UPDATE REPORT

September 2008

Portugal presents this update report on the legislative and other measures taken in answering to the comments made by FATF in the third AML/CFT Mutual Evaluation Report of October 2006.

The update report is in accordance with the structure of presentation proposed in the document FATF/PLEN(2006)6/REV6 and provides the necessary information related to the comments identified in Recommendations rated with PC or NC.

PORTUGAL FATF MUTUAL EVALUATION REPORT – UPDATE

Document FATF/ME (2006)7

I. INTRODUCTION

I – General review of the Portuguese money laundering and terrorist financing preventive system in 2006/2007.

1. In July 2006 by joint decision of the Minister of State and Finance and of the Minister of Justice, an Inter–Ministerial working group was constituted[1] to revise Law no. 11/2004, of 27 March (the AML Law in force) and to launch the process of transposition into domestic law of the Directive no. 2005/60/EC of the European Parliament and the Council, of 26th of October and the Directive no. 2006/70/EC of the Commission, of 1st of August, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. The Inter-Ministerial working group (IMWG) was headed by the Ministry of Finance and Public Administration and integrated representatives from the three supervisory authorities of the financial sector - the Bank of Portugal (Banco de Portugal–BdP), the Portuguese Insurance Institute (Instituto de Seguros de Portugal–ISP) and the Securities Market Commission (Comissão do Mercado de Valores Mobiliários–CMVM) - as well as representatives from Justice and law enforcement authorities, such as the Financial Intelligence Unit, the Criminal Police and the General Directorate for Registries and Notaries.

2. One of the basic tasks of the IMWG before preparing a new legislative draft proposal consisted in conducting a general assessment of the Portuguese AML/CFT prevention system. This process involved the financial and non-financial sectors, including the DNFBPs which in the Portuguese preventive regime in accordance with Law no. 11/2004 covered the following: lawyers, *solicitadores*, notaries, registrars, statutory auditors, chartered accountants, real estate agents, casinos, betting and lotteries and dealers in high value goods.

3. Direct contacts have been established by the IMWG with the oversight authorities and SROs of the above mentioned DNFBPs with the purpose to assess the specific difficulties in applying the legal framework in force - Law no.11/2004, of 27th of March and the regime of prevention of terrorism financing - and their specific needs, assessing as well how to improve the implementation in domestic law of the new requirements of the EC Directives and of the 40+9 FATF Recommendations and taking also into account the Warsaw Convention of the Council of Europe, of 17th May of 2005.

4. With this aim the IMWG worked directly with the oversight authorities of the non financial sector, the Authority on Food and Economic Safety (ASAE), the General Inspectorate for Gambling, the Order of Statutory Auditors, the Chamber of Chartered Accountants, the General Directorate for Registers and Notaries, the Order of Notaries, the Bar Association, the Chamber of *Solicitadores*, as well as with the General Directorate for Customs and Special Taxes on Consumption (DGAIEC).

5. After those direct contacts the Group prepared a draft law which was submitted to public consultation, during 30 days, and received comments and remarks both from financial and non

[1] Joint Ministerial Order no. 17 901/2006, of 17th of July of 2006, published in the Official Gazette II no. 171 of 5th September of 2006.

financial sectors. Comments were received from credit institutions, insurance companies, investment companies, bureaux de change, the Portuguese Banking Association, the Insurance Portuguese Association, the Investment Companies Association, the Investment Pension Funds and Assets Association, the Attorney-General Office, the Order of Statutory Auditors and the Portuguese Casinos Association.

6. This preparation of the legislative proposal was completed with the remittance to the Government of the draft law which took into consideration all the contacts and comments made by those involved in the process, the demonstrated needs of the different sectors where the preventive system is applicable, the evaluation of the difficulties in implementing some requirements of the previous AML Law no. 11/ 2004 and the requirements of the mentioned EC Directives as well as the FATF Recommendations.

II - Law no. 25/2008 of 5th June – General overview of the most innovative measures of the new AML/CFT law

1 - Extension of the AML regime to cover terrorism financing

7. In April 2008 the Assembly of the Republic approved Law no. 25/2008, which entered into force on the 10th of June 2008.

8. The new law continues to apply the preventive general duties already contained in the previous legal framework, such as the duties: to identify, to apply due diligence measures, to keep documents and records, to scrutiny the transactions, to report suspicious operations, to refrain from carrying out transactions in certain circumstances, to cooperate with competent and judiciary authorities and to have internal control mechanisms and to train the staff. However the Law is now extended to the prevention of terrorism financing, according for instance to Article 1 and some of the duties above mentioned are addressed in more detail.

9. With the extension of the preventive legal system of Law no. 25/2008 to the prevention of terrorism financing the role of the FIU has also been extended to receive, analyse and disseminate suspicious transactions linked to terrorism financing (Article 16 of Law no. 25/2008).

10. Furthermore Law no. 25/2008 expressly states that the FIU is the central national authority competent to receive analyse and disseminate suspicious transactions either of money laundering or of terrorism financing (Article 2 10)).

2 – More detailed provisions on CDD and consideration given to risk

11. CDD requirements are more detailed in Law no. 25/2008 when compared with the previous law, allowing for a more consistent cross–sector implementation (financial and non financial). Therefore some provisions on CDD previously dealt with in regulations of the BdP and the ISP are now expressly mentioned in the Law. Among others we would underline the concept and procedures on the identification of the beneficial owner and on shell banks (Articles 2, 5, 7 to 9, and 30).

12. Another aspect which is worth mentioning is the enhance consideration given to the risk assessment of customers and transactions.

13. Examples of situations where the consideration of the risk of money laundering and terrorism financing involved is expressly required in the Law are namely the following: the verification of the identity of the beneficial owner (Article 7 (4)), situations where the origin and destination of the funds should be obtained from the customer (Article 9 (1) c)), the extension of procedures of verification of the customers' identity and of due diligence measures (Article 10).

14. Besides that specific situations exists which receive a different legal treatment according to risk considerations, such as those referred in Articles 11, 12, 25 and 26.

15. In this vein as further detailed in this report, the new law includes specific provisions of enhanced due diligence on Politically Exposed Persons (PEP's) (Articles 2 and 12).

16. Therefore Law no. 25/2008 reflects an increased consideration of the risk involved in the transactions and business relationships and the customer's risk profile, which affects the measures that subject entities should have in place to deal with this risk.

3 – Collection of statistical data

17. Taking into consideration the need to clearly improve the collection of statistical data, namely in what regards the Justice and law enforcement sectors of the preventive system, Law no. 25/2008 considered this issue in depth.

18. Therefore in Article 44 of the Law it is expressly prescribed that the FIU is now responsible for collecting and maintaining up-dated the statistical data on the number of suspicious transactions on money laundering and terrorism financing reported, as well as the routing and results of such reports. This data are then published by the FIU in its annual reports.

19. Furthermore is also legally prescribed in Article 44 of the new Law that the General Directorate for Justice Policy, a department of the Ministry of Justice, shall collect, on an annual basis, all the data referring to the number of cases of money laundering and terrorism financing investigated, the number of persons prosecuted, the number of convictions, and the amount of property frozen, seized and confiscated for the State. This information shall be published regularly, according to the same provision, by the Ministry of Justice in the "Statistics of Justice".

20. With these new provisions in the Law conditions are now met to improve the collection of accurate information on the investigation, prosecution and convictions of money laundering and terrorism financing.

III - Other legislative instruments of general interest issued since the Mutual Evaluation Report

1 - Law no. 59/2007, of 4th September - Criminal liability of legal persons

21. The criminal liability of legal persons required by FATF Recommendation 2 is now laid down in Article 11 of the Criminal Code as revised through Law no. 59/2007, of 4Th of September.

22. The general principle on criminal liability in Portugal, as stated in Article 11 (1) of the Criminal Code, prescribes that only individuals are able of criminal liability. However two broad exceptions are provided to this general principle, one of them concerning specific criminal offences prescribed in paragraph 2 of the above mentioned provision and the other referring to situations specially foreseen in different laws, outside the Criminal Code.

23. Paragraph 2 of Article 11 of the Criminal Code, after revision through Law no. 59/2007, states that legal persons and equivalent entities, except the State, other state owned legal persons and international organizations of public law, are liable for the commission of crimes, among others, of money laundering set forth in Article 368-A of the Criminal Code, when committed *i)* on their behalf and in its collective interest by natural persons occupying a leadership position within the legal person' structure or *ii)* by whoever acts under the authority of the natural persons referred to in the previous subparagraph, on account of a breach of his/her duties of vigilance/awareness and control.

24. The expression public legal persons includes *i)* public law legal persons, where the business public entities are included, *ii)* entities rendering public services, regardless of their ownership and *iii)* other legal persons who exercise prerogatives of the public power. For the purposes of criminal liability, civil societies and de facto associations are considered equivalent entities to legal persons.

25. Some safeguards for legal persons are provided by Article 11, for instance, the liability of legal persons and equivalent entities is excluded when the agent has acted against the orders or express instructions of the legal person.

26. Furthermore the liability of legal persons and equivalent entities does not exclude the individual liability of the respective agents nor does it depend from the liability of those. However, notwithstanding the right to demand payment to the legal persons or to equivalent entities, persons occupying a leadership position are subsidiary responsible for the payment of fines and compensation in which the legal persons or equivalent entity are sanctioned, regarding to crimes referred to in Article 11 (9) a) to c) (See the full version of Article 11 in the Annex).

2 - Amendments to Law no. 52/2003, of 22nd August

27. Amendments to Law no. 52/2003 of 22nd August (Terrorism Law) have been introduced in order to *i)* criminalize the financing of terrorism in a more clearly way and *ii)* to criminalize the provision or collection of funds for the benefit of a single terrorist that are the shortcomings identified by the evaluation team during the mutual evaluation, allowing Portuguese authorities to state that Special Recommendation I is currently fully compliant.

28. Regarding Special Recommendation V, the Portuguese delegation stated, during the discussion of the Mutual Evaluation Report, that comments related to this Recommendation made by the evaluation team are not in accordance with the existing legislation in force.

29. However, in order to clearly overcome this misunderstanding, some amendments have been made to Law no. 52/2003, of 22nd August. Law no 25/2008 of 5th June (the AML/CFT Law) approved a new Article 5-A (financing of terrorism), where the collection and provision of funds or assets to be used by terrorism groups, terrorism organizations and by an individual terrorist are explicitly set forth.

30. Consequently, no doubt exists on the ability of Portugal to answer positively to mutual legal assistance and extradition requests where a single terrorist is involved.

3 – EC Regulation no. 1889/2005 of 26th October and Decree-Law no. 61/2007 of 14th March

31. Inspired on FATF Special Recommendation IX, the European Union issued in 2005 the Regulation no. 1889/2005, of 26th of October on the control of the amounts of cash entering or leaving the European Community. According to Article 249 of the EC Treaty the Regulation is mandatory and directly applicable in Portugal as well as in all EU Member States.

32. In accordance with this Regulation any natural person entering or leaving the European Community is subject to a mandatory disclosure requirement whenever the amount of cash carried is equal or higher than EUR 10 000.

33. This obligatory declaration to the Portuguese Customs authorities includes information on the identification of the declarant, the owner and beneficiary of the cash, the amount and nature and the intended use of cash, the mean of transport to be used and the itinerary of the declarant.

34. Complementing this EC Regulation Portugal issued the Decree-Law no. 61/2007, of 14th of March that abrogated some of the previous provisions of Decree-Law no. 295/2003.

35. Decree-Law no. 61/2007 establishes a broad notion of cash that includes paper money and coins with legal tender and without legal tender which are still redeemable, means of payment to the bearer and also minted gold, gold bars and other forms of non-wrought gold.

36. In addition, Decree-Law no. 61/2007, in its Article 3 (2) establishes also a regime of obligatory information, upon request of the Customs authorities, for those coming in or outgoing to a European Community Member State carrying cash in an amount equal or higher than EUR 10 000. This regime of "declaration upon request" was the regime applicable in Portugal before the issuance of EC Regulation no. 1889/2005, as referred to in the Mutual Evaluation Report.

37. The breach of the legal duty of obligatory disclosure (at the EU external border) or of declaration when requested by the Customs authorities (within the EU) may entail the retention of cash by the Customs authorities and give raise to an administrative proceeding conducted through the Customs and the breach of the legal duty imposed by the Regulation and the Decree-Law provisions are punishable through penalties.

38. The information obtained at the borders by the Customs authorities must be retained for a period of five years after its collection and a copy is reported to the Directorate for Anti-Fraud Services/DGAIEC and on a quarterly basis to the FIU, for analysis. Nevertheless suspicious transactions are reported immediately to the FIU.

39. Regarding sanctions the main changes are the substantial amendments of the amount of the fines imposable and the inclusion of an ancillary sanction. Actually the breach of the duty to declare is punishable through a fine of EUR 150 to EUR 150 000 (previously for legal persons was punishable with a fine from EUR 5 000 to EUR 25 000 and from EUR 2 000 to EUR 10 000 for natural persons).

40. Whenever the breach is committed wilfully and the amount of cash related to the breach is higher than EUR 150 000 the total loss of the amount exceeding this threshold may be imposed having in due regard the seriousness of the breach and the fault of the perpetrator.

4 - EC Regulation no. 1781/2006 of 15th November and Decree-Law no. 125/2008 of 21st July

41. EC Regulation no. 1781/2006, of 15 November was issued with the purpose of coordinating the electronic transfer of funds within the European Community and ensuring no discrimination between internal and intra-EC transfers of funds.

42. The EC Regulation comes in the sequence of FATF Special Recommendation VII, preventing money laundering and terrorism financing and establishing rules on the information on the payer that should accompany transfers of funds sent or received by a payment service provider established in the European Community.

43. As explained before the EC Regulation is mandatory in all its elements and directly applicable in Portugal as in any other European Union Member State.

44. In general terms according to this Regulation the wire transfer of funds between institutions established outside the European Union and incoming to European Union institutions or outgoing from European Union entities shall be accompanied by the name, address and account number of the payer or when an account does not exist by a unique identification number.

45. In addition to the EC Regulation no. 1781/2006 the Decree-Law no. 125/2008, of 21st of July was issued laying down the competence of the BdP to initiate administrative proceedings and to apply the adequate sanctions and also establishing the administrative sanctions applicable to the breach of the duties imposed through the EC Regulation. A more detailed description of the legal regime applicable to wire transfers is further explained when dealing with Special Recommendation VII.

5 - Securities Code – Amended by Decree-Law no. 357-A/2007 of 31st of October

46. It is also worth noting the deep revision of the Securities Code through Decree-Law no. 357-A/2007 of 31st of October, namely regarding the auditor's disclosure duties (Article 304-C), the compliance control system preventing expressly money laundering and terrorist financing (Article 305-A c)), risk management (Article 305-B) and internal audit (Article 305-C) (See relevant Articles in the Annex).

6 - Decree-Law no. 144/2006, of 31st July – Insurance brokers

47. In February 2007 came into force the Decree-Law no. 144/2006, of 31st July. It rules the activity of the insurance brokers and includes important provisions on the prevention of AML/CFT:

a) Article 13 (1) a) determines that someone that has been convicted for money laundering crimes should not be considered fit and proper to work as a broker.

b) Article 29 e) obliges the brokers to act bearing in mind that they should try to avoid money-laundering situations. The breach of this duty give raise to a fine between EUR 50 and EUR 50 000 (if they are physical persons) or between EUR 1 500 to EUR 250 000 (if they are legal persons).

c) Article 29 h) establishes a broker's duty to maintain a register of the insurance contracts together with the elements and information required for the money laundering prevention. The breach of this duty give raise to a fine between EUR 250 and EUR 15 000 (if they are physical persons) or between EUR 750 to EUR 75 000 (if they are legal persons).

7 - Code of Public Procurement, approved by Decree-Law no. 18/2008, of 29th August

48. It should be mentioned as well that the new Code for Public Procurement, approved by Decree-Law no. 18/2008 of 29th January includes a «*Declaration Model*» (in accordance to Article 57 (1)) where the natural or legal person (including the directors or other representatives) should state that he or she have not been convicted by money laundering or corruption, among other offences. It means that persons or entities that have been convicted by those offences are not allowed to celebrate contracts with the Portuguese State.

II. FORTY RECOMMENDATIONS

Recommendation 6: NC

Politically exposed persons

1. Summary of factors underlying rating

- There is no requirement for appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is PEP.
- There is no legal requirement for financial institutions to obtain senior management approval for establishing business relationships with PEP or to take reasonable measures to establish the source of wealth and the source of funds.
- It is not so clear about effectiveness in practice in part due to some confusion about national versus international PEP's.

2. FATF Recommendations in the Mutual Evaluation Report related to this Recommendation.

- Adopt requirements for PEP's as contemplated in Recommendation 6.

