. The foreign authority must state the grounds on which it deems that such proceedings might be located in Portugal.
3. The Portuguese authority shall take such steps as are necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence; the provisions of Part IV shall apply *mutatis mutandis*.
4. When the foreign authority communicates its intention to request the enforcement of any decision as mentioned in the preceding paragraph, the Portuguese authority may take such steps as are consistent with the Portuguese law in order to prevent any dealing in, transfer or disposal of property which at a later stage shall be, or may be, the subject of that decision.
5. The provisions of this Article also apply to objects and instrumentalities of an offence.

(b) Observations on the implementation of the article

Article 145 (2) b) and c) of the Law no.144/99 seems to be consistent with UNCAC.

Article 48 Law enforcement cooperation

Subparagraph 1 (d)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

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

Mentioned provisions, namely Article 160 of Law no. 144/99, which are broad, apply for the exchange of information with other States concerning specific means and methods used to commit offences covered by the UN Convention against Corruption or other offences, including the use of false identities, forged, altered or false documents and other means of concealing activities.

We should also state that the exchange of information concerning specific means and methods used to commit offences including the use of false identities, forged, altered or false documents and other means of concealing activities is usually included in the provision of the

bilateral agreements concluded with other countries in the framework of the prevention and fight against crime.

Law no. 144/99, of 31 August

Article 160

Proceeds, objects and instrumentalities

1. At the request of a competent foreign authority, steps may be taken in order to trace the proceedings of an allegedly committed offence; the results thereof shall be communicated to the requesting authority.
2. The foreign authority must state the grounds on which it deems that such proceedings might be located in Portugal.
3. The Portuguese authority shall take such steps as are necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence; the provisions of Part IV shall apply *mutatis mutandis*.
4. When the foreign authority communicates its intention to request the enforcement of any decision as mentioned in the preceding paragraph, the Portuguese authority may take such steps as are consistent with the Portuguese law in order to prevent any dealing in, transfer or disposal of property which at a later stage shall be, or may be, the subject of that decision.
5. The provisions of this Article also apply to objects and instrumentalities of an offence.

(b) Observations on the implementation of the article

Article 160 (5) states that the previous paragraphs apply as well to objects and instrumentalities of an offence, the Portuguese legislation seems to be consistent with UNCAC.

Article 48 Law enforcement cooperation

Subparagraph 1 (e)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

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

The domestic coordination between the competent authorities, agencies and law enforcement services is made under the coordination of the Secretary for Internal Security. In the framework of criminal investigation, all the police bodies which are competent for such investigation - the Criminal Police, for serious offences exclusively, as well as the Police of Public Order, the National Republican Guard and the Borders and Aliens Service for ordinary offences – act under the direction of the Public Prosecutors, which is the responsible for the coordination.

The wording of subparagraph 1 (e) of Article 48 of the UN Convention against Corruption is usually used by Portugal in the negotiation of bilateral agreements with other States, therefore

provisions are included in order to identify liaison officers, to promote the exchange of personal and experts, as well the exchange of experiences.

Portugal appointed liaison officers of the Criminal Police in Cape Verde and Guinea-Bissau. The Border and Aliens Service appointed as well liaison officers in countries like Brazil and Mozambique.

Portugal appointed liaison officers of the Criminal Police in Cape Verde, Venezuela and Guinea-Bissau. The Border and Aliens Service appointed as well liaison officers in countries like Senegal, Brazil, Mozambique and Russian Federation.

(b) Observations on the implementation of the article

The Portuguese position seems to be consistent with UNCAC.

Article 48 Law enforcement cooperation

Subparagraph 1 (f)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

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

The exchange of relevant criminal information between law enforcement authorities can be made upon request, spontaneously or through an international cooperation (mutual legal assistance) request.

The exchange of relevant criminal information between law enforcement authorities can be made upon request, spontaneously or through an international cooperation (mutual legal assistance) request. Law enforcement authorities can also use the INTERPOL and EUROPOL channels for this goal and Public Prosecutors could use the possibilities that exist in EUROJUST.