3. Description of laws, regulations and other measures adopted or ongoing

49. As stated in the introductory section of this up-date Report, enhanced due diligence requirements concerning Politically Exposed Persons (PEP's) were introduced in the Portuguese legal framework through Law no. 25/2008.

50. The Law includes an extensive and detailed definition of "Political Exposed Persons" in its Article 2(6), which transposes the definition adopted in Directive no. 2005/60/EC and in its implementing measures (European Commission Directive no. 2006/70/EC).

51. Therefore the definition includes natural persons who hold or who have held up to the previous twelve months prominent political or public functions, as well as close family members and persons who are known to have close business or commercial relationships with an original PEP.

52. All these categories are further specified in the Law, as follows:

a) «Prominent political or public functions»:

i) Heads of State, heads of Government, and members of the Government, such as ministers, secretaries and sub-secretaries of State.

ii) Members of Parliament and of parliamentary chambers.

iii) Members of supreme courts, of constitutional courts, of courts of auditors or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances.

iv) Members of the management and auditing boards of central banks;

v) Ambassadors and heads of diplomatic missions and consulates.

vi) High-ranking officers in the Armed Forces.

vii) Members of the management and auditing bodies of State-owned companies and public limited companies whose capital is exclusively or mainly public, public institutes, public foundations, public establishments, regardless of the respective designation, including the management bodies of companies integrating regional and local corporate sectors.

viii) Members of the executive boards of the European Communities and of the European Central Bank.

ix) Members of the executive boards of international organisations.

b) «Close family members»:

x) The spouse or partner.

xi) The parents, children and their spouses or partners.

c) «Persons known to have close commercial or business type relations»:

xii) Any natural person who is known to have joint beneficial ownership of legal persons or legal arrangements, or any other close business relations, with the holder of a prominent political or public function.

xiii) Any natural person who owns the capital or voting rights of a legal person or the property of a legal arrangement, which is known to have as sole beneficial owner the holder of a prominent political or public function.

53. The Law imposes an enhanced due diligence duty concerning business relationships or transactions with non-resident PEP's - Article 12 (2). The enhanced due diligence requirements – set out in Article 12(4) - include the following:

- To have adequate risk-based procedures to determine if the customer could be considered as a PEP.
- To obtain senior management approval before establishing business relationships with these customers.
- To take the necessary measures so as to determine the origin of the property and of the funds involved in the business relationships or in the occasional transactions.
- To conduct an enhanced on-going monitoring of the business relationship.

54. Furthermore, regulations issued by the BdP (Notice no. 11/2005 and Instruction no. 26/2005), the CMVM Securities Market Commission (Regulation no. 2/2007) and the ISP (Regulatory Standard no. 10/2005-R) still in force require financial institutions when establishing a business relationship to obtain information from their customers (resident or non-resident) on official posts held. This information amongst others is taken into account by financial institutions when defining the risk profile of their customers.

55. In conclusion, Portuguese authorities are of the view that the AML/CFT domestic regime is fully compliant with FATF Recommendation 6.

Recommendation 7: PC

Correspondent banking

1. Summary of factors underlying rating

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

2. FATF Recommendations in the Mutual Evaluation Report related to this Recommendation.

- Adopt measures for correspondent relationships as contemplated in Recommendation 7.

3. Description of laws, regulations and other measures adopted or ongoing

56. Law no. 25/2008 includes a specific provision which imposes the duty of enhanced due diligence to financial institutions when establishing correspondent banking relationships with institutions from third countries (Article 26). Within the European Union all the financial institutions are subject to the European Union Directive and therefore to a common and binding legal framework, whose eventual breach is subject and sanctioned by the European Court of Justice, in accordance with the EC Treaty.

57. The specific enhanced due diligence duty established by Article 26 of Law no. 25/2008 imposes the following obligations:

i) To gather sufficient information about the respondent institution in such a way to understand the nature of its activity, to evaluate its internal control procedures with respect to AML/CFT risks and to assess, on the basis of publicly available information, its reputation and the characteristics of its supervisory framework - Article 26 (2).

ii) To obtain senior management approval before establishing correspondent relationships and to document in writing the respective responsibilities of each institution - Article 26(3).

iii) When the correspondence relationship involves payable-through accounts, to confirm that the identity of the customer who has direct access to the account has been checked, and that due diligence is carried out by the respondent institution, ensuring as well that these elements can be provided upon request - Article 26(4).

58. Therefore the view of the Portuguese Authorities is that the regime in force fully complies with FATF Recommendation 7.

Recommendation 12, DNFBP: PC

Including R. 5, 6, 8-11

1. Summary of factors underlying rating

- The deficiencies in the implementation of Recommendation 5, 6 and 11 that apply to financial institutions also apply to DNFBPs.
- There are few implementation measures that clarify the specific obligations of DNFBPs (similar to regulations and circulars for financial institutions)
- Portugal has not implemented explicit AML/CFT measures concerning PEPs applicable to DNFBPs.
- There is no requirement that DNFBPs have policies in place to deal with the misuse of technological developments (Recommendation 8).
- More generally, the implementation of the FATF requirements (both ML and TF) by DNFBPs raises concerns given the low number of STRs submitted.

2. FATF Recommendations in the Mutual Evaluation Report related to this Recommendation.

- Portugal should implement Recommendation 5 and 6 fully to all DNFBPs.
- Portugal should bring in legislative changes to ensure that all DNFBPs have adequate CDD and record keeping obligations in situations required by Recommendation 12.
- DNFBPs should be required to establish and maintain internal procedures, policies and controls to prevent ML and TF, and to communicate these to their employers. These procedures, policies and controls should cover: CDD and the detection of unusual and suspicious transactions and the reporting obligation. DNFBPs should be required to maintain an independent audit function and establish ongoing employee training.

3. Description of laws, regulations and other measures adopted or ongoing

59. Law no. 25/2008, is expressly applicable to money laundering and terrorism financing prevention as referred for instance in its Article 1, therefore CDD measures apply to any transaction that might de suspicious of money laundering or of terrorist financing (5th bullet of factors underlying the rating for Recommendation 5) .

60. DNFBPs covered by FATF Recommendation 12, such as: casinos, real estate agents, dealers in goods that receive payments in cash of €15 000 or more, lawyers, notaries, registrars and *solicitadores*, chartered accountants, statutory auditors, trust and company service providers and also professions that are not covered by Recommendation 12, such as operators awarding betting and lotteries, entities constructing buildings for direct sale and tax advisors, listed in Article 4 of the Law no. 25/2008, are all subject to the AML/CFT legal regime. It should be noted that the list of DNFBPs subject to AML/CFT Law is the same as in the previous Law no. 11/2004, with the addition of entities constructing buildings for direct sale.

61. All these entities are obliged to comply with the customer identification requirements, the due diligence obligations, the duty to refuse to carry out suspicious transactions in certain conditions, to keep documents and records, to scrutiny the operations, to report suspicious operations, to cooperate

with the competent authorities, to maintain secrecy in relation to the customer and to have internal control mechanisms and to train.

62. Therefore it is completely clarified that all legal duties to prevent money laundering and terrorism financing prescribed in the Law are applicable to all DNFBPs above mentioned in accordance with the provisions of Chapter II, Section II of the mentioned Law no. 25/2008, with the specifications provided for in Section III of the Law.

63. In addition to the duty of identifying and verifying the customers' identity, Article 7 (4) of the Law no. 25/2008 imposes also to DNFBPs the duty to identify the beneficial owner and verify its identity according to the money laundering or terrorism financing risk involved.

64. Furthermore Article 15 of Law no. 25/2008 imposes to DNFBPs the duty to scrutiny all the operations they perform which might involve an increased risk of money laundering and terrorism financing. DNFBPs should reduce the results of this scrutiny to a written form and maintain this written information for a period of five years, information that should be available to auditors, when they exist, and also to oversight authorities.

65. In conclusion Portuguese authorities consider that the regime applicable to DNFBPs complies entirely with Recommendation 5.

66. As stated previously with respect to Recommendation 6, Article 2 (6) of Law no. 25/2008 provides for the definition of PEPs considering as such natural persons who hold or have held in the previous twelve months prominent public or political functions and their immediate family members or persons known to be closed associates with him through a business or commercial relationship.

67. Besides that the very detailed definition of PEPs is further developed in Article 2 (6) of the Law and it refers expressly to the high ranking politicians or public officials concerned.

68. Furthermore Article 12 (4) of Law no. 25/2008, applicable to DNFBPs, requires a continued duty of enhanced due diligence regarding business relationships with PEP's that do not reside in Portugal. Besides that is also required the following: a) that DNFBPS have systems in place to determine whether the customer is a PEP, b) senior management approval to establish a business relationship with a PEP, c) take measures to establish the source of wealth of funds that are involved in the business relationship with a PEP.

69. We refer here to the description of the legal duties applicable to PEPs described in Recommendation 6, which are directly applicable also to DNFBPs.

70. In conclusion, Portuguese authorities consider that the actual legal regime in force complies entirely with FATF Recommendation 6.

71. Regarding compliance with Recommendation 8, Law no. 25/2008 addresses the issue raised by this Recommendation on the risk stemming from the use of new technologies which might favour anonymity. It should be noted however that the issue has different implications according to the characteristics of the business of the various DNFBPs.

72. In the situations where DNFBPs operations are performed at distance and without the physical presence of the customer, Law no. 25/2008 prescribes specific enhanced due diligence measures that should be applied (Article 12 (2) and (3)) requiring supplementary procedures to verify the identity of the customer or his/her representative.

73. In addition Article 15 of Law no. 25/2008 also imposes a special duty of scrutiny according to the money laundering or terrorism financing risk, taking in consideration the means of payments used and the type of products or transactions that could favour anonymity.

74. In conclusion, Portuguese authorities consider that the actual legal regime in force complies entirely with FATF Recommendation 8.

Issuance of general guidance and guidelines

75. In addition to the legal preventing duties on money laundering and terrorism financing prescribed previously in Law no. 11/2004 and now further developed in Law no. 25/2008, several DNFBPs oversight authorities have issued guidelines directed to the subject entities explaining them how to comply with the legal regime in force.

76. That was the case of the Service for Gambling Inspection within the Tourism Institute (that replaced the General Inspectorate for Gambling), a public authority with the competence to oversight on a daily basis the casino industry that issued the Internal Note no. 2/2008, of 5th of June, clarifying the legal regime of Law no. 25/2008.

77. The Authority for Food and Economic Safety (ASAE), that maintains competence to oversee dealers in high value goods as well as company and legal arrangements service providers, tax advisers and external auditors, were they are not subject to monitoring by another competent authority in accordance with the Article 38 b) of Law no. 25/2008, published in its website, in 2008, an informative paper elaborating on the legal system in place to prevent money laundering and terrorism financing.

78. ASAE is also preparing regulations on the money laundering and terrorism financing duties applicable to persons subject to its oversight competence under the powers expressly attributed to it through Article 39 (1) of Law no. 25/2008.

79. The National Institute for Construction and Real Estate (INCI) which received through Article 4 c) of Law no. 25/2008 the competence to oversight and regulate real estate agents and construction entities selling property directly into the market has already published in its web site information referring to the subject entities and to their legal duties, to raise awareness on the compliance with Law no. 25/2008.

80. The Institute is preparing an informative Circular on compliance with AML/CFT Law no. 25/2008, of 5th June 2008.

81. The Institute for Registrars and Notaries is also preparing new guidelines related to Law no. 25/2008 to be applicable respectively to notaries and registrars (Article 4 f)).

82. The Bar Association and the Chamber of *Solicitadores* have also published in their web sites information on the legal preventive regime of money laundering and terrorism financing as well as the EC Directives on this subject.

83. The Chamber of Chartered Accountants has promoted in 2006 the clarification of the legal regime stated in the former Law no. 11/2004, specially on how to comply with the duty to report suspicious transactions to the Attorney-General Office and published also Law no. 25/2008 in its website, as well as in SITOC, a CD–ROM distributed every month to these professionals.

84. With the aim of clarifying and promoting awareness of these professionals to the preventive AML/CFT legal regime several opinion Articles were published in TOC Magazine and also in national newspapers.

85. The Order of Statutory Auditors has also published in its web site information on the legal AML regime related with Law no. 11/2004 and is preparing new information disseminating Law no.25/2008 on money laundering and terrorism financing.

Duty to Report STRs

86. In what regards DNFBPs there were suspicious transaction reports (STR) and currency transaction reports (CTR) in 2006 and 2007 from notaries, ASAE, betting and lotteries, chartered accountants and traders in high value goods. See also Table on Recommendation 32.

87. In what regards lawyers and *solicitadores* it should be noted that Article 35 of Law no. 25/2008, has performed a revision of a previous similar provision of the Law no. 11/2004 prescribing now that mentioned legal professionals should report suspicious operations respectively to SROs - the *Bastonário* of the Bar Association and the President of the Chamber of *Solicitadores* - that must report these operations promptly and without filtering them directly to the Attorney General Office and the FIU.

Recommendation 16, DNFBP: PC

Including R. 13-15 & 21

1. Summary of factors underlying rating

- All DNFBPs are subject to comprehensive legislation with regard to reporting duties. However only 10 suspicious transactions were reported from 2003 to 2005.
- No co-operation procedures have been so far established between the Bar Association and the Chamber of *Solicitadores* on the one hand, and the DCIAP or FIU/PJ, on the other hand.
- Even though training is not satisfactory yet except in the area of casinos, the evaluation team noted the planning for improvements concerning this matter.
- There is no obligation to give special attention to business relationships and transactions with persons (including legal persons) from or in countries which do not or insufficiently apply the FATF Recommendations.
- Sanctions provided by law are in particular proportionate, as fines have a wide range of amounts and article 47 of Law 11/2004 allows to imposition of supplementary penalties. However no sanctions have been imposed yet, except in the supervisory area of ASAE (formerly the IGAE).

2. FATF Recommendations in the Mutual Evaluation Report related to this Recommendation.

- All Customer Due Diligence requirements should be extended to clearly reflect the risk related to terrorist financing (R. 12 & 16).
- The requirement to identify beneficial ownership should be fully applicable to DNFBPs as well as the obligation to carry out additional identification/know-your-customer rules (R. 12 & 16).
- Requirements in relation to ongoing due diligence and the obligation for DNFBPs to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant should be clarified and impose direct obligations as asked for in Recommendation 5 (R. 12 & 16).
- With regard to higher risk situations, measures in place should be completed. Portugal should also address whether or not DNFBPs should be permitted to apply simplified or reduced CDD measures, and issue appropriate guidance (R. 12 & 16).
- Portugal should ensure that the measures in place are adequately implemented and fully effective (R. 16).

3. Description of laws, regulations and other measures adopted or ongoing

88. Regarding STRs and CTRs reported to the FIU please see table on Recommendation 32.

89. Concerning the remark made in the second bullet of the factors underlying the rating the Portuguese Authorities consider that lawyers and *solicitadores*, taking into consideration their legal professional functions and duties, do not need protocols or other kind of cooperation procedures to reach effective compliance with the AML/CFT Law. In other words these entities are bound by the provisions of the Law, which they know better than any other DNFBPs and do not require any

additional guidelines on how to comply with the legal regime beyond what is done by the Bar Association and the Chamber of *Solicitadores*.

90. Therefore it was considered that a legal clarification of the duties of lawyers and *solicitadores* through Law no. 25/2008 was the most appropriate way to be chosen to ensure compliance with its provisions.

91. As already stated, Article 35 of the Law was revised with the aim of clarifying that the Bar Association and the Chamber of *Solicitadores* can not act as a filter on the reporting of suspicious transactions to the FIU and the Attorney General of the Republic. It has been clarified that the Order and the Chamber can not retain the suspicious operations communicated to them respectively by lawyers and *solicitadores* and should send them promptly and without filtering to the authorities above mentioned.

Training provided to DNFBPs

92. With regard to training, in 2007 a seminar has been organized by the Chamber of *Solicitadores* where it was explained in full detail the duties of the *Solicitadores* relating to the prevention of the AML/CFT, which included presentations provided by the FIU. In this seminar it was also presented and discussed the draft of the new law that was published in 5th June 2008 (Law no. 25/2008).

93. The Service for Gambling Inspection, which oversees casinos, organized a training session in 2008 in AML/CFT, with the participation of the FIU, as well.

94. The Chamber of Chartered Accountants offers regular counselling to its associates relating to the compliance with the AML/CFT prevention regime, clarifying how they should act when facing suspicious situations to be reported.

95. The Chamber of Chartered Accountants promoted several training sessions in 2006 and 2008 for its associates under the theme “Statutory Accounts Responsibility in the Internal Legal Order”, to raise awareness on the legal regime to combat money laundering and also terrorism financing amongst these professionals.