In this regard, the Portuguese law enforcement authorities (Criminal Police) are able to exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by the United Nations Convention against Corruption. According to the Law on the Organization of the Criminal Investigation, approved by Law no. 48/2009, mentioned offences are subject to priority investigation.

(b) Observations on the implementation of the article

The Portuguese position seems to be consistent with UNCAC.

Article 48 Law enforcement cooperation

Paragraph 2

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

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

The legal framework on mutual legal assistance is comprehensive and Portugal can use multilateral treaties and conventions as the legal basis to request and to answer to requests on this issue. At the same time, a number of bilateral agreements have been celebrated. In the absence of such legal instruments, Law no. 144/99, of 31 of August can be applicable and Portugal can provide international cooperation in criminal matters on the basis of reciprocity. Bilateral treaties were concluded with Russia (29 May 2000), South Africa (25 June 2002), and Ukraine (18 June 2010).

Portugal foresees the direct exchange of information between the public prosecutors and the direct exchange of information between the investigation police (Criminal Police).

The exchange of relevant criminal information between law enforcement authorities can be made upon request, spontaneously or through an international cooperation (mutual legal assistance) request. Law enforcement authorities can also use the INTERPOL and EUROPOL channels for this goal and Public Prosecutors could use the possibilities that exist in EUROJUST. In this regard, the Portuguese law enforcement authorities (Criminal Police) are able to exchange information directly. According to the Law on the Organization of the Criminal Investigation, approved by Law no. 48/2009, mentioned offences are subject to priority investigation.

(b) Observations on the implementation of the article

The Portuguese position seems to be consistent with UNCAC.

Article 48 Law enforcement cooperation

Paragraph 3

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

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

The use of modern technology to respond to offences covered by UNCAC is in place in Portugal. That's the case of the interception of communications including mobile communications and other techniques such as financial investigations and financial intelligence.

Law no. 144/99, of 31 August

Article 145-A

Joint criminal investigation teams

1. Joint investigation teams shall be set up by mutual agreement between the Portuguese State and a foreign State, in particular where:
 - a) in the framework of a foreign State's criminal investigation, specially complex investigations having links with Portugal or with another State are required;
 - b) a number of States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the States involved.
2. Requests for the setting up of joint investigation teams shall, in addition to the information referred to in the relevant provisions of Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty of 27 June 1962, as amended by Protocol of 11 May 1974, include proposals for the composition of the team.
3. Seconded members of a joint investigation team may be present when criminal investigation acts are carried out in the Portuguese territory, unless the national authority leading the team decides otherwise, giving the reasons therefore, in accordance with the Portuguese law.
4. Criminal investigation acts may be carried out in the Portuguese territory by seconded members of a joint investigation team by a decision taken by the national authority leading the team and subject to the approval of the Minister of Justice and of the competent authority of the seconding State.
5. Where a joint investigation team needs assistance from a State other than those which have set up the team, the request for assistance may be addressed by the Minister of Justice to the competent authorities of the State concerned in accordance with the relevant instruments or arrangements.
6. Members of joint investigation teams who have been seconded by the Portuguese State may provide their teams with information available in Portugal for the purpose of the criminal investigations conducted by them.
7. Information lawfully obtained by the members of joint investigation teams during the performance of their duties which is not otherwise available to the competent authorities of the seconding States concerned may be used for the following purposes:
 - a) for the purposes for which the team has been set up;
 - b) subject to the prior consent of the Minister of Justice, for detecting, investigating and prosecuting other criminal offences, provided that such use will not endanger criminal investigations being carried out in Portugal or when facts are at stake in respect of which the State concerned could refuse mutual assistance;
 - c) for preventing an immediate and serious threat to public security and, without prejudice to subparagraph (b), if a criminal investigation is subsequently opened;
 - d) for other purposes provided that an agreement thereon exists between States setting up the team.
8. Arrangements may be agreed for persons other than representatives of the States setting up a joint investigation team to take part in the activities of the team, in accordance with national laws or the provisions of any legal instrument applicable. Such persons shall not enjoy the rights conferred upon the seconded members of the team unless an agreement expressly states otherwise.