96. In 2006 and 2008 the Order of Statutory Auditors promoted several training sessions directed to its associates and involving around 30 000 members explaining the legal regime on money laundering and terrorism prevention.

97. The Institute for Registers and Notaries is planning training sessions for registrars and notaries, with the participation of the FIU, from September 2008 on.

98. In conclusion DNBPs in general seem to be aware of their responsibilities and duties in communicating to its subject entities the legal regime in place and reinforcing its compliance.

Warnings related to non cooperative countries or jurisdictions.

99. In accordance with Article 42 of Law no. 25/2008 supervisory and oversight authorities should issue warnings with the purpose of preventing money laundering and terrorism financing threats, including the identification of countries and jurisdictions that do not apply or insufficiently apply FATF Recommendations.

100. DNFBPs, as the financial entities, must comply with those warnings and scrutiny with enhanced due diligence operations with countries and jurisdictions that are recognized as non cooperative countries regarding money laundering and terrorism financing.

101. Beyond that the source and destination of funds, including geographical, are elements that should be considered by DNFBPs under the duty to scrutiny transactions from or directed to non cooperative countries according to Articles 15 (2) c) and 31 of Law no 25/2008.

102. It should also be considered that in accordance with Article 31 of Law no. 25/2008, DNFBPs monitoring authorities may impose through regulation, where necessary, enhanced due diligence obligations in operations performed with countries and jurisdictions that do not apply or apply insufficiently FATF Recommendations.

Sanctions applied to DNFBPs

103. The Service for Gambling Inspection, of the Tourism Institute has applied an administrative sanction (*coima*) in the amount of EUR 63 547.50, for breach of Article 45 a) of former Law no. 11/2004, through its Deliberation 5/2007/CJ, of 9 of November 2007, to a gambling entity. The Deliberation is under judicial appeal.

Recommendation 24 – DNFBP: PC

Regulation, supervision and monitoring

1. Summary of factors underlying rating

- With regard to all DNFBPs competent authorities or SROs are designated to perform monitoring and ensuring compliance of DNFBPs with AML/CFT requirements. However except for the IGJ and IGAE/ASAE, no inspections or other monitoring activities were carried out by the competent authorities.
- Where an oversight role exists the SROs do not have sufficient resources to perform these functions.

2. FATF Recommendations in the Mutual Evaluation Report related to this Recommendation.

- Portugal should provide more specific, timely and systematic feedback to reporting entities and should develop further its effort to raise AML/CFT awareness within the DNFBPs, especially through sectoral and very practical guidelines (especially in the CFT area).
- Portugal should ensure that the measures in place are adequately implemented and fully effective.

3. Description of laws, regulations and other measures adopted or ongoing

104. As referred previously ASAE, until the entry into force of Law no. 25/2008, was the competent authority for oversight compliance with the AML regime stated in Law no.11/2004 with regard to the most important number of DNFBPs, such as those integrating the real estate sector and the buying and selling of high value goods.

105. In performing their monitoring duties the ASAE established in 2006 a working group for the analysis of the priority areas in the field of money laundering prevention, with the purpose of increasing the effectiveness of inspections and its results.

106. In 2006 an informative Circular was issued to assist in the compliance with the anti-money laundering regime in force to be disseminated to the entities subject to the ASAE monitoring activities.

107. In December 2006, the ASAE prepared and carried out 2 inspections focused on AML duties.

108. In 2007 the ASAE outsourced the activity of information processing of all the obligatory information received from the subject entities, which is of high importance to its oversight activities.

109. The real estate intermediaries reported, under the previous legal regime to ASAE, and report now to the Institute for Construction and Real Estate (INCI), the starting date of its activities and every six months important data referring to its business, such as the identification of customers, the property negotiated, the amount of the transactions performed, the respective deeds and means of payment used.

110. Law no. 25/2008 clarified the regulatory powers of DNFBPs oversight authorities in Articles 38 and 39, therefore it could be expected that new regulations may arise in the future.

111. Regarding the Order of Statutory Auditors, considering Law no. 25/2008 and also the new supervisory model that will arise with the transposition to internal law of Directive no. 2006/43/EC of 17 May relating to the revision of annual consolidated accounts, the Statutory Auditors Statute, will be adapted in conformity, introducing a new model of supervision, which will involve strengthening the independence and the quality control conducted through the Order.

112. It will be established a regime of recording documents related to the exercise of functions performed in the public interest, and also an incompatibilities regime, that will forbidden Statutory Auditors of performing certain other businesses and the revision of accounts simultaneously. Besides that a public register of statutory auditors will be established that will be communicated to the Order for publication.

113. Regarding the issue of feedback see the answer to Recommendation 25.

Recommendation 25: PC

Guidelines & feed-back

1. Summary of factors underlying rating

- There is very little guidance provided to the DNFBPs under the new Law 11/2004 by the competent authorities, except for IGAE/ASAE and casinos.

2. FATF Recommendations in the Mutual Evaluation Report related to this Recommendation.

- Portugal should provide more specific, timely and systematic feedback to reporting entities and should develop further its effort to raise AML/CFT awareness within the DNFBPs, especially through sectoral and very practical guidelines (especially in the CFT area).
- Portugal should ensure that the measures in place are adequately implemented and fully effective.

3. Description of laws, regulations and other measures adopted or ongoing

Issuance of guidance and guidelines

114. In addition to the legal preventive duties on money laundering and terrorism financing prescribed previously in Law no. 11/2004 and now in Law no. 25/2008, several DNFBPs oversight authorities have issued guidelines directed to the subject entities explaining them how to comply with the legal regime in force.

115. That was the case of the Service for Gambling Inspection within the Tourism Institute (that replaced the General Inspectorate for Gambling), a public authority with the competence to oversight on a daily basis the casino industry that issued the Internal Note no. 2/2008, of 5th of June, clarifying the legal regime of Law no. 25/2008.

116. The Authority for Food and Economic Safety (ASAE) – that maintains competence to oversee dealers in high value goods as well as company and legal arrangements service providers, tax advisers and external auditors, when they are not subject to monitoring by another competent authority in accordance with the Article 38 b) of Law no. 25/2008 – published in its website, in 2008, an informative paper elaborating on the legal system in place to prevent money laundering and terrorism financing.

117. ASAE is also preparing regulations on the money laundering and terrorism financing duties applicable to persons subject to its oversight competence under the powers expressly attributed to it through Article 39 (1) of Law no. 25/2008.

118. The Institute for Construction and Real Estate (InCI), which received through Article 38 b) ii) of Law no. 25/2008 the competence to oversight and regulate real estate agents and construction entities selling property directly into the market, has already published in its website information referring to the subject entities and to their legal duties, to raise awareness on the compliance with Law no. 25/2008.

119. The Institute is preparing an informative letter (*Circular*) on compliance with AML/CFT Law no. 25/2008, of 5h June 2008.

120. The Institute for Registrars and Notaries is also preparing new guidelines related with Law no. 25/2008 to be applicable respectively to notaries and registrars (Article 4 f)).

121. The Bar Association and the Chamber of *Solicitadores* have also published in their websites information on the legal preventive regime of money laundering and terrorism financing as well as the EC Directives on this subject.

122. The Chamber of Chartered Accountants has promoted in 2006 the clarification of the legal regime stated in Law no. 11/2004, specially on how to report suspicious transactions to the Attorney-General Office and published also Law no. 25/2008 in its website, as well as in SITOC, a CD–ROM distributed every month to these professionals.

123. With the aim of clarifying and promoting awareness of these professionals to the preventive AML legal regime several opinion Articles were published in TOC Magazine and also in national newspapers.

124. The Order of Statutory Auditors has also published in its website information on the legal AML regime related to Law no. 11/2004 and is preparing new information disseminating Law no. 25/2008.

Feedback

125. In accordance with Article 43 of the Law no. 25/2008 the FIU is charged with the obligation of providing feedback to all entities subject to this law on the results and follow-up of the communications on money laundering and terrorism financing received from the reporting entities.

126. It should be clarified that in practice the FIU was already providing feed-back to reporting entities but under the new AML/CFT Law this corresponds to a legal prescription.

127. Besides that Article 42 of Law o. 25/2008 requires the authorities responsible for the supervision of the financial sector and for the oversight of DNFBPs, including the self-regulatory organizations, as well as the FIU, within the scope of their respective competences, to issue warnings and to disseminate updated information on trends and known practices with the aim to address money laundering or terrorism financing involving threats.

Recommendation 32: PC

Statistics

1. Summary of factors underlying rating

- Portugal has not conducted a full and comprehensive review of its AML/CFT regime.
- There are no comprehensive statistics on ML and TF investigations, prosecutions and convictions. There are no TF statistics on which to judge the effectiveness of the TF legislation as no TF cases have been tried.
- More detailed statistics should be kept, particularly concerning the nature and disposition of investigations and prosecutions.
- It is not possible to assess the effectiveness of freezing of terrorist funds under Special Recommendation III as no funds have been identified for freezing action.
- There are very limited statistics on the number of cases and the amounts of property frozen seized and confiscated relating to ML, TF and criminal proceeds.
- There are insufficient statistics upon which to assess the efficiency of the measures in place [issue of effectiveness SR IX].

2. FATF Recommendations in the Mutual Evaluation Report related to this Recommendation.

- Ensure that comprehensive statistics on ML prosecutions an convictions are kept.
- Portugal should also maintain more statistics in the following areas: *i)* data on the amounts of property frozen, seized and confiscated relating to money laundering, terrorist financing and criminal proceeds; *ii)* statistics cross-border transportation of currency and bearer negotiable instruments; *iii)* statistics on whether the request for mutual legal assistance was granted or refused and on how much time was required to respond; *iv)* number of requests for extradition for ML/TF cases and figures on whether the request was granted or refused and how much time was required to respond.

3. Description of laws, regulations and other measures adopted or ongoing

128. Portuguese Authorities would like to highlight the review of the Portuguese AML /CFT system performed in 2006 and 2007 as referred in the introduction of this report.

129. The General Directorate for Justice Policy (DGPJ) is the body, within the Ministry of Justice, responsible for the justice and law enforcement statistical data. Empowered by the National Statistics Institute, it is entrusted with the collecting, use, treatment, analysis and public diffusion of the justice statistical data as well as their dissemination within the national statistical framework.

130. According to its competence and recognizing the importance of statistic elements and data, also for the definition of the national criminal policy, and taking into account the need for the up-dating and improvement of the collection and production of statistics, a Project is ongoing in DGPJ for the re-formulation of the Statistics Information System.

131. Regarding the offences of money laundering information is collected on the number of registered offences by law enforcement authorities and on the cases in court, defendants and convicted persons in the Criminal Courts of first instance.

132. Taking into consideration the need to increase the information details about the cases that are to be heard in court – for money laundering and terrorism financing offences – and to allow the collection of information about the accusations promoted by the Public Prosecutors, the DGPJ is working jointly with competent authorities (law enforcement and judicial authorities) with the aim, in the short period, to have the conditions to publicly deliver relevant data. In this framework it should be highlighted the future collection of data about the amount of frozen, seized and confiscated assets for the State.

133. Regarding terrorism financing up to now, the data collected by the "Statistics of Justice" are only related to the number of crimes of terrorist organizations or terrorist groups and internal or international terrorism registered. DGPJ is already working in connection with the above mentioned competent authorities, in order to make publicly available in the near future data about terrorism financing with the detail requested by the Mutual Evaluation Report.

134. With new AML/CFT Law (Law no. 25/2008), in force since June 10th, the issue of collecting statistic data related to money laundering and terrorism financing should now be taken in a more proactive way, due also to the provisions of the EU Directive no. 2005/60/EC of 26th October. Article 44 of mentioned Law requires the collection, maintenance and publication of statistical data, emerging of this provision some binding obligations as follows:

i) It is incumbent on the FIU to prepare and update statistical data relating to all the reporting transactions reports and the respective routing and results.

ii) It is incumbent on the judicial and law enforcement authorities to transmit, yearly, to the General Directorate for Justice Policy data on money laundering and terrorism financing, namely on the investigated cases, accused and convicted persons, as well as on the amount of frozen, seized and confiscated assets.

iii) It is incumbent on the General Directorate for Justice Policy to publish the collected statistical data regarding the prevention of money laundering and terrorism financing.

135. Therefore, in conclusion, with the mentioned legislative and technical improvements the Portuguese authorities expect that the collection, treatment and publication of statistical data related to money laundering and terrorism financing could be managed in a more efficient way allowing for a better knowledge of the effectiveness of the national AML/CFT system and a more informed definition of public policies in the matter.

136. Regarding the statistics on money laundering and terrorism financing investigations, inquiries, prosecutions and convictions, there was since 2006 a significant increase in the figures. The Public Prosecution initiated 84 enquiries in 2006, 95 in 2007 and 46 in the first semester of 2008, representing a total of 225. The figure for 2006 represents a 64% increase when compared with 2005.

137. According to the figures of the following table, the number of convictions for the commission of a money laundering offence has increased when compared with the period 2000-2005.

Money laundering enquiries, accusations and convictions in the period 2006-2008

	2006	***2007***	***2008 1st semester***	***Total***
Enquiries	84	95	46	225
Accused persons	12	25	16	53
Convictions	11	4	14	29
Assets seized	Cash:EUR 3 500 000 Banking accounts: EUR 518 000 Requested the confiscation of EUR 182 924 Several automobiles	Several automobiles Requested the confiscation of EUR 8 300 000		

138. The total amount of convictions between 2006 and 2008 (1st semester) shows that around 55% of the convictions have drug trafficking as predicate offence and around 15% for each of the offences of corruption, swindling and incitement to prostitution.

139. In relation to the money laundering convictions in the same period a minimum penalty of ten months imprisonment and a maximum of seven years have been applied.

140. Between 2006 and 2008 (1st semester) and after the conviction in Court several properties, automobiles, currency and securities, were confiscated to the State, as shown in the table below.

Confiscations in the period 2006 – 2008

2006	***2007***	***2008 (1st semester)***
- Compensation to the State (EUR 6 149 018) - One apartment - EUR 33 000 - Six automobiles - Gold manufactured objects	-One apartment (around EUR 140 000) - EUR 170.313 - One automobile	- Securities (EUR 274 000) - EUR 574 000 - Three automobiles - Gold manufactured objects

141. In addition it should be noted that the number of reported transactions has increased as well from financial institutions and non financial sectors as shown in the previous table. At the same time and in order to improve the channels to communicate suspicious transactions, the FIU and the DCIAP informed the financial sector entities and DNFBPs that they should use a specific e-mail address.

142. The evaluation team also stated that insufficient statistics on cross-border cash declarations made more difficult to access the effectiveness of Special Recommendation IX. However, after the entry into force, in 15 June of 2007, of the EC Regulation no. 1889/05 and of Decree-Law no. 61/2007 of 14th of March, imposing a obligatory disclosure system to travellers coming from or going outside the EU external borders and a declaration system upon demand to intra-EU travellers, there was a substantial increase in the number of declarations made by travellers, Portuguese and foreigners, when arriving or leaving the national territory.

143. As shown below in the table, in 2007 the number of declarations increased to 820 and in the first semester of 2008, 466 declarations have been made to the customs authorities showing that the figures of 2007 might be overcome, and that the legislative and practical improvements in the declaration system and sanctions regime are clearly more effective as well.

Reports received by the FIU									
	2006			2007			2008 (1º semester)		
	STR	CTR	TOTAL	STR	CTR	TOTAL	STR	CTR	TOTAL
Credit institutions	507	39	546	588	156	744	253	86	339
Central Bank	35	172	207	54	114	168	12	53	65
Insurance		16	16	1	12	13		23	23
CMVM		54	54						
Bureaux de change	31	1	32	66	45	111	10	6	16
Notaries	2	46	48						
Traders in high value goods		17	17		27	27		4	4
General Inspectorate for Gambling		15 108	15 108		11 402	11 402		17 842	17 842
General Directorate for Customs and Special Taxes on Consumption (DGAIEC)	1	180	181		820	820		466	466
Authority for Alimentary and Economic Security (ASAE)		2	2	1		1			
Betting & Lotteries	1	3	4	5		5			
Chartered Accountants		1	1	1	1	2			
Others	7	12	19	8		8	2		2
TOTAL	**584**	**15 651**	**16 235**	**724**	**12 577**	**13 301**	**277**	**18 480**	**18 757**

144. Regarding the suspension of the execution of transactions and the freezing of funds the figures have also increased in relation to 2005, as shown in the table below.

Suspension of executions and amounts frozen

	2005	*2006*	*2007*	*2008 1º Trimester*
Number	4	17	13	6
Amounts	EUR 3 236 262	EUR 11 295 000 USD 1 670 000 GBP 154 000	EUR 14 950 000 USD 250 000	EUR 8 556 000

Recommendation 33: PC

Legal persons – beneficial owners

1. Summary of factors underlying rating

- The National Register of Legal Persons does not include information on the beneficial ownership and the persons who control a legal person.
- There is not full transparency of the shareholders of companies that have issued bearer shares.

2. FATF Recommendations in the Mutual Evaluation Report related to this Recommendation.

- Portugal should ensure information on the beneficial ownership and the persons who control a legal person and there is full transparency of the shareholders of companies that have issued bearer shares.

3. Description of laws, regulations and other measures adopted or ongoing

145. Legal persons of civil or commercial nature operating in Portugal must be recorded in the National Register of Legal Persons, where their name and constitution is obligatory recorded and where can be found for instance the details of the set-up, the name and purpose of its activity, the amount of capital, the address, the mergers, winding-up and liquidation .

146. The National Registry of Legal Persons provides the number of identification of the legal person – the Legal Person Identification Number (NIPC) – which follows the legal person from its creation to its liquidation.

147. Commercial entities – such as, general partnerships, limited liability companies, joint –stock companies, limited partnerships and partnerships limited by shares – must also be recorded into the Commercial Register. In the Commercial Register can be found for instance the by-laws of the companies, the transfer of the company's shares, the statutory seat of the companies, the updated identification of the shareholders and the amount of capital they hold, which are not bearer shares, the annual accounts of the companies, the mergers, the winding-up and the deliberation on the liquidation of the companies.

148. The information recorded in the Commercial Register is available to all public authorities or any interested person and contains sufficient elements on the identification of the stock-holders which allow for the recognition of the person who controls a company.

149. Even when the company has issued bearer paper shares (certificated shares), the identity of the holder of the bearer shares should be reported to the company, according to Articles 447 and 448 of the Companies Code, with regard to the shares held by members of the management and supervisory committees and closed family members, such as spouses and descendents, and by any shareholder holding at least 1/10, 1/3 or half of the capital of the joint-stock company, even for publicly traded companies. This information is published in the annex to the annual report of the company.

150. In what regards associations and foundations all the updated elements related to the holders of the property are also recorded in the National Register of Legal Persons.

151. Therefore information on the shareholders that control a company, meaning holding 10% or more of the company shares, is available either from the Commercial Register to any kind of company or directly from the joint-stock company when it issues bearer paper shares (certificated shares), even when the company is a publicly traded company.

152. In what regards to the transparency of the information, competent authorities have access to the National Registry of Legal Persons to which civil legal persons and business companies, associations, foundations, cooperatives, state-owned companies, cooperative undertakings, European economic interest groupings and any other personalised collective bodies are subject (Article 4 (1) a) of the National Registry of Legal Persons Regime, approved by Decree-Law no. 129/98, of 13th of May).

153. Furthermore, Article 86 of the Securities Code expressly lays down that, in pursuance of their duties, the CMVM and the BdP have direct access to information on the facts and legal situations found in the records and supporting documents of the entities (financial intermediaries) where the securities are registered.

154. The CMVM may request any information from issuers, financial intermediaries and the managing bodies of centralised systems of securities (Articles 359 (1) a) to c) and 361 (2) a) of the Securities Code), who cannot claim professional secrecy (to which financial intermediaries – Article 304 (4) of the Securities Code and the managing bodies of centralised systems of securities are subject – Articles 37 and 46 of the body Law governing Market Management Entities, approved by Decree-Law no. 357-C/2007, of 31st October) and have the duty to collaborate (Article 361 (2) a) *in fine* and Article 359 (3) of the Securities Code).

155. Financial intermediaries are obliged to keep the supporting documents and records as they are custodians in the securities registration system (Article 291 a) of the Securities Code, Articles 6 (1) b) and 7 (1) of Regulation no. 14/2000 of CMVM ; cf. also Articles 16 (a) and 17 (1) b) of Regulation no. 14/2000 of CMVM);custodians and issuing bodies are further responsible for opening and movements in individual accounts (Articles 6, 7, and 8 of Regulation no. 14/2000).

156. All the information contained in the accounts and related documents is kept for a five year period, counting from the date of their definitive cancellation (Regulation no. 14/2000 of CMVM) – this duty applies to the managing bodies of centralised systems of securities, financial intermediaries and issuers, who are all *common participants* in the systems (Articles 2 (1), 6 (1), 7 (1) and 8 of Regulation no. 14/2000 of CMVM).

157. Therefore, the only difference between the regimes applicable to nominative and bearer paper shares (certificated shares) is that, in the latter case, there is no access to the continued ownership of certificated shares that are not integrated in a centralised system, registered with a single financial intermediary or with the issuer and do not fall under the communication duties of the Companies Code or the Securities Code, *i.e*. the ownership of which is always less than 10% of the share capital, or less than 2%, in the case of a public company (See Articles 61 to 64 and 99 of the Securities Code and Regulation no. 14/2000 of CMVM).

158. Nevertheless, the ownership of bearer shares is disclosed in the minutes of the general meetings, which contains the names of the partners present or represented and which are filed with the company over the next ten years, safeguarding those cases in which the law requires that a presence list be organised and annexed to the minutes – *e.g.* Articles 382, 63 (2) c) and 63 (4) and (5) of the Companies Code; when information is requested on the preparatory documents of the general meetings, so long as they hold at least 1% of the share capital (Article 228 (1) of the Companies Code); through the voluntary representation instruments in a general meeting, which are filed with the company for the mandatory conservation period of documents (Article 380 (2) of the Companies Code); or when equity claims on the company are exercised, irrespective of the amount of share capital they have.

159. In addition Law no.25/2008 in its Article 2 (5) requires from the subject entities the identification of the beneficial owner of legal persons, whose definition is also provided for in the same provision, independently of the shares being nominative or bearer and the verification of the identity of the beneficial owner should be carried out according to the risk involved in the operation.

160. Similar provisions, although not so detailed were already provided for in the Instruction no. 26/2005 of the BdP and in the Regulatory Standard no. 10/2005-R of the ISP in point 2.2, as well as in the Regulation no. 2/2007 of the CMVM.

161. In conclusion Portuguese Authorities consider that there are sufficient mechanisms in place to ensure that bearer paper shares (certificated shares), the only not recorded with the issuer or with a financial intermediary, do not pose relevant issues of lack of transparency for the purposes of money laundering and terrorism financing.

Recommendation 34: PC

Legal arrangements – beneficial owners

1. Summary of factors underlying rating

- Competent authorities have limited powers to have timely access to information on the beneficial ownership and control of trusts.

2. FATF Recommendations in the Mutual Evaluation Report related to this Recommendation.

- Portugal should ensure that competent authorities have adequate powers to have timely access to information on the beneficial ownership and control of trusts.

3. Description of laws, regulations and other measures adopted or ongoing

162. In first place we clarify that, as stated in the Mutual Evaluation Report, the Portuguese legal system does not acknowledge, in general, the legal concept of trust and besides that Portugal has neither approved nor ratified the Hague Convention on the Law Applicable to Trusts and its Recognition, of 1985.

163. However there is a situation exclusively in the Madeira Free Trade Zone, a Portuguese archipelago in the Atlantic Ocean, where international trusts constituted according to a foreign law might be recognized and produce legal effects, according to the chosen foreign law and the legal regime of the Free Trade Zone.

164. These foreign trusts, are recognized to produce legal effects in the Madeira Free Trade Zone, when they meet certain mandatory legal requirements, such as the settlor and beneficiary being not residents in Portugal and the assets constituting the trust do not include any immovable property situated in Portugal.

165. When a trust meets these two requirements it can be recognized by the legal regime of the Madeira Free Trade Zone and must be subject to registry.

166. In what regards to registration a Commercial Register Department, which has the nature of a public authority submitted to AML/CFT provisions, is established in the Madeira Free Trade Zone, and the trusts lasting for more than one year must be registered with this public authority.

167. This public Authority keeps all the written information referring to the identity of the settlor, the trustee and the beneficiary of the trust, and also the information pertaining to the scope of the trust and the trust instrument or deed. According to the Commercial Register rules, this information should be kept updated by the trustee.

168. The requirements referring to the name, identification and purpose of the trust, the date of its creation, the period of its duration, and the date and nature of the changing and extinction acts concerning the trust are all publicly available to any person interested in this information and even published in the Madeira Region Official Gazette.

169. According to the law on international trusts in the Madeira Free Trade Zone, only joint-stock companies licensed by the Regional Government to perform business in the Free Trade Zone can be appointed as trustees.

170. The identification and statutory seat of the trustee must be registered as well in the Commercial Register of the Free Trade Zone, being also publicly available and being published in the Madeira Region Official Gazette. Judiciary authorities, according to their legal powers, when investigating money laundering or terrorism financing or other serious offences are allowed to obtain the information registered in the Commercial Register of the Free Trade Zone pertaining to trusts in due time.

171. The identification of the settlor and of the beneficiary of the trust are obligatory kept within the Commercial Register, but they are not publicly available.

172. In factual terms there are 53 trusts registered and active in the Free Trade Zone of Madeira, in the first semester of 2008.

173. It should also be clarified that trusts are forbidden to perform banking, insurance and securities activities, according to Article 13 (2) of Decree-Law no. 352-A/88 and also confirmed expressly through Decree-Law no. 13/2008, of 18th January, which extended tax benefits in the Madeira Free Trade Zone until 2020.

174. The new AML Law establishes that joint-stock companies providing trust services in the Madeira Free Trade Zone must identify its customers and verify its identification, according to the general rules established in the Law no. 25/2008, and also identify the beneficial owner of the international trust, when recognized in the Madeira Free Trade Zone and verify its identity according to the money laundering or terrorism financing risk involved in the situation (Article 7 (4) and Article 4 f) of Law no. 25/2008).

175. Besides that whenever the company managing the trust opens any bank account or performs any kind of financial operation is obliged to disclose who is the beneficiary of the trust, as stated in Article 7 (4) of the Law no. 25/2008.

176. The new Law no. 25/2008 clarified also, in detail, that the Commercial Register of the Free Trade Zone, which is managed by a public official, the *Conservador* of the Register, is a public authority submitted to the legal provisions of the AML/CFT Law, namely when it registers a trust and is obliged to examine and communicate any suspicious operations to the FIU and the Attorney General regarding the creation or the management of a trust (according to Article 4 f) iii) and Article 2 (4) of Law no. 25/2008).

177. Besides that, as stated before, any judiciary authority when investigating money laundering or terrorism financing or other serious offences is allowed to obtain the information registered in the Commercial Register of the Free Trade Zone pertaining to trusts, according to Article 3 of Law no. 5/2002.

178. In conclusion, the Portuguese authorities are convinced that the legal regime of international trusts in place in the Madeira Free Trade Zone, taking into consideration the clarification provided by the new Law on the measures of identification and verification of identity applicable expressly to trusts, ensures that competent authorities, such as the *Conservador* of the Commercial Register and Judiciary Authorities have adequate and effective powers to have timely access to information on the beneficial ownership and control of trusts.

III. 9 SPECIAL RECOMMENDATIONS

Special Recommendation I: PC

Ratification, implementation UN instruments

1. Summary of factors underlying rating

- S/RES/1267 (1999) has been implemented but S/RES/1373 (2001) has not yet been comprehensively implemented.
- There is no system for effectively communicating action taken by the authorities under the freezing mechanisms to some DNFBPs.
- DNFBPs are not adequately monitored for compliance with measures taken under the Resolutions.

2. FATF Recommendations in the Mutual Evaluation Report related to this Recommendation.

- Ensure that DNFBP's are advised of their obligations under S/RES/1267 (1999) and S/RES/1373 (2001).

3. Description of laws, regulations and other measures adopted or ongoing

179. Regarding the comment in the first bullet of the factors underlying the rating, the Portuguese authorities are not convinced that UN Resolution S/RES/1373 (2001) has not been comprehensively implemented, taking into account that Common Position 2001/931/CFSP and (EC) Regulation no. 2580/2001, both from the European Union give execution to the aforementioned UN Resolution.

180.

181. According to Article 249 of the EEC Treaty, European Regulations are binding and directly and immediately applicable in domestic Law (as stated in Article 8 of the Constitution of the Portuguese Republic).

182. Since the mutual evaluation of Portugal, more exactly during the first half of 2007, measures were adopted at the European Union level in order to improve the effectiveness of implementation of UN Resolution S/RES/1373 (2001) and to establish clear and more transparent procedures for the freezing actions.

183. Besides other innovations, one of the most important improvements is the de-listing procedure where a request for de-listing can be presented by a Member State or the third State which had originally proposed the listing in question in addition to requests made by listed persons, groups or entities.

184. One of the tasks of the new "Working Party on implementation of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism" (CP931 Working Party) is the discussion of all requests for listing and de-listing of persons, groups and entities, preparing the

regular review of the list by the Council as foreseen in Article 1(6) of Common Position 2001/931/CFSP.

185. Other improvements are the obligation of notification and the review procedure. In the first situation, after a listing decision taken by the EU Council , the persons, groups or entities subject to restrictive measures under (EC) Regulation no. 2580/2001 should be informed by a letter where the reference to the possibility for the persons, groups or entities to send a file to the Council with supporting documents, asking for their listing to be reconsidered and reference to the possibility of an appeal to the Court of First Instance in accordance with the EC Treaty is set forth.

186. Listed persons, groups and entities included in the list have now different possibilities to react to the listing procedure, have the possibility to submit a request to the Council to reconsider their case, on the basis of supporting documentation, to challenge the listing decision of the national competent authority according to national procedures, to challenge the Council's decision before the Court of First Instance of the European Communities, if subject to restrictive measures under Regulation no. 2580/2001 and also to request humanitarian exemptions to cover basic needs, as allowed by the mentioned European legal instruments.

187. The Council should make the regular review of the list of assets that have been frozen at regular intervals, at least in a six months period and, in addition can, regardless of any period of time, adopt decisions for new listing or delisting of persons, groups and entities. Member States should also inform each other about any new facts and developments relating to listed persons, groups or entities.

188. Taking into account that Special Recommendation I states that «*Countries should also immediately implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373*» and after the cross-checking of all its provisions, we can conclude that the mentioned Resolution has been comprehensively implemented in the Portuguese legal order.

189. After the third mutual evaluation and due to the fact that the prevention and fight against terrorism and terrorism financing is a matter of particular concern at international level and also due to the recommendations made by the evaluation team, the Portuguese authorities have taken some measures to improve the ways of communication of actions taken under the freezing mechanisms to DNFBPs as obliged entities set forth in Law no 11/2004, of 27th March, in force at the time.

190. In that regard, with the purpose to communicate to DNFBPs subject to its oversight, ASAE published in its official website, in 2008, the links to European Union and United Nations websites related to the lists of persons and entities suspected of terrorism and to support terrorism, in order to allow designated non-financial businesses and activities to comply with the obligations that are mandatory, nowadays in a clearer way, through the application of Law no. 25/2008, of 5th June. The mentioned disclosure in the ASAE website was accompanied of previous information sent to the referred entities of the non-financial sector, warning them of the obligations that they should comply with.

191. The Institute for Registries and Notaries receives through the Ministry of Justice the mentioned list of persons and entities suspected to be terrorists or to support terrorism, promoting the dissemination of the lists to all notaries and different registries services (for instance Commercial Registry or Real Estate Registry) in order to verify if some of the notarial acts or other acts involved such persons or entities or if such persons or entities are the owners of different types of property in Portugal. With the purpose of a better clarification of the obligations set forth in the new AML/CFT Law the Institute for Registers and Notaries will provide in the website the links to the European Union and United Nations, sending through informative letter (Circular) – as already made in the past – information about the obligations for notaries and registers in the field of prevention and repression of money laundering and terrorism financing, including the freezing measures.

192. The General Directorate for the Justice Policy of the Ministry of Justice also publishes updating information on consolidated lists facilitating the access in particular to the Bar Association and Chamber of *Solicitadores* and their associates.

193. According to the provisions of Law no. 25/2008 of 5th June, the INCI (Institute for Construction and Real Estate) is the new entity responsible for the oversight of all entities performing activities in the real estate sector. In that sense, as others public entities, the INCI provides information about the lists of persons and entities subject to UN and European Union restrictive measures, warning subject entities of the real estate sector of the obligations that they need to comply with, which means, the freezing obligations set forth in UNSC Resolutions and EC Regulations.

194. Furthermore, GPEARI, the Bureau for International Relations of the Ministry of Finance and Public Administration, provides all relevant information in the website related to financial sanctions and restrictive measures, in order to facilitate its public acknowledgement, both for financial and non-financial entities, especially the chartered accountants (TOC) and statutory auditors (ROC).