Article 160-A

Controlled and surveyed deliveries

1. For the purposes of obtaining the identification of largest possible number of offenders and establishing their criminal liability, in co-operation with one or more foreign States, the Public Prosecution shall be empowered to authorise on a case by case basis, upon request from one or

more foreign States, in particular where such is provided for in a conventional instrument, that criminal police bodies abstain from acting within the framework of trans-border criminal investigations concerning extraditable offences.

2. The Portuguese authorities shall have the legal powers to act as well as the supervision and control of the criminal investigation operations conducted within the framework of the provisions of the preceding paragraph, without prejudice to the necessary co-operation with the competent foreign authorities.

3. Authorisations given under paragraph 1 above shall be without prejudice to the exercise of criminal proceedings for the facts in respect of which the Portuguese law is applicable; they shall be given only where :

a) the competent foreign authorities have ensured that both their legislation provides adequate criminal sanctions for the offence at stake and criminal proceedings shall be exercised; and

b) the competent foreign authorities have ensured the security of the substances and goods at stake against the risks of flight and loss; and

c) the competent foreign authorities have undertaken urgently to communicate detailed information about the results of the operation as well as the acts performed by each of the offenders, in particular those who acted in Portugal.

4. Even where the above-mentioned authorisation has been granted, the criminal police bodies shall act if safety margins noticeably decrease or if any circumstance arise that renders the arrest of the culprits, or the seizure of the substances or goods, more difficult; where such action by the police bodies was not previously communicated to the authority that granted the authorisation, such shall be done in writing within the next 24 hours.

5. Subject to the existence of an agreement with the country of destination, where prohibited or dangerous substances are in transit, they may be partially replaced by innocuous; a written record shall be filed.

6. Non-compliance of obligations undertaken by foreign authorities may constitute grounds for refusal of authorisation in case of future requests.

7. International agreements are made by the National Bureau of INTERPOL, through the "Polícia Judiciária".

8. Any other entity that receives requests for controlled deliveries, in particular the "Direcção-Geral de Alfândegas" (Directorate General of Customs), either through the Customs Co-operation Council or through its foreign counterparts, without prejudice of processing of custom-specific data, shall address such a request to the "Polícia Judiciária" for action.

9. The Public Prosecution magistrate of the judicial circle of Lisbon shall be empowered to decide upon requests for controlled deliveries.

Article 160-B

Undercover action

1. Criminal investigation officials of other States may develop undercover action in Portugal, in accordance with the applicable law; in such cases, their status shall be similar to that of Portuguese criminal investigation officials.

2. Action as mentioned in paragraph 1 above is subject both to a request based on an international agreement, treaty or convention, and reciprocity.

3. The judge of the "Tribunal Central de Instrução Criminal" (Central Court of Criminal Investigation) shall be empowered to authorise such action, upon a proposal of the Public Prosecution magistrate at the "Departamento Central de Investigação e Acção Penal - DCIAP" (Central Department for Criminal Investigation and Prosecution).

Article 160-C

Interception of telecommunications

1. Upon request of the competent authorities of a foreign State, the interception of telecommunications effectuated in Portugal may be authorised, if such is provided for in an international agreement, treaty or convention and provided that, in similar national circumstances, interception would be admissible under the Portuguese criminal procedural law.

2. The "Polícia Judiciária" shall be empowered to receive requests for interception; it shall thereupon submit the requests to the Criminal Investigations' judge of Lisbon for authorisation.
3. The decision concerning the authorisation mentioned in the preceding paragraph shall include an authorisation for the immediate transmission of the communication to the requesting State, should such transmission be provided for in the international agreement, treaty or convention under which the request was made.