195. Regarding the oversight of the compliance with the measures resulting form UNSC Resolutions and EC Regulations we can state that, with new Law no. 25/2008 of 5th June, the powers of oversight of competent authorities have been enlarged to include terrorism financing, creating the legal basis to allow them to include the matter in its monitoring and oversight activities.

196. In conclusion Portuguese Authorities are convinced that the system in place complies entirely with the requirements of Special Recommendation I, being S/RES/1373(2001) disseminated to the entities subject to the oversight of the competent authorities.

Special Recommendation III: PC

Freezing and confiscation of terrorism assets

1. Summary of factors underlying rating

- Portugal has a limited ability to freeze funds in accordance with S/RES/1373 (2001) of designated terrorists outside the EU listing system.
- Communication mechanisms to all DNFBPs are limited.
- Portugal does not adequately monitor DNFBPs for compliance with the relevant laws for freezing of terrorist funds.

2. FATF Recommendations in the Mutual Evaluation Report related to this Recommendation.

- Portugal should extend its current limited ability to freeze funds in accordance with S/RES/1373 and ensure that all freezing actions are communicated to relevant DNFBPs. There should be adequate monitoring of DNFBPs to ensure they comply with required freezing actions.

3. Description of laws, regulations and other measures adopted or ongoing

197. The existing system allows the Portuguese competent authorities to freeze assets in accordance with UNSC Resolution 1373 (2001) of terrorists that fall outside the European system of lists (the so-called "terrorists outside EU") through the application of internal legislation in force, namely Law no. 5/2002 of 10th January and Law no. 11/2002 of 16th February as well as through existing mechanisms for mutual legal assistance in criminal matters, regulated by Law no. 144/99, of 31st August.

198. In this particular issue, we should bear in mind the wording of Interpretative Note of Special Recommendation III that consists of two obligations. The first requires jurisdictions to implement measures that will freeze or, if appropriate, seize terrorist-related funds or other assets without delay in accordance with relevant United Nations resolutions. The second obligation of Special Recommendation III is to have measures in place that allow a jurisdiction to seize or confiscate terrorist funds or other assets on the basis of an order or mechanism issued by a competent authority or a court. This means that, it is up to the States, according to their constitutional principles, the use of freezing mechanisms, regardless of their nature – administrative or judicial – in a timely basis.

199. Therefore, according to the mentioned internal legislation, any Public Prosecutor has the power to initiate an inquiry and freeze, without delay, any funds or other assets or economic resources belonging *i)* to persons that commit or attempt to commit terrorist acts, participate or facilitate in the commission of the acts, *ii)* that are owned or controlled, directly or indirectly, by such persons or entities or *iii)* to persons or entities acting in its behalf or under its supervision, including the freezing of funds that are derived from or representing the result of funds that are owned or controlled, directly or indirectly, by such persons or persons and entities linked to them, regardless the fact that the person are classified as « EU internal terrorist » or not.

200. In addition, the freezing could also take place under the mutual legal assistance request submitted by another State – that may send the request directly to the Attorney-General Office or to any Public Prosecutor. Therefore the Portuguese Authorities are empowered with the mechanisms to give execution to actions initiated under freezing mechanisms of other jurisdictions. In this framework, when a request is received and there are suspicions or reasonable grounds to suspect that a

designated person is a terrorist, a terrorism financier or that we are dealing with a terrorist organization, there are mechanisms in place for the freezing of funds or other assets or economic resources placed in Portugal.

201. The issue of the limited mechanisms of communication for DNFBPs as well as the oversight of compliance with the relevant laws for freezing of terrorist funds have been addressed in the answer provided for in relation to Special Recommendation I.

202. In conclusion the current system in Portugal to freeze assets in accordance with UNSC Resolution 1373 (2001) is broad and in accordance with the provisions set forth in special Recommendation III and its interpretative Note, allowing competent authorities to freeze funds of any type regardless the person or entity involved is considered a EU terrorist or not . At the same time improvements have been made and are ongoing to ensure the communication of freezing and other actions to all DNFBPs regulated by the AML/CFT Law.

Special Recommendation VII: NC

Wire transfers rules

1. Summary of factors underlying rating

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

2. FATF Recommendations in the Mutual Evaluation Report related to this Recommendation.

- SR VII has not been implemented in most respects. Portugal should implement the provisions of SR VII as soon as possible.

3. Description of laws, regulations and other measures adopted or ongoing

203. Special Recommendation VII has been implemented In the European Union through Regulation (EC) no. 1781/2006 of the European Parliament and of the Council of 15th of November 2006 on information on the payer accompanying transfers of funds (see Annex), whose provisions are directly applicable in all Member States.

204. The obligations on the payment service provider of the payer are covered by Articles 4 to 7 of the above mentioned Regulation.

205. Article 5 of this Regulation requires payment service providers to ensure that transfers of funds are accompanied by complete information on the payer and to verify this information on the basis of documents, data or information obtained from a reliable and independent source. Concerning verification, a threshold of 1000 € applies if there is no suspicion of money laundering or terrorism financing.

206. Complete information on the payer consists of his name, address and account number. The address may be replaced by the date and place of birth, the customer identification number or the national identity number. Where the payer does not have an account number, it will be replaced by a unique identifier which allows the transaction to be traced back to the payer (see Article 4).

207. Where both the payment service provider of the payer and the payment service provider of the payee are situated in the European Community, transfers of funds are required to be accompanied only

by the account number of the payer or a unique identifier allowing the transaction to be traced back to the payer. However, if so requested by the payment service provider of the payee, the payment service provider of the payer will make available complete information on the payer within three working days of receiving that request (see Article 6).

208. The obligations imposed on intermediary payment service providers are covered by Articles 12 and 13 of the EC Regulation. Article 12 establishes that information received on the payer that accompanies a transfer of funds is kept with the transfer by the intermediary payment service provider, while Article 13 establishes specific procedures to be followed when there are technical limitations.

209. Articles 8 to 11 of the EC Regulation deal with the obligations imposed on the payment service provider of the payee, which include the detection of missing information on the payer and the procedures to be followed in such cases, as well as the risk-based assessment to be made by the payment service provider of the payee on the suspicious nature of the missing or incomplete information.

210. Infringements to the provisions set forth in this Regulation are subject to penalties as established in Decree-Law no. 125/2008 of 21st July (see Annex). This Decree-Law sets out the competent authority for monitoring the compliance with this Regulation – BdP – and the sanctions applicable to the infringement of the duties stated in the Regulation. These sanctions are for natural persons, penalties going from EUR 500 to EUR 3 500 and for legal persons going from EUR 2 500 to EUR 44 000, with the possibility of complementary sanctions being imposed (see Articles 5 and 6). This Decree Law provides also for the administrative responsibility of legal persons for the payment of the penalties imposed under a proceeding, jointly with the individual responsible for the breach of the specific duty (see Article 9).

211. In conclusion Portuguese Authorities are convinced that the legal framework of EC Regulation no. 1781/2006 and Decree-Law no.125/2008 is in complete accordance with Special Recommendation VII.

ANNEX

RELEVANT LEGISLATION
(*working translations*)

1. Law no. 25/2008 of 5th June (AML/CFT Law).

2. Criminal Code - Article 11 (as approved by Law no. 59/2007 of 4th September).

3. Law no. 52/2003 of 22nd August (as amended by Law no. 59/2007 of 4th September).

4. EC Regulation no. 1889/2005 of the European Parliament and the Council, of 26 October 2005.

5. Decree-Law no. 61/2007 of 14th March.

6. Decree-Law no. 125/2008 of 21st June.

7. EC Regulation no.1781/2006 of the European Parliament and of the Council of 15 November 2006.

8. Securities Code – Articles 304 to 305-E (as amended by Decree-Law no. 357-A/2007 of 31st October).

9. Decree-Law no. 144/2006, of 31st July – Articles 13 and 29.

Annex 1

Law No. 25/2008
of 5 June

Establishing the preventive and repressive measures for the combat against the laundering of benefits of illicit origin and terrorism financing, transposing into the domestic legal system Directive 2005/60/EC of the European Parliament and Council, of 26 October 2005, and Directive 2006/70/EC, of the Commission, of 01 August 2006, relating to the prevention of the use of the financial system and of the specially designated activities and professions for purposes of money laundering and terrorism financing, first amendment to Law No. 52/2003 of 22 August, and revoking Law No. 11/2004, of 27 March

The Assembly of the Republic decrees, pursuant to Article 161 c) of the Constitution, the following:

CHAPTER I
General provisions

SECTION I

Subject matter and definitions

Article 1
Subject matter

1- This Law establishes preventive and repressive measures to combat the laundering of unlawful proceeds and terrorism financing and transposes into Portuguese law Directive 2005/60/EC of the European Parliament and of the Council of 26th October 2005 and Commission Directive 2006/70/EC of 1st August 2006 on the prevention of the use of the financial system and designated non-financial businesses and professions for the purpose of money laundering and terrorism financing.
2- Money laundering and terrorism financing are prohibited and punishable in accordance with the procedures established by the applicable criminal law.

Article 2
Definitions

For the purposes of this Law the following shall mean:

1) «Entities subject to this Law», the entities referred to in Articles 3 and 4 of this Law;

2) «Business relationship», professional or commercial relationship between institutions and entities subject to this Law and their customers which, at the time when the relationship is established, is expected to last;

3) «Occasional transaction», any transaction carried out by entities subject to this Law outside the scope of an already established business relationship;

4) «Legal arrangements», autonomous property, such as condominium based building, claimed but undistributed inheritances, and trusts governed by foreign law, where and under the terms recognised by Portuguese law;
5) «Beneficial owner», the natural person on whose behalf a transaction or activity is carried out, or who ultimately owns or controls the customer. The beneficial owner shall at least include:

a) where the customer is a corporate entity:

i) the natural person who ultimately owns or controls a legal entity, directly or indirectly, or control over at least a percentage equivalent to 25 % of the shares or voting rights in that legal entity, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards;
ii) the natural person who otherwise exercises control over the management of a legal entity;

b) where the customer is a non-corporate entity, such as foundations and legal arrangements which administer and distribute funds:

i) where the future beneficiaries have already been determined, the natural person(who is the beneficiary of 25 % or more of the property;
ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
iii) the natural person who exercises control over 25 % or more of the property of a legal arrangement or legal person;

6) "Politically exposed persons", natural persons who hold or who have held up to the previous twelve months prominent public or political functions and immediate family members, or persons known to be close associates of such persons through a business or commercial relationship. For the purposes of this paragraph:

a) “Prominent public or political functions” is understood as:

i) Heads of State, heads of government, ministers and deputy or assistant ministers;
ii) Members of parliaments, or members of parliamentary chambers;
iii) Members of supreme courts, constitutional courts or other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
iv) Members of management or auditing boards of central banks;
v) Ambassadors and heads of diplomatic missions and consulates;
vi) High-ranking officers in the armed forces;
vii) Members of the management and auditing boards of State-owned enterprises and corporations in which the State holds exclusively or the majority of the capital, public institutes, public foundations, public establishments, irrespective of their specific name, including the management boards of companies belonging to the regional and local corporate sectors;
viii) Members of the executive bodies of the European Communities and the European Central Bank;
ix) Members of executive bodies of international law organisations;

b) “Immediate family members” shall include:

i) The spouse or partner;
ii) The parents, the children and their spouses or partners;

c) "Persons known to have a close company or business relationship":

i) Any natural person who is known to have joint beneficial ownership of legal persons or legal arrangements, or any other close business relations, with a person entrusted with prominent public or political functions;
ii) Any natural person who has ownership of the capital stock or voting rights of a legal person or legal arrangement which is known to have as sole beneficial owner a person

entrusted with prominent public or political functions;

7) "Shell bank" a credit institution, incorporated in a State or jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is unaffiliated with a regulated financial group;
8) «Equivalent third country» any country mentioned in an executive order of the member of government responsible for finance, having a regime equivalent to the national one in respect of money laundering and terrorism financing prevention and the supervision of such obligations; and in respect of the information requirements applicable to listed companies in a regulated market, the regime set out in a list approved by the Securities Market Commission;
9) «Service providers to companies and other legal persons and legal arrangements», any person who by way of business provide any of the following services to third parties:

a) Incorporation of companies, other legal entities or legal arrangements as well as providing related services of representation, management and administration to such legal entities or legal arrangements;
b) Fulfilment of the functions of director, secretary or shareholder for a company, or other legal person, or acting in a similar position in relation to legal arrangements;

10) «Financial Intelligence Unit (FIU)», the national central unit for receiving, analysing and disseminating suspected money laundering or terrorism financing information, set up by Decree-Law No 304/2002 of 13 December.

SECTION II
Scope of application

Article 3
Financial entities

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

a) Credit institutions;
b) Investment companies and other financial companies;
c) Entities managing or marketing venture capital funds;
d) Collective investment undertakings marketing their units;
e) Insurance companies and insurance brokers carrying on the activities referred to in subparagraph *c)* of Article 5 of Decree-Law No 144/2006 of 31 July, with the exception of connected insurance brokers as mentioned in Article 8 of the aforementioned Decree-Law, when they carry on activities within the area of life insurance;
f) Pension-fund managing companies;
g) Credit securitisation companies;
h) Venture capital companies and investors;
i) Investment consulting companies;
j) Companies pursuing activities dealing with contracts related to investment in tangible assets[2].

2- The branches established in the Portuguese territory of the entities referred to in the preceding paragraph having their head office abroad, as well as off-shore branches are also covered.
3- The current law also applies to the entities providing postal services and to Treasury and Government Debt Agency, where providing financial services to the public.

[2] Text in accordance with the Declaration of Rectification no. 41/2008, published in the Official Gazette of 4 th of August 2008.

4- For the purposes of this Law, the entities referred to in the preceding paragraphs are hereinafter referred to as «financial entities».

Article 4
Non-financial entities

The following entities, carrying on activities in the national territory, shall be subject to the provisions of this law:

a) Those acting under a concession granted in order to operate games in casinos;
b) Operators awarding betting or lottery prizes;
c) Real estate agents as well as agents buying and reselling real estate and construction entities selling directly real property;
d) Persons trading in goods, only to the extent that payments are made in cash in an amount of EUR 15000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
e) Statutory auditors, chartered accountants, external auditors and tax advisors;
f) Notaries, registrars, lawyers, *solicitadores* and other independent legal professionals, acting either individually or incorporated as a company, when they participate or assist, on behalf of a client or otherwise in the following operations:

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

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

Article 5
Financial activity on an occasional and limited basis

This law shall not apply to companies operating in the tourism and travel sector, authorised to carry out, on an occasional and limited basis, foreign currency exchange transactions, pursuant to the provisions of Decree-Law No 295/2003 of 21 November.

CHAPTER II
Duties of the entities subject to this Law

SECTION I
General duties

Article 6
Duties

The entities subject to this law, in the exercise of their professional activities, are obliged to comply

with the following general legal duties:

a) Duty of identification;
b) Duty of due diligence;
c) Duty to refuse to carry out operations;
d) Duty to keep documents and records;
e) Duty of scrutiny;
f) Duty to report;
g) Duty to refrain from carrying out transactions;
h) Duty to cooperate;
i) Duty of confidentiality;
j) Duty to control;
l) Duty of training.

Article 7
Duty of Identification

1- The entities subject to this law shall identify and verify the identity of their customers and the respective representatives:

a) When establishing a business relationship;
b) When carrying out occasional transactions amounting to EUR 15000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
c) When there is a suspicion of money laundering or terrorism financing operations, regardless of their amount, and any exemption or threshold, taking into account, in particular the nature, complexity, atypical or unusual pattern of the transaction regarding the customer's profile or activity, amounts involved, frequency, source and destination of funds, economic and financial situation of intervening parties or means of payment used;
d) When there are doubts about the veracity or adequacy of previously obtained customer identification data.

2- In the case of casino operators and operators awarding betting or lottery prizes, the identification obligation shall apply for amounts higher than those set out respectively in subparagraph *a)* of paragraph 1 of Article 32 and in Article 33.

3- Verification of the identity shall be made:

a) In the case of a natural person, through the presentation of a valid original document with photo, containing the full name, date of birth and nationality;
b) In the case of a legal person, through the presentation of the legal person identification card, commercial registration certificate or, in the case of non-residents in the national territory of an equivalent document.

4- Where the customer is a legal person or legal arrangement or, in any event, whenever it is known or there is grounded suspicion that a customer is not acting for his/her own account, the entities covered by this Law shall obtain from the customer information on the identity of the beneficial owner; this information shall be adequately verified, according to the risk of money laundering or terrorism financing.

Article 8
Identity checking moment

1- Checking the identity of a customer, its representatives and, where applicable, of the beneficial owner shall take place at the moment when the business relationship is established or before the carrying out of any occasional transaction.
2- Without prejudice to the provisions of the previous paragraph, where there is limited risk of money laundering or terrorism financing and except as otherwise provided for in a legal rule or regulation applicable to the activity carried on by the subject entity, the verification of the identity of the customer mentioned in the previous paragraph can be completed after the establishment of a business relationship, if this is indispensable for the completion of the transaction, in which case these identification procedures shall be completed as soon as possible.
3- When opening a bank account, credit institutions shall not allow any credit or debit movements to the account after the initial deposit, make available any payment instruments on the said account or make any change to the ownership, until full compliance with the customer's identification procedure, in accordance with the legal or regulatory provisions applicable.
4- In the case of life insurance contracts, verification of the identity of the beneficiary under the policy may take place after the business relationship has been established, but always at or before the time of payout or at or before the time the beneficiary intends to exercise rights vested under the policy.

Article 9
Due diligence

1- In addition to the identification of customers, representatives and beneficial owners, the entities subject to this law shall:

a) Take appropriate measures to understand the ownership and control structure of the customer, as regards legal persons or legal arrangements;
b) Obtain information on the purpose and intended nature of the business relationship;
c) Obtain information, where required by the risk profile of the customer or the characteristics of the operation, on the source and destination of funds within the scope of a business relationship or of an occasional transaction;
d) Conduct ongoing monitoring of the business relationship to ensure that the transactions being conducted are consistent with the institution's or person's knowledge of the customer, as well as of its business and risk profile;
e) Ensure that the information elements gathered in the course of the business relationship are kept up-to-date.

2- Customer due diligence procedures shall apply not only to new customers but also to existing customers, on a regular basis and according to the existing risk level.

Article 10
Adaptation to the risk level

1- In compliance with the identification and due diligence duties set out in Articles 7 and 9, the entities subject to this law may adapt the nature and extent of the checking procedures and the due diligence measures depending on the risk associated with the type of customer, the business relationship, the product, the transaction and the source and destination of the funds.
2- The entities subject to this law shall be able to demonstrate to the competent supervisory or monitoring authorities, that the extent of the measures adopted pursuant to the previous paragraph is appropriate.

Article 11
Simplified due diligence

1- Except where there are suspicions of money laundering or terrorism financing operations, the entities subject to this law shall be exempt from compliance with the duties referred to in Articles 7 and 9 in the following situations:

a) Where the customer is a financial entity set up in a European Union Member State or in a third country which imposes equivalent requirements in respect of money laundering and terrorism financing prevention;
b) Where the customer is a listed company whose securities have been admitted to trading in a regulated market, within the meaning of Article 199 of the Portuguese Securities Code, as amended by Decree-Law no. 357-A/2007 of 31st October, in any European Union Member State, as well as listed companies in third country markets, which are subject to reporting obligations equivalent to those required by Community legislation, as publicized by the competent supervisory authority;
c) Where the customer is the State, autonomous regions, local authorities or a legal person governed by public law, of any nature, integrated in the central, regional or local governments;
d) Where the customer is a public authority or body with transparent accounting practices and subject to monitoring, including those institutions referred to in the Treaty establishing the European Community and any others to be disclosed through an executive order of the member of government responsible for finance;
e) Where the customer is the entity providing postal services or is the Treasury and Government Debt Agency.

2- The provisions of the previous paragraph shall also apply to beneficial owners of customer accounts with credit institutions, opened by lawyers or *solicitadores* established in Portugal, provided that it is ensured, through a declaration made to the credit institution where the account is opened and at the time of opening, that the information on the identity of the beneficial owner is promptly available, on request, of the credit institution.
3- In the cases referred to in the previous paragraphs, the entities subject to this law shall in any case gather sufficient information to establish if the customer falls into any of the categories or professions mentioned above, and monitor the business relationship in order to detect particularly complex or unusually high amounts transactions, which have no apparent economic or visible lawful purpose.

Article 12
Enhanced due diligence

1- Without prejudice to the provisions of Articles 7 and 9, the entities subject to this law shall apply enhanced due diligence measures, in respect of customers and transactions which by their nature or characteristics can present a higher risk of money laundering or terrorism financing.
2- Enhanced due diligence measures shall always apply in non-face-to-face transactions and in particular to those operations that may favour anonymity, to the operations carried out with politically exposed persons residing outside the national territory, correspondent banking operations with credit institutions established in third countries and any others designated by the competent supervisory or monitoring authorities, provided that they are legally empowered thereto.
3- Without prejudice to the regulations issued by the competent authorities, where the operation takes place without the customer or his/her representative being physically present (non face-to-face operations), verification of identity can be supplemented by one of the following means:

a) Additional documents or information considered adequate to check or certify the data provided by the customer, namely those supplied through a financial entity;
b) Carry out the first payment related to the operation through an account opened in the customer's name with a credit institution.

4 - In respect of business relationships or occasional transactions with politically exposed persons residing outside the national territory, the entities subject to this law shall:

a) Have appropriate risk-based procedures to determine whether the customer is a politically exposed person;
b) Have senior management approval for establishing business relationships with such customers;
c) Take adequate measures to establish the source of wealth and the source of funds that are involved in the business relationship or occasional transaction;
d) Conduct enhanced ongoing monitoring of the business relationship.

5 - The regime set out in the previous paragraph shall continue to apply to all persons, who no longer being a politically exposed person, continue to present a higher risk of money laundering or terrorism financing, due to their profile or to the nature of operations carried out.

Article 13
Duty to refuse to carry out transactions

1- The entities subject to this law shall refuse to carry out a transaction through a bank account, establish a business relationship or carry out any occasional transaction, when:

a) The information referred to in Article 7 for the identification of the customer, his/her representative or of the beneficial owner, where applicable, has not been provided;
b) The information referred to in Article 9 on the ownership and control structure of the customer, the purpose and intended nature of the business relationship, and the source and destination of funds, has not been provided.

2- Whenever the refusal provided for in the previous paragraph occurs, the entities subject to this law shall analyse the circumstances that determined it and where the situation may be related to the commission of a money laundering or terrorism financing offence, they shall report it as provided for in Article 16 and shall consider putting an end to the business relationship.

Article 14
Duty to keep documents and records

1- A copy or the references to the documents demonstrating compliance with the duty of identification and due diligence, shall be kept for a period of seven years after the customer identification moment or, in the case of a business relationship, after the business relationship with the customer has ended.
2- Original documents, copies, references or any other durable support systems, equally admissible in court proceedings as evidence, of the demonstrative documents and of the records of the transactions, shall always be kept to enable the reconstruction of the transaction, for a period of seven years after its execution, even if the transaction is part of a business relationship that has already ended.

Article 15
Duty of scrutiny

1- Without prejudice to enhanced customer due diligence, the entities subject to this law shall examine with particular care and pay special attention, based on their professional experience, to any conduct, activity or transaction which they regard as particularly likely, by its nature, to be related to money laundering or terrorism financing.

2- For the purposes of the previous paragraph, the following features are particularly important:

a) The nature, purpose, frequency, complexity, unusual type and pattern of the conduct, activity or transaction;
b) The apparent inexistence of an economic or visible lawful purpose associated with the conduct, activity or transaction;
c) The amount, source and destination of the flow of funds;
d) The means of payment used;
e) The nature, activity, operative pattern and profile of the parties intervening in the transaction;
f) The type of transaction or product that may particularly favour anonymity.

3- The results of the examination referred to in paragraph 1 above, shall be written down and kept for a period of at least five years, being available for auditors, where applicable, and for the supervisory and monitoring authorities.
4- The evaluation of the degree of suspicion indicated by any conduct, activity or transaction does not necessarily imply the existence of any type of document confirming such suspicion, rather, it may be based on the evaluation of a concrete situation, in the light of the due diligence criteria required from a professional in the analysis of the situation.

Article 16
Duty to report

1- The entities subject to this law shall promptly inform, on their own initiative, the Attorney General of the Republic and the FIU, where they know, suspect or have reasonable grounds to suspect that an operation is likely to incorporate a money laundering or terrorism financing offence is being or has been committed or attempted.
2- The information provided pursuant to the previous paragraph shall only be used in criminal proceedings, and the identity of the person who provided the information shall in no case be disclosed.

Article 17
Duty to refrain from carrying out transactions

1- The entities subject to this law shall refrain from carrying out transactions which they know or suspect to be related to the commission of money laundering or terrorism financing offences.
2- The entities subject to this law shall promptly inform the Attorney-General of the Republic and the FIU that they have refrained from executing the operation, and the Attorney-General of the Republic may determine the suspension of the suspicious operation, notifying for the purpose, the entity subject to this law.
3- The frozen transaction may however be carried out, where the freezing order is not confirmed by the criminal investigation judge within two working days, as of the report made by the subject entity, in accordance with the previous paragraph.
4- Where the entity subject to this law consider that the obligation to refrain referred to in paragraph 1 cannot be complied with, or when after consulting the Attorney-General of the Republic and the FIU, they consider that compliance therewith is likely to frustrate the prevention or the future investigation of money laundering or terrorism financing, the operation may be executed, as long as the entity covered by this Law promptly forwards to the Attorney-General of the Republic and the FIU the information regarding the transaction.

Article 18
Duty to cooperate

The entities subject to this law shall promptly provide assistance as requested by the Attorney-General

of the Republic, by the FIU for the performance of its tasks, by the judicial authority responsible for leading the inquiry, or by the competent authorities to supervise or monitoring[3] compliance with the obligations provided for in this law, according to their respective legal competences, namely by granting direct access to information and presenting the documents or records required.

Article 19
Duty of confidentiality

1- The entities subject to this law, as well as the members of their management, auditing or other corporate bodies, those holding office as director, manager or head of department or similar, their employees, representatives and other persons providing services on a permanent, temporary or occasional basis, shall not disclose to the client nor to third persons that they have reported the information legally due or that a money laundering or terrorism financing investigation is being carried out.
2- It shall not constitute a breach of the duty mentioned in the previous paragraph the disclosure of information, legally imposed, to the supervisory or monitoring authorities of the duties provided for in this Law, including the professional self-regulatory bodies of the businesses or professions subject to this law.
3- The provisions of paragraph 1 shall not prevent the disclosure of information, for the purposes of money laundering and terrorism financing prevention:

a) Between institutions belonging to the same company group, within the meaning of Articles 2 and 3 of Decree-Law No 145/2006 of 31st July, established in a European Union Member State or in a third country, which imposes equivalent requirements in respect of money laundering and terrorism financing prevention;
b) Between the persons referred to in subparagraphs *e)* and *f)* of Article 4 established in a European Union Member State or in a third country, which imposes equivalent requirements in respect of money laundering and terrorism financing prevention, that provide services or are employees within the same legal person or in a group of companies to which it belongs, with common ownership or management.

4- The prohibition laid down in paragraph 1 shall not prevent disclosure of information between the financial and non-financial entities referred to in subparagraphs *e)* and *f)* of Article 4 on a common business relationship, regarding the same customer, provided that the information exchanged shall be exclusively used for the purposes of money laundering and terrorism financing prevention and all entities are subject to equivalent obligations as regards professional secrecy and personal data protection and are established in European Union Member States or in a third country which imposes equivalent requirements in respect of money laundering and terrorism financing prevention.

Article 20
Protection in the disclosure of information

1- The disclosure of information in good faith by the entities subject to this law, in compliance with the duties laid down in Articles 16, 17 and 18, shall not constitute a breach of any duty of confidentiality, imposed by any legislative, regulatory or contractual provision, and shall not hold liable in any way the persons who disclose the information.
2- Whoever, even due to mere negligence, discloses or favours the disclosure of the identity of the person that provided the information, in accordance with the Articles referred to in the previous paragraph, shall be punished with a maximum penalty of three years' imprisonment or shall be liable to a fine.

[3] Text in accordance with the Declaration of Rectification nº. 41/2008 published in the Official Gazette of 4th August 2008.

Article 21
Duty of to control

The entities subject to this law shall establish adequate internal policies and procedures for compliance with the duties laid down in this law, namely as far as internal control, evaluation and risk assessment and management and internal audit are concerned, in order to effectively combat money laundering and terrorism financing.

Article 22
Duty of training

1- The entities subject to this law shall take the measures necessary for their directors and employees, whose functions are relevant for money laundering and terrorism financing prevention, to have adequate knowledge of the duties imposed by the legislation and regulations in force concerning this matter.
2- The measures set out in the previous paragraph shall include participation in specific and regular training programmes, suitable for each sector of activity, enabling their employees to identify operations which may be related to the commission of money laundering or terrorism financing offences and to instruct them to act in accordance with the provisions of this law and respective regulatory rules.

SECTION II

Specific duties of financial entities

Article 23
Duties of financial entities

1- Financial entities shall be subject to the duties referred to in Article 6, as well as to the specific provisions laid down in the following Articles and in the related regulatory rules issued by the competent supervisory authorities, under the terms of this law and of the legal ordinances regulating their activity.
2- Under no circumstance can anonymous bank accounts or anonymous passbooks exist.

Article 24
Performance by third parties

1- Financial entities, with the exception of bureaux de changes, are authorised to rely on a third party for customer identification and due diligence, pursuant to Article 7 and subparagraphs *a)* to *c)* of paragraph 1 of Article 9, in accordance of regulations to be established by the competent supervisory authorities, provided that the financial entity is:

a) A financial entity referred to in paragraph 1 of Article 3, established in the national territory, other than a bureau de change;
b) A financial entity whose nature is similar to that of the entities authorised under this paragraph, having its head office in the European Union or in a third country which imposes equivalent requirements against money laundering and terrorism financing prevention.

2- The financial entities that rely on third parties to ensure compliance with the duties mentioned in the previous paragraph shall retain responsibility for full compliance with such duties, as if they were their direct performers and shall have immediate access to the information relating to the

carrying out of that operation.

Article 25
Specific duty of simplified due diligence

1- Except when there are suspicions of money laundering or terrorism financing, the financial entities are exempt from complying with the duties set out in Articles 7 and 9, in the following situations:

a) Issuance of electronic money, whose monetary value is stored on an electronic device and represents a claim on the issuer, issued on receipt of funds of an amount of not less than the monetary value issued and accepted as a means of payment by undertakings other than the issuer; if the electronic device cannot be recharged since the maximum amount stored in the device is no more than €150, or even if it can, a threshold of EUR 2500 is imposed on the total amount transacted in a calendar year, except when an amount of EUR 1000 or more is redeemed in that same calendar year by the bearer, as referred to in Article 3 of Directive 2000/46/EC of the European Parliament and of the Council of 18th September 2000;([4])
b) Life insurance policies, pension fund contracts or similar savings schemes, where the annual premium or contribution is no more than EUR 1000, or the single premium is no more than EUR 2500;
c) Insurance policies for pension schemes if there is no surrender clause and the policy cannot be used as collateral;
d) Pension, superannuation or similar schemes that provide retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme.

2- The financial entities shall also be exempt from the duties set out in Article 7 in insurance policies, life insurance policies and pension schemes, where the premium or the contribution is paid through a debit of, or cheque drawn on an account opened in the name of the insured with a credit institution subject to the obligations laid down in Article 6.

Article 26
Enhanced specific customer due diligence

1- Financial entities that are credit institutions shall also apply enhanced customer due diligence in respect of cross-border correspondent banking relationships with institutions established in third countries.
2- For the purposes of the previous paragraph, credit institutions shall gather sufficient information about a respondent institution to understand fully the nature of the respondent's business, to assess the respondent institution's anti-money laundering and anti-terrorism financing controls and to determine from publicly available information the reputation of the institution and the characteristics of its supervision.
3- Approval shall be obtained from senior management before a credit institution establishes a new correspondent banking relationship and the respective responsibilities shall be written down.
4- If the correspondent relationship involves payable-through accounts, the credit institution shall be satisfied that the respondent credit institution has verified the identity of the customer and performed due diligence on the customer having direct access to the accounts, ensuring that all these elements of information can be provided , upon request.

[4] Text in accordance with the Declaration of Rectification no 41/2008, published in the Official Gazette of 4th of August 2008.

Article 27
Specific reporting duty

In the case of transactions which present a special risk of money laundering or terrorism financing, namely when they are related to a specific country or jurisdiction subject to additional counter-measures decided by the Council of the European Union, the competent supervisory authorities may determine their obligation of immediately reporting to the Attorney-General of the Republic and the FIU of such transactions, when they amount to EUR 5 000 or more.

Article 28
Specific duty to cooperate

The financial entities shall have systems and instruments in place that enable them to respond fully and appropriately to enquiries from the Attorney-General of the Republic, the FIU, or from other competent judicial authorities, as to whether they maintain or have maintained during the previous five years a business relationship with specified natural or legal persons and respective the nature of that relationship.