To respond to the commission of offences committed through the use of modern technology, Portuguese authorities have the possibility to use special investigative techniques and the appropriate structures and Articles 145-A, 160-A, 160-B and 160-C apply. For instance within the Criminal Police, a special unit dealing with cybercrime and offences committed through modern technologies has been created. The Public Prosecution Service is developing specialized training to Public Prosecutors in the same subject matter.

(b) Observations on the implementation of the article

The experts take good note of the information provided by the Portuguese authorities that matches the requirement of UNCAC. They encourage Portugal to continue seeking means to respond to offences committed through the use of modern technology.

Article 49 Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

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

Joint investigative teams are regulated by Law no. 144/99.

Article 145-A of Law no. 144/99 states that “joint investigation teams shall be set up by mutual agreement between the Portuguese State and a foreign State, in particular where (a) in the framework of a foreign State's criminal investigation, especially complex investigations having links with Portugal or with another State are required”. This provision foresees the possibility of creation of a joint investigation team in a case by case basis - where the creation of a joint investigation team is required due to the complexity of the investigation of an offence which has links with Portugal or with another State.

Law no. 144/99, of 31 August

Article 145-A

Joint criminal investigation teams

1. Joint investigation teams shall be set up by mutual agreement between the Portuguese State and a foreign State, in particular where:
 - a) in the framework of a foreign State's criminal investigation, specially complex investigations having links with Portugal or with another State are required;

- b) a number of States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the States involved.
2. Requests for the setting up of joint investigation teams shall, in addition to the information referred to in the relevant provisions of Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty of 27 June 1962, as amended by Protocol of 11 May 1974, include proposals for the composition of the team.
3. Seconded members of a joint investigation team may be present when criminal investigation acts are carried out in the Portuguese territory, unless the national authority leading the team decides otherwise, giving the reasons therefore, in accordance with the Portuguese law.
4. Criminal investigation acts may be carried out in the Portuguese territory by seconded members of a joint investigation team by a decision taken by the national authority leading the team and subject to the approval of the Minister of Justice and of the competent authority of the seconding State.
5. Where a joint investigation team needs assistance from a State other than those which have set up the team, the request for assistance may be addressed by the Minister of Justice to the competent authorities of the State concerned in accordance with the relevant instruments or arrangements.
6. Members of joint investigation teams who have been seconded by the Portuguese State may provide their teams with information available in Portugal for the purpose of the criminal investigations conducted by them.
7. Information lawfully obtained by the members of joint investigation teams during the performance of their duties which is not otherwise available to the competent authorities of the seconding States concerned may be used for the following purposes:
- a) for the purposes for which the team has been set up;
 - b) subject to the prior consent of the Minister of Justice, for detecting, investigating and prosecuting other criminal offences, provided that such use will not endanger criminal investigations being carried out in Portugal or when facts are at stake in respect of which the State concerned could refuse mutual assistance;
 - c) for preventing an immediate and serious threat to public security and, without prejudice to subparagraph (b), if a criminal investigation is subsequently opened;
 - d) for other purposes provided that an agreement thereon exists between States setting up the team.
8. Arrangements may be agreed for persons other than representatives of the States setting up a joint investigation team to take part in the activities of the team, in accordance with national laws or the provisions of any legal instrument applicable. Such persons shall not enjoy the rights conferred upon the seconded members of the team unless an agreement expressly states otherwise.

Article 145-B

Civil liability regarding members of joint investigation teams

1. The seconding State shall be liable for any damage caused to third parties by its own officials during the exercise of their functions as seconded members of a joint investigation team, in accordance with the law of the State in whose territory such damage was caused.
2. The Portuguese State shall make good any damage caused in the national territory by seconded members of a team, and shall exercise its right to claim return of all sums it has paid.
3. The Portuguese State shall reimburse any sums paid to third parties by the seconding State for damage caused by its own members of joint investigation teams.
4. The Portuguese State shall waive all requests for reimbursement of damages it has sustained, caused by members of joint investigation teams who have been seconded by the foreign State, without prejudice to the exercise of its rights vis-à-vis third parties."