Article 29
Branches and subsidiaries in third countries

1- Financial entities, in respect of their branches and majority-owned subsidiaries located in third countries, shall:

a) Apply measures equivalent to those laid down in this law, with regard to the duties of identification, due diligence, document and record keeping and training;
b) Communicate the policies and internal procedures defined in compliance with the provisions of Article 21, where applicable within the scope of the activity carried out by the branches and subsidiaries.

2- Where the legislation of the third country does not allow the application of the measures laid down in subparagraph *a)* of the previous paragraph, the financial entities concerned shall inform its competent supervisory authorities of that fact and take additional measures to prevent the risk of money laundering and terrorism financing.

Article 30
Shell banks

1- Credit institutions shall not establish correspondent banking relationships with shell banks.
2- Credit institutions shall take appropriate measures to ensure that they do not enter into correspondent banking relationships with other credit institutions that are known to allow their accounts to be used by shell banks.
3- As soon as the institutions learn they keep a correspondent banking relationship with the entities referred to in the previous paragraphs, they shall terminate that relationship.

SECTION III
Specific duties of non-financial entities

Article 31
Duties of non-financial entities

Non-financial entities shall be subject to the duties set out in Article 6, with the specifications laid

down in the following Articles and in the regulatory rules issued by the member of government responsible for the respective sector of activity or by the legally competent monitoring authorities, for that purpose.

Article 32
Entities acting under a concession to operate games in casinos

1- The entities acting under a concession granted in order to operate games in casinos are subject to the following duties:

a) Identifying all casino customers and verifying their identity immediately on entry in the gambling room or when they purchase or exchange gambling chips or other gambling-related items with a total value of EUR 2 000 or more;
b) Issuing cheques in their own name in gambling rooms in exchange for gambling chips or other gambling-related items only to the order of identified casino customers that have purchased them through a bankcard or valid cheque and up to a maximum amount equal to the cumulative amount of all those purchases;
c) Issuing cheques in their own name in gambling and slot machine rooms to pay prizes only to the order of previously identified casino players' winners and resulting from combination of machine payout schemes or accumulated prize schemes.

2- Casino customers' identity shall always be registered.
3- The cheques referred to in subparagraphs *b)* and *c)* of paragraph 1 shall bear the name of the payee and must be crossed with a clause prohibiting any endorsement.
4- The reports to be submitted under the terms of this law shall be made by the administration of the company acting under concession.

Article 33
Operators awarding betting or lottery prizes

Entities awarding betting and lottery prizes in an amount of EUR 5 000 or more shall identify and verify the identity of payment beneficiaries.

Article 34
Real estate agents

1- Natural or legal persons dealing in real estate mediation, as well as natural or legal persons engaged in the purchase, sale, purchase for resale or exchange of real property and who, with their own or any third party resources, directly or indirectly decide, promote, program, manage and finance the construction of buildings, intended for their subsequent transmission or sale, on whatever grounds, shall forward the following documents to the Institute for Construction and Real Estate:

a) Communication, in accordance with the terms laid down in the law, of the start-date for the real estate mediation activity, purchase, sale, purchase for resale or exchange of real property and of any person(s) who, with their own or any third party resources, directly or indirectly decide, promote, program, manage and finance the construction of buildings, intended for their subsequent transmission or sale, on whatever grounds, together with the access code to the permanent commercial registration certificate, within a maximum period of 60 days as of the date of verification of any such situations;
b) Report on a half-yearly basis and in the appropriate form, containing the following particulars on each transaction carried out:

i) Clear identification of the intervening parties;
ii) Overall amount of the legal transaction;
iii) Reference to the title deeds thereof;
iv) Means of payment used;
v) Identification of the real estate.

2- Natural or legal persons, that have already started the activities referred to in the previous paragraph, shall forward the communication mentioned in subparagraph *a)* above within a maximum period of 90 days after the entry into force of this Law.
3- The communication referred to in subparagraph *a)* of paragraph 1 shall be accompanied by a commercial registration certificate, where the entity does not have the permanent certificate mentioned in the said subparagraph.

Article 35
Lawyers and *solicitadores*

1- In compliance with the reporting duty provided for in Article 16, lawyers and *solicitadores* shall report suspicious transactions respectively to the President of the Bar Association and to the Chairman of the Chamber of *Solicitadores*, which shall forward promptly and unfiltered this information to the Attorney-General of the Republic and the FIU, notwithstanding the provisions of the following paragraph.
2- In the case of lawyers or *solicitadores* and in respect of the transactions referred to in subparagraph *f)* of Article 4, the reporting obligation shall not cover information obtained in the course of ascertaining the legal position of a client, when providing legal advice, or when performing their task of defending or representing that client in, or concerning judicial proceedings, including when advising that client in relation to instituting or avoiding judicial proceedings, as well as whether such information is obtained before, during or after the judicial proceedings.
3- The provisions of the previous paragraphs shall equally apply to compliance by lawyers and *solicitadores* with the duties to refrain and to cooperate laid down in Articles 17 and 18, and it shall be their responsibility within the scope of the cooperation duty, and as soon as the judicial authority requires their assistance, to communicate to the President of the Bar Association or to the Chairman of the Chamber of *Solicitadores*, providing them the information required under paragraph 1.

Article 36
Dissuasion from engagement in illicit activities

Where the persons referred to in subparagraphs *e)* and *f)* of Article 4 seek to dissuade a client from engaging in illegal activity or action, this shall not constitute a disclosure within the meaning of paragraph 1 of Article 19.

Article 37
Specific training duty

Where the non-financial entity subject to this law is a natural person performing his professional activities as an employee of a legal person, the obligations set forth in Article 22 shall apply to that legal person.

CHAPTER III

Supervision and monitoring

Article 38
Authorities

Monitoring of compliance with the duties set forth in this law shall fall under the responsibility of:

a) In the case of financial entities:

   i) The Central Bank, the Securities and Market Commission and the Portuguese Insurance Institute, within the framework of the respective functions;
   ii) The Minister responsible for finance, with regard to the Treasury and Government Debt Agency.

b) In the case of non-financial entities:

   i) The Service for Gambling Inspectorate, with regard to the entities referred to in subparagraphs *a)* and *b)* of Article 4;
   ii) The Institute for Construction and Real Estate, with regard to the entities referred to in subparagraph *c)* of Article 4;
   iii) The Economy and Food Safety Authority, with regard to the entities referred to in subparagraph *d)* of Article 4, as well as to external auditors, legal advisors, company and legal arrangements service providers, and other independent professionals referred to in subparagraph *f)* of Article 4, where they are not subject to monitoring by another competent authority referred to in this provision.

c) The Order of Statutory Auditors, with regard to statutory auditors;
d) The Chamber of Chartered Accountants, with regard to chartered accountants;
e) The Institute for Registrars and Notaries, with regard to notaries and registrars;
f) The Bar Association, with regard to lawyers;
g) The Chamber of Solicitadores, with regard to *solicitadores*.

Article 39
Competences

1- Within the scope of the respective tasks, the supervisory and monitoring authorities referred to in the previous Article shall retain responsibility for:

a) Regulating the conditions of exercise, the reporting and clarification duties, as well as the implementation instruments, mechanisms and formalities required for the full compliance with the duties set out in Chapter II, always in accordance with the principles of legality, necessity, adequacy and proportionality;
b) Monitoring compliance with the rules laid down in this law and corresponding regulatory ordinances applicable to the sector;
c) Instituting and investigating the respective breach of regulations proceedings and, where applicable, applying or proposing sanctions.

2- Financial sector supervisory authorities should make consultations on a reciprocity basis, directly or through the competent institutional bodies, before issuing regulations on the issues referred to in this law in order to avoid any overlapping, loophole or opposition between the respective regulatory rules.

Article 40
Reporting duty of authorities

1- Whenever, in the performance of their functions, the supervisory authorities of financial entities and the monitoring authorities of non-financial entities, have knowledge or grounds to suspect of facts likely to incorporate money laundering or terrorist financing, they shall promptly report to the Attorney-General of the Republic and to the FIU, if the reporting has not yet been made.
2- The reporting obligation referred to in the previous paragraph is equally applicable to the authorities responsible for the supervision of securities management companies, settlement system and centralised securities management companies and foreign exchange market management companies.
3- The provisions of Article 20 shall apply to the information provided under paragraphs 1 and 2 above.

CHAPTER IV
Information and statistics

Article 41
Access to information

In order to properly fulfil their tasks of preventing money laundering and terrorism financing, the Attorney-General of the Republic and the FIU have access, on a timely basis, to the financial, administrative and law enforcement information, which shall be subject to the provisions set forth in paragraph 2 of Article 16.

Article 42
Dissemination of information

Financial sector supervisory authorities and monitoring authorities of non-financial entities, including professional self-regulatory organizations, as well as the FIU, within the scope of their tasks and legal competences, shall give warning and disseminate updated information on trends and practices known to them, in order to prevent money laundering and terrorist financing.

Article 43
Feedback

The FIU shall give timely feedback to the entities subject to this law and to the supervisory and monitoring authorities on the routing and follow-up of suspicious reports of money laundering and terrorism financing that they have sent.

Article 44
Collection, keeping and publication of statistical data

The FIU shall be responsible for preparing and keeping updated statistical data on the number of suspicious transactions reported as well as on the routing and result of such communications.

1- Law enforcement authorities shall send, on an annual basis, to the General Directorate for Justice Policy statistical data on money laundering and terrorism financing, namely the number of cases investigated, the number of persons prosecuted, the number of persons convicted for money laundering or terrorist financing offences and how much property has been frozen, seized or confiscated in favour of the State.
2- The General Directorate for Justice Policy shall publish the statistical data gathered on money laundering and terrorism financing prevention.

CHAPTER V
Administrative offences regime

SECTION I
General provisions

Article 45
Territorial application

Regardless of the nationality of the offender, the provisions of this Chapter shall apply to:

a) Acts committed within the Portuguese territory;
b) Acts committed outside the Portuguese territory, which fall under the responsibility of the entities referred to in Articles 3 and 4, operating through their branches or by providing services, as well as the persons who, in relation to such entities, fall into any of the situations referred to in subparagraph c) of paragraph 1 of the following Article;
c) Acts committed on board of Portuguese vessels or aircrafts, except as otherwise provided for in any international treaty or convention.

Article 46
Liability

1- The following entities shall be liable for the breaches of regulations referred to in this Chapter:

a) Financial entities;
b) Non-financial entities, with the exception of lawyers and *solicitadores*;
c) Natural persons who are members of the organs of the legal persons of entities referred to in the preceding subparagraphs or those holding office as director, manager or head of department or similar, as well as those acting legally or voluntarily on their behalf and, in case of breach of the duty mentioned in Article 19, their employees and other persons providing services on a permanent or occasional basis.

2- Legal persons are liable for the offences committed in the performance of their functions or in their name or on their behalf, by the members the organs of the legal persons, nominees, representatives, employees or any other persons providing services on a permanent or occasional basis.
3- The liability of legal persons shall not preclude the individual liability of the respective offenders.
4- When the legal definition of the offence requires the existence of certain personal requirements which are only present in the legal person, or requires that the agents commit the act in their own interest, while they have acted for the interest of a third party, these circumstances shall not preclude the responsibility of individual agents.
5- Where the deed justifying the relationship between the individual person and the legal is void ou null, that shall not preclude the application of the provisions of the preceding paragraphs.

Article 47
Negligence

Negligence shall always be punishable. In this case, the maximum and the minimum thresholds of the fine shall be reduced by half.

Article 48
Fulfilment of an omitted duty

1- Whenever the breach of regulation is a result of failure to perform a duty, the application of the penalty and the payment of the fine do not exempt the offender from performing the said duty, if this is still possible.
2- The offender may be given an injunction to fulfil the obligation in question.

Article 49
Statute of limitations

1- The legal procedure for breaches of regulations laid down in this Chapter shall expire by statute of limitation within five years starting on the date when the breach was committed.
2- The fines and ancillary sanctions shall expire by statute of limitation within five years as of the day the administrative decision became final, or the day when the judicial decision becomes *res judicata*.

Article 50
Allocation of fines

Regardless of the phase in which the conviction becomes final or the judgement becomes *res judicata*, the proceeds of fines shall revert 60% to the State and 40% to:

a) The Deposits Guarantee Fund, created by Article 154 of the Legal framework of credit institutions and financial companies, approved by Decree-Law No 298/92 of 31st December 1992, in the case of fines imposed on financial entities in proceedings in which Banco de Portugal is vested with decision-making powers;
b) The Investors Compensation Scheme, created by Decree-Law No 222/99 of 22 June 1999, in the case of fines applied in proceedings in which the Securities Market Commission is vested with decision-making powers;
c) The Portuguese Tourism of Portugal (Public Institute), in the case of fines applied in proceedings in which the Inspection Services of the Portuguese Tourism Institute is vested with decision-making powers;
d) The entity responsible for the investigation of the proceedings, as far as the other cases are concerned.

Article 51
Responsibility for the payment of fines

1- Legal persons shall be jointly held responsible for the payment of fines and costs to which their directors, nominees, representatives or employees may be sentenced to pay for the commission of offences punishable under the terms of this law.
2- Members of the bodies of legal persons who, although having had the possibility to do so, did not prevent it, shall be individually and subsidiary liable for the payment of any fines and costs to which legal persons have been sentenced to pay, even if by the date of the decision being passed, those legal persons have been wound up or have gone into liquidation.

Article 52
Subsidiary law

The general regime governing the breaches of regulations shall be subsidiary applicable to the

offences referred to in this Chapter.

SECTION II

Administrative offences

Article 53

Breach of laws and regulations

The following typical illicit acts shall constitute breach of regulations:

a) Failure to comply with the obligations of identification and identity verification of customers, representatives and beneficial owners, breaching the provisions of Article 7, subparagraph *a)* of paragraph 1 and of paragraph 2 of Article 32 and of Article 33;

b) Failure to comply in due time with the rules laid down in paragraphs 1, 2 and 4 of Article 8 regarding the identity verification of customers, representatives and beneficial owners;

c) Allowing debit and credit movements in bank deposit accounts, making available any payment instruments on the said accounts or making changes to their ownership, until full compliance with the customer's identification procedure, breaching the provisions laid down in paragraph 3 of Article 8;

d) Failure to comply with the customer due diligence measures and procedures set out in subparagraphs *a) to e)* of paragraph 1 of Article 9;

e) Failure to adapt the nature and extent of customer identification and verification procedures and customer due diligence on a risk-sensitive basis, breaching the provisions laid down in paragraph 1 of Article 10, as well as failure to provide evidence to the competent authorities of that adaptation, breaching the provisions laid down in paragraph 2 of the same Article;

f) Adoption of simplified customer identification and due diligence procedures, failing to comply with the terms and conditions set out in Articles 11 and 25;

g) Total or partial omission of enhanced customer due diligence to customers and transactions liable of presenting a higher risk of money laundering or terrorism financing and cross-border correspondent banking relationships with institutions established in third countries, breaching the provisions laid down in Articles 12 and 26 respectively;

h) Failure to comply with the duty to refuse to carry out transactions through a bank account, establishment of business relationships or carrying out of occasional transactions, where the identification or information elements referred to respectively in subparagraphs *a)* and *b)* of paragraph 1 of Article 13 are not provided;

i) Failure to analyse the circumstances that give rise to refusal of a transaction, business relationship or occasional transaction and their prompt report to the Attorney-General of the Republic and the FIU, breaching the provisions laid down in paragraph 2 of Article 13;

j) Failure to keep original documents, copies, references or any other durable support systems admissible in court proceedings, supporting the identification and due diligence of customers and the execution of transactions, under the terms and within the periods set out respectively in paragraphs 1 and 2 of Article 14;

l) Failure to comply with the duty to examine with particular care and pay special attention to any conduct, activity or transaction regarded as particularly likely to be related to money laundering or terrorism financing, breaching the provisions laid down in paragraph 1 of Article 15;

m) Failure to comply with the obligations of registration, document and record keeping and provision of access to the results of the examination of suspicious conducts, activities or transactions, breaching the provisions laid down in paragraph 2 of Article 15;

n) Failure to promptly report to the Attorney-General of the Republic and to the FIU of suspicious money laundering or terrorism financing-related transactions, breaching the provisions laid down in Article 16;

o) Failure to comply with the duty to refrain from carrying out the suspicious transactions

referred to in paragraph 1 of Article 17 as well as with the obligation to promptly report to the Attorney-General of the Republic and to the FIU, breaching the provisions laid down in paragraphs 2 and 4 of the same Article;

p) Failure to comply with the suspension order of suspicious transactions under the terms of paragraph 2 of Article 17, as well as the carrying out of such transactions after the judicial confirmation of the suspension order mentioned in paragraph 3 of the same Article;