Portugal has participated to joint investigation teams at various occasions, for example with the United Kingdom and Spain. In the absence of a treaty, the Ministry of Justice could still authorize joint investigation teams.

(b) Observations on the implementation of the article

Article 145-A seems to be consistent with UNCAC.

Article 50 Special investigative techniques

Paragraph 1

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

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

The use of special investigative techniques is allowed under domestic law. Controlled deliveries are foreseen in the Portuguese criminal law since 1993 in Decree-Law no. 15/93 establishing the legal regime for the fight against drug trafficking. Law no. 144/99 also includes provision related to the use of special investigative techniques in Articles 160-A, 160-B and 160-C. As well, Law no. 101/2001 of 25 August established the legal regime for the use of undercover operations.

Decree-Law no. 15/93, transposing to the Portuguese legal system the provision of the UN Vienna Convention of 1988, was entered into force in 1993 and, at that time, is the only legal instrument that allow for the use of the special technique of investigation so-called «controlled deliveries», applicable only in the framework of the prevention and fight against drug trafficking.

Article 160-A was added to Law no. 144/99 in 2001 by Law no. 104/2001, of 25 August, extending the possibility of the use of controlled deliveries to the offences that are punishable in abstract with deprivation of liberty for a maximum period of at least one year, as clarified before, and not only to drug trafficking.

In what concerns interception of communications, apart from the reference to article 160-C of the Law no. 144/99, along with Articles 187-189 of the Code of Criminal Procedure regulate telephonic interceptions in the framework of the criminal proceeding and articles 11-19 of the Law no.109/2009, of September 15th, on cybercrime, established the legal framework for the interception of telephones and e-mail communications, traffic data, computer systems and computed data as well as undercover actions.

Law no. 144/99, of 31 August

Article 160-A

Controlled and surveyed deliveries

1. For the purposes of obtaining the identification of largest possible number of offenders and establishing their criminal liability, in co-operation with one or more foreign States, the Public Prosecution shall be empowered to authorize on a case by case basis, upon request from one or more foreign States, in particular where such is provided for in a conventional instrument, that criminal police bodies abstain from acting within the framework of trans-border criminal investigations concerning extraditable offences.
2. The Portuguese authorities shall have the legal powers to act as well as the supervision and control of the criminal investigation operations conducted within the framework of the provisions of the preceding paragraph, without prejudice to the necessary co-operation with the competent foreign authorities.
3. Authorizations given under paragraph 1 above shall be without prejudice to the exercise of criminal proceedings for the facts in respect of which the Portuguese law is applicable; they shall be given only where :
 - a) the competent foreign authorities have ensured that both their legislation provides adequate criminal sanctions for the offence at stake and criminal proceedings shall be exercised; and
 - b) the competent foreign authorities have ensured the security of the substances and goods at stake against the risks of flight and loss; and
 - c) the competent foreign authorities have undertaken urgently to communicate detailed information about the results of the operation as well as the acts performed by each of the offenders, in particular those who acted in Portugal.
4. Even where the above-mentioned authorization has been granted, the criminal police bodies shall act if safety margins noticeably decrease or if any circumstance arise that renders the arrest of the culprits, or the seizure of the substances or goods, more difficult; where such action by the police bodies was not previously communicated to the authority that granted the authorization, such shall be done in writing within the next 24 hours.
5. Subject to the existence of an agreement with the country of destination, where prohibited or dangerous substances are in transit, they may be partially replaced by innocuous; a written record shall be filed.
6. Non-compliance of obligations undertaken by foreign authorities may constitute grounds for refusal of authorization in case of future requests.
7. International agreements are made by the National Bureau of INTERPOL, through the Criminal Police.
8. Any other entity that receives requests for controlled deliveries, in particular the "Direcção-Geral de Alfândegas" (Directorate General of Customs), either through the Customs Co-operation Council or through its foreign counterparts, without prejudice of processing of custom-specific data, shall address such a request to the Criminal Police for action.
9. The Public Prosecutor of the judicial circle of Lisbon shall be empowered to decide upon requests for controlled deliveries.

Article 160-B

Undercover actions

1. Criminal investigation officials of other States may develop undercover action in Portugal, in accordance with the applicable law; in such cases, their status shall be similar to that of Portuguese criminal investigation officials.
2. Action as mentioned in paragraph 1 above is subject both to a request based on an international agreement, treaty or convention, and reciprocity.
3. The judge of the "Tribunal Central de Instrução Criminal" (Central Court of Criminal Investigation) shall be empowered to authorize such action, upon a proposal of the Public Prosecutor at DCIAP - Central Department for Criminal Investigation and Prosecution.

Article 160-C

Interception of telecommunications

1. Upon request of the competent authorities of a foreign State, the interception of telecommunications effectuated in Portugal may be authorized, if such is provided for in an international agreement, treaty or convention and provided that, in similar national circumstances, interception would be admissible under the Portuguese criminal procedural law.
2. The Criminal Police shall be empowered to receive requests for interception; it shall thereupon submit the requests to the Criminal Investigations' judge of Lisbon for authorization.
3. The decision concerning the authorization mentioned in the preceding paragraph shall include an authorization for the immediate transmission of the communication to the requesting State, should such transmission be provided for in the international agreement, treaty or convention under which the request was made.

Law no. 101/2001 of 25 August 2001, to make provision as to undercover operations undertaken for the purposes of crime prevention and criminal investigation

Article 1
Object

1. This Law sets forth the legal regime of undercover operations carried out for the purposes of crime prevention and criminal investigation.
2. Any operations conducted by criminal investigation officers or third persons subject to the scrutiny of the Criminal Police, acting under undisclosed capacity and identity for the purpose of preventing or punishing the offences specified in this Act, shall be deemed to be undercover operations.

(b) Observations on the implementation of the article

The provisions mentioned are in the line of the provisions of the United Nations Convention against Corruption.

Article 50 Special investigative techniques

Paragraph 2

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

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

According to Articles 160-A to 160-C, Portugal can use special investigative techniques in the framework of international cooperation, meaning that no bilateral or multilateral agreements need to be negotiated with other States. However, Portugal concluded a number of bilateral agreements on the fight against crime and on law enforcement cooperation, where the use of special investigative techniques is foreseen. One multilateral agreement on extradition has been celebrated within the Portuguese Speaking Countries Community. A multilateral agreement on simplified extradition has been celebrated with Spain, Argentina and Brazil.

The Ministry responsible for the negotiations of bilateral (and multilateral) agreements in the criminal area is the Ministry of Justice. The celebration of bilateral or multilateral agreements on international cooperation in criminal matters, as the examples provided, takes into account Article 50 (2) of UNCAC.

(b) Observations on the implementation of the article

The Portuguese position is consistent the provisions of the United Nations Convention against Corruption.

Article 50 Special investigative techniques

Paragraph 3

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

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

International cooperation in criminal matters is carried out in accordance with the provisions of the international treaties, conventions and agreements that bind the Portuguese State and, where such provisions are non-existent or do not suffice the provisions of Law no. 144/99 apply (Article 3 (1)).

Portugal considers that, due to their nature, the use of a special investigative technique, even in a situation of international cooperation where an offence of transnational nature was committed or there are suspicion that has been committed, is to be decided by each State Party in a case by case basis and where necessary.

In practice, and except in the case of joint investigation teams, each State Party will perform, within its territory, the appropriate investigative actions in order to gather the criminal evidence that an offence was committed and to identify the offenders and damage resulting from such offence. Therefore, Portugal has encountered no problems of jurisdiction in this framework.

According to Articles 160-A to 160-C of Law no. 144/99, Portugal can use special investigative techniques in the framework of international cooperation, meaning that no bilateral or multilateral agreements need to be negotiated with other States. Paragraph 1 of mentioned provision states that for the purposes of obtaining the identification of largest possible number of offenders and establishing their criminal liability, in co-operation with one or more foreign States, the Public Prosecution shall be empowered to authorize on a case by case basis, upon request from one or more foreign States, in particular where such is provided for in a conventional instrument, that criminal police bodies abstain from acting within the framework of trans-border criminal investigations concerning all extraditable offences.

However, Portugal concluded a number of bilateral agreements on the fight against crime and on law enforcement cooperation, where the use of special investigative techniques is foreseen.

Regarding the financial arrangements referred to in this provision of UNCAC, Article 26 of Law no. 144/99 states that, as a general rule, the execution of a request for international co-operation shall be free of charge. However, the requesting State or the requesting international judicial entity shall bear the expenses deemed by the requested State to be of relevance on account of the human or technological means used (Article 26 (2) d)).

(b) Observations on the implementation of the article

The Portuguese position is consistent the provisions of the United Nations Convention against Corruption.

Article 50 Special investigative techniques

Paragraph 4

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

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

Law no. 144/99, of 31 August

Article 160-A

Controlled and surveyed deliveries

1. For the purposes of obtaining the identification of largest possible number of offenders and establishing their criminal liability, in co-operation with one or more foreign States, the Public Prosecution shall be empowered to authorize on a case by case basis, upon request from one or more foreign States, in particular where such is provided for in a conventional instrument, that criminal police bodies abstain from acting within the framework of trans-border criminal investigations concerning extraditable offences.

2. The Portuguese authorities shall have the legal powers to act as well as the supervision and control of the criminal investigation operations conducted within the framework of the provisions of the preceding paragraph, without prejudice to the necessary co-operation with the competent foreign authorities.

3. Authorizations given under paragraph 1 above shall be without prejudice to the exercise of criminal proceedings for the facts in respect of which the Portuguese law is applicable; they shall be given only where :

a) the competent foreign authorities have ensured that both their legislation provides adequate criminal sanctions for the offence at stake and criminal proceedings shall be exercised; and

b) the competent foreign authorities have ensured the security of the substances and goods at stake against the risks of flight and loss; and

c) the competent foreign authorities have undertaken urgently to communicate detailed information about the results of the operation as well as the acts performed by each of the offenders, in particular those who acted in Portugal.

4. Even where the above-mentioned authorization has been granted, the criminal police bodies shall act if safety margins noticeably decrease or if any circumstance arise that renders the arrest of the culprits, or the seizure of the substances or goods, more difficult; where such action by the police bodies was not previously communicated to the authority that granted the authorization, such shall be done in writing within the next 24 hours.

5. Subject to the existence of an agreement with the country of destination, where prohibited or dangerous substances are in transit, they may be partially replaced by innocuous; a written record shall be filed.
6. Non-compliance of obligations undertaken by foreign authorities may constitute grounds for refusal of authorization in case of future requests.
7. International agreements are made by the National Bureau of INTERPOL, through the Criminal Police.
8. Any other entity that receives requests for controlled deliveries, in particular the "Direcção-Geral de Alfândegas" (Directorate General of Customs), either through the Customs Co-operation Council or through its foreign counterparts, without prejudice of processing of custom-specific data, shall address such a request to the Criminal police for action.
9. The Public Prosecutor of the judicial circle of Lisbon shall be empowered to decide upon requests for controlled deliveries.

From the technical point of view, the of controlled deliveries is not only to gather evidence arrest the offenders but seize the goods of funds involved in the criminal action and, for that reason, there is no need to describe in the law all the particular action that could be taken. Article 160-A (5) refers for instance to the possibility of removal or replacing of good or funds, stating that «...subject to the conciliation with the country of destination, where prohibited or dangerous substances are in transit, they may be partially replaced by innocuous.

(b) Observations on the implementation of the article

The Portuguese position is consistent the provisions of the United Nations Convention against Corruption.