q) Failure to promptly cooperate with the Attorney-General of the Republic, the FIU, the judicial authority responsible for the conducting of the inquiry, or the competent authorities monitoring compliance with the obligations laid down in this Law, breaching the provisions laid down in Article 18;

r) Disclosure to customers or to third parties of the reporting of information to the Attorney-General of the Republic and the FIU or of a pending criminal investigation, breaching the provisions laid down in paragraph 1 of Article 19;

s) The disclosure and the exchange of information between the entities referred to in paragraphs 3 and 4 of Article 19, failing to comply with the purposes, terms and conditions referred to therein;

t) Failure to define and apply policies and internal control procedures, breaching the provisions laid down in Article 21;

u) Failure to adopt disclosure and training programmes and measures on the prevention of money laundering and terrorism financing, breaching the provisions laid down in Articles 22 and 37;

v) Opening anonymous accounts or the existence of anonymous passbooks, breaching the provisions laid down in paragraph 2 of Article 23;

x) Execution of the duties of identification and customer due diligence by relying on a third party, breaching the terms and conditions set out in Article 24;

z) Failure to communicate to the Attorney-General of the Republic and the FIU transactions which present a special risk of money laundering or terrorism financing and whose reporting obligation has been determined by the competent supervisory authority, breaching the provisions laid down in Article 27;

aa) Failure to have systems and instruments in place that enable financial entities to respond fully and promptly to enquiries from the Attorney-General of the Republic, the FIU, or the judicial authorities, breaching the provisions laid down in Article 28;

ab) Failure to comply with the obligations to apply equivalent preventive measures, communication of policies and internal procedures, reporting of information to supervisory or monitoring authorities and adoption of additional preventive measures, within the scope of the activity of branches and subsidiaries established in a third country, breaching the provisions laid down in Article 29;

ac) Establishment or maintenance of business relationships with shell banks or credit institutions with which they have a business relationship, breaching the provisions laid down in Article 30;

ad) Issuance of cheques to the order of casino customers, breaching the terms and conditions set out in subparagraphs *b)* and *c)* of paragraph 1 and in paragraph 3 of Article 32;

ae) Failure to comply with the obligations of communication imposed on real estate agents, breaching the provisions laid down in Article 34;

af) Failure to comply with the injunction issued in accordance with the terms of paragraph 2 of Article 48;

ag) Failure to comply with the rules laid down in regulatory ordinances for the specific sectors, issued pursuant to this Law, in the performance of the competences laid down in subparagraph *a)* of paragraph 1 of Article 39.

Article 54
Fines

The breaches of regulations referred to in the previous Article shall be punishable as follows:

a) Where the offence is committed within the scope of activity of a financial entity:

i) By a fine from EUR 25 000 to EUR 2 500 000, where the offender is a legal person;
ii) By a fine from EUR 12 500 to EUR 1 250 000, where the offender is a natural person;

b) Where the offence is committed within the scope of activity of a non-financial entity, with the exception of lawyers and *solicitadores*:

i) By a fine from EUR 5 000 to EUR 500 000, where the offender is a legal person;
ii) By a fine from EUR 2 500 to EUR 250 000, where the offender is a natural person.

Article 55
Additional penalties

In addition to the fines, the responsible for any of the breaches of regulations referred to in Article 53, may be punished with the following additional penalties, depending on the seriousness of the offence and guilt of the offender:

a) Prohibition, for a maximum period of up to three years, from exercising the profession or activity to which the breach of regulations relates;
b) Prohibition, for a maximum period of up to three years, from being member of management or auditing boards as well as from holding chief executive, senior management, or management and supervisory posts in legal persons subject to this law, where the offender is a member of the management or auditing boards, holds chief executive, senior management, or management posts or legally or voluntarily acts on behalf of the legal person;
c) Publicity of the final decision, at the expense of the offender, in one of the most widely read newspapers of the area where the offender has its head office or permanent establishment or, if the offender is a natural person, of the area of his/her residence.

SECTION III
Procedural provisions

Article 56
Competence of the administrative authorities

1- With regard to the breaches of regulations committed by financial entities, the competence to investigate the offences, the procedural investigation and the application of fines and ancillary sanctions shall fall under the responsibility of the Central Bank, the Securities Market Commission or the Portuguese Insurance Institute, depending on the financial sector in which the regulatory offence has occurred, and the Ministry of Finance and Public Administration, as far as the Treasury and Government Debt Agency (Public Institute) is concerned.
2- With regard to breaches of regulations committed by non-financial entities, without prejudice to the provisions of the following paragraph, the competence to investigate the breach of regulations , the procedural investigation and application of fines and ancillary sanctions responsibility for the inquiry into offences, fall under the responsibility of the monitoring authorities and professional self-regulatory organizations, referred to in subparagraphs *a) to e)* of Article 38, within the scope and in accordance with their functions.
3- In the cases where the investigations fall under the responsibility of the Economy and Food Safety Authority, the imposition of fines and additional penalties shall be the responsibility of the Economic and Advertising Penalties Application, pursuant to Decree-Law no. 208/2006 of 27 October.

Article 57
Judicial competence

1- The competent court to judge any appeal, to undertake a review or to execute decisions in proceedings on breaches of regulations taken by a supervisory authority of financial entities shall be the Lisbon's lower Criminal Court.
2- In the case of application of the decisions referred to in paragraph 1 in proceedings on breaches of regulations where the defendant is a non-financial entity, the competent court shall be the Lisbon's district Court or the district court of the area of the head office or residence of that entity, at its choice.

CHAPTER VI

Disciplinary violations

Article 58
Breaches committed by lawyers

1- Any breach committed by a lawyer of the duties to which he/she is bound pursuant to this Law, shall entail disciplinary proceedings taken by the Bar Association, according to the general terms of the Bar Association's Statutes.
2- The disciplinary sanctions applicable are the following:

a) Fine between EUR 2500 and EUR 250000;
b) Suspension from activity of up to 2 years;
c) Suspension from activity of over 2 and up to 10 years;
d) Expulsion.

3- While applying these sanctions and their respective measure and degree, seriousness regarding the violation of the duties to which lawyers are bound pursuant to this law shall be taken into account based on the criteria set out in Article 126 of the Bar Association's Statutes.

Article 59
Breaches committed by *solicitadores*

1- Any offence committed by a *solicitador* of the duties to which he/she is bound pursuant to this law shall entail disciplinary proceedings by the Chamber of *Solicitadores* according to the general terms of the Statute of the Chamber *of Solicitadores.*
2- The disciplinary sanctions applicable are the following:

a) Fine between EUR 2 500 and EUR 250 000;
b) Suspension from activity of up to 2 years;
c) Suspension from activity of over 2 and up to 10 years;
d) Expulsion.

3- While applying these sanctions and their respective measure and degree, seriousness of the violation of the duties to which *solicitadores* are bound pursuant to this law shall be taken into account, based on the criteria set out in Article 145 of the Statute of the *Chamber* of *Solicitadores*.

CHAPTER VII

Final provisions

Article 60
Protection of rights of bona fide third parties

1- If the property which has been seized from defendants against whom criminal proceedings have been instituted for an offence related to the laundering of unlawful proceeds is recorded in a public register in the name of a third party, the persons whose property is entered in such registers are notified and given the opportunity to defend their rights and summarily submit evidence of their good faith. In such circumstances, the property may be immediately restored to them.
2- If there is no such register, third parties claiming that they purchased the seized property in good faith may defend their rights in the proceedings.
3- Third parties claiming to have acted in good faith may defend their rights by submitting a request to the judge until a confiscation order is made. The party concerned shall include all pieces of evidence in that request.
4- The request shall be attached to the proceedings and, after notifying the Public Prosecution Service that might want to oppose it, the court shall make a decision and, for that purpose, take all the steps it considers appropriate.
5- Where, by virtue of its complexity or the delay it would entail in the criminal proceedings, the case cannot be properly resolved by the judge, he may refer the case to the civil courts.

Article 61
Amendment to Law no. 52/2003 of 22 August

Articles 2, 4, and 8 of Law No 52/2003 of 22 August as amended by Law No 59/2007 of 4 September, shall be worded as follows:

"Article 2
[…]

1- ……..
2- Whoever promotes or founds a terrorist group, organisation or association, or adheres to or supports them, including by supplying information or material resources, shall be punished with a penalty of 8 to 15 years' imprisonment.
3- ……..
4- ……..
5- ……..

Article 4
[…]

1- ……..
2- Whoever commits aggravated theft, extortion, on-line or communications fraud, computer forgery or forgery of administrative documents with the purpose to committing the acts set out in article 2, paragraph 1, shall be punished with the penalty that corresponds to the committed offence, with the respective minimum and maximum limits increased in one third.
3- ……..

Article 8
[…]

1- ……:

a) ……..;
b) Where they constitute the crimes set out in Articles 3, 5 and 5-A, provided that the agent is found in Portugal and cannot be extradited or surrendered under the European arrest warrant.

2- …….”

Article 62
Amendment to Law no. 52/2003 of 22 August

A new Article 5-A shall be added to Law No 52/2003 of 22 August as amended by Law No 59/2007 of 4 September, to read as follows:

“Article 5-A
Terrorism financing

1- Whoever, by any means, directly or indirectly, provides, collects or holds funds or assets of any type, as well as products or rights liable of being transformed into funds, with the intention that they should be used or in the knowledge that they may to be used, in full or in part, in the planning, preparation or commission of the set out in paragraph 1 of Article 2, or whoever commits these facts with the intention referred to in paragraph 1 of Article 3 or in paragraph 1 of Article 4, shall be punishable with a penalty of 8 up to 15 years.

2- For an act to constitute the offence set forth in the preceding paragraph, it shall not be necessary that funds originate from a third party, or have been transferred to whom they were destined, or have actually been used to commit the facts therein mentioned.

3- The penalty shall be specially reduced or not take place where the offender voluntarily renounces his activity, prevents or mitigates the danger caused by him/her or actually helps in a concrete manner to collect conclusive evidence for the identification or arrest of other persons responsible.”

Article 63
Delegation of powers by the Attorney-General of the Republic

The Attorney-General of the Republic may delegate in another public prosecutor the powers entrusted upon him by this Law.

Article 64
Information to the European Commission and to the Member States

The Minister responsible for finance is the competent authority to transmit and receive the information, relating to third countries, set out in paragraph 4 of Article 11, paragraph 7 of Article 28 and paragraph 2 of Article 31 of Directive 2005/60/EC of the European Parliament and of the Council of 26th October 2005.

Article 65
Revocation

1- Law No 11/2004 of 27 March 2004 is hereby repealed.

2- References in other legal instruments to the rules that have been revoked shall hereinafter considered made to this Law.

Approved on 3 April 2008

The President of the Assembly of the Republic, *Jaime Gama*.
Promulgated on 21 May 2008.
Let it be published.
The President of the Republic, ANÍBAL CAVACO SILVA.
Countersigned on 23 May 2008.
The Prime-Minister, *José Sócrates Carvalho Pinto de Sousa*.

Annex 2

Criminal Code
as amended by Law no. 59/2007, of 4th September

Article 11
Liability of natural and legal persons

1- Except when stated in the following paragraph and in the cases specially foreseen by law, only individuals are able to be criminally liable.

2- Legal persons and equivalent entities, except the State; other state owned (public) legal persons and international organizations of public law are liable for the crimes foreseen in Articles 152-A and 152-B, 159 and 160, 163 to 166, if 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) on their behalf and in the collective interest by natural persons occupying a leadership position within the legal person' structure; or

b) by whoever acts under the authority of the natural persons referred to in the previous subparagraph, on account of a violation of his/her duties of vigilance and control.

3- For the purposes of criminal law, the expression public legal persons include:

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 the 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 occupying a leadership 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 is 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 from the liability of those.

8- The separation (splitting) and the merger do not determine the extinction of the criminal liability of 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 separation.

9- Notwithstanding the right to demand payment to the legal persons or to equivalent entities, persons occupying a leadership position are subsidiary responsible for the payment of fines and compensation in which the legal persons or equivalent entity are sanctioned, regarding to crimes:

a) Practiced during the exercise of his/her post, without his/her express opposition;
b) Previously practiced, when it has been due to them that the property of the legal person or equivalent entity has became insufficient for the respective payment or;

c) Previously practiced, when the final decision to apply them has been notified during the exercise of his/her post and when the lack of payment is due to them.

10- Whenever several persons are liable according to the previous paragraph, they are jointly liable.

11- If the fines and compensation are applicable to an entity without legal capacity, the common property and in its absence or insufficiency, the property of each partner shall jointly answer for them.

Annex 3

Law No. 52/2003
of 22nd August

On combating terrorism (in compliance with council Framework Decision no. 2002/475/JHA, of 13 June) as amended by Law nº 59/2007 of 4th September and Law no. 25/2008, of 5th June

The Assembly of the Republic decrees, pursuant to Article 161 (c) of the Constitution, to be in force as general Law of the Republic, the following:

Article 1
Purpose

This Act aims at the prediction and the punishment of terrorist acts and terrorist organisations, in compliance with Council Framework Decision No. 2002/475/JHA, of 13 June, on combating terrorism.

Article 2
Terrorist organisations

1 – A terrorist group, organisation or association shall mean any grouping of two people or more who, acting in concert, aim at: attacking the national integrity or independence; preventing, modifying or undermining the operation of the State institutions established in the Constitution; compelling the public authorities to perform, abstain from performing or tolerating the performance of an act; intimidating certain persons, groups of persons or the population in general, by means of:

a) Offences against a person's life, physical integrity or freedom;
b) Offences against the safety of transport and communications, including computer, telegraphic, radio or television communications;
c) Offences producing a common danger, using fire, explosions, radioactive or toxic substances, causing floods or avalanches, crumbling of buildings, contamination of food and water intended for human consumption, or dissemination of a disease or an illness, a harmful plant or animal;
d) Acts that, definitively or temporarily, totally or partially interfere with, disrupt the functioning or deviate from their normal purposes the means or ways of communication, public infrastructure facilities or facilities designed for supplying and meeting the vital needs of the population;
e) Research into and development of biological or chemical weapons;
f) Offences involving the use of nuclear energy, firearms, biological or chemical weapons, explosive substances or devices, incendiary devices of any kind, mail or parcel bombs,

whenever these offences, given their nature or the context in which they are committed, are likely to seriously affect the State or population they intend to intimidate.

2 – Whoever promotes or founds a terrorist group, organisation or association, or adheres to or supports them, including by supplying information or material resources or by financing in any way their activities, shall be punished with a penalty of 8 to 15 years' imprisonment.

3 – Whoever heads or directs a terrorist group, organisation or association shall be punished with a penalty of 15 to 20 years' imprisonment.

4 – Whoever commits any act preparatory to the formation of a terrorist group, organisation or association shall be punished with a penalty of 1 to 8 years' imprisonment.

5 – The penalty may be specially reduced or not take place if the offender voluntarily renounces his activity, prevents or mitigates the danger caused by it, or actually helps to find decisive evidence for the identification and arrest of other offenders.

Article 3
Other terrorist organizations

1 – It is comparable to the terrorist groups, organisations or associations provided for in the preceding Article, paragraph 1, any grouping of two people or more who, acting in concert and through the commission of the acts that are described there, aim at: attacking the integrity or independence of a State; preventing, modifying or undermining the operation of the institutions of that State or of an international public organisation; compelling the respective authorities to perform, abstain from performing or tolerating the performance of an act; intimidating certain groups of persons or populations.

2 – The provisions laid out in the preceding Article, paragraphs 2 to 5, are correspondingly applicable.

Article 4
Terrorism

1 – Whoever commits the acts provided for in Article 2, paragraph 1, with the intention mentioned in it, shall be punished with a penalty of 2 to 10 years' imprisonment, or with the penalty that corresponds to the committed offence, with the respective minimum and maximum limits increased in one third if equal or higher than the earlier mentioned penalty. Yet, it cannot exceed the limit referred to in Article 41, paragraph 2, of the Penal Code.

2 – Whoever commits aggravated theft, extortion or drawing up of false administrative documents with a view to committing the acts listed in Article 2, paragraph 1, shall be punished with the penalty that corresponds to the committed offence, with the respective minimum and maximum limits increased in one third.

3 – The penalty may be specially reduced or not take place if the offender voluntarily renounces his activity, prevents or mitigates the danger caused by it, or actually helps to find decisive evidence for the identification and arrest of other offenders.

Article 5
International terrorism

1 - Whoever commits the acts provided for in Article 2, paragraph 1, with the intention mentioned in Article 3, paragraph 1, shall be punished with a penalty of 2 to 10 years' imprisonment, or with the penalty that corresponds to the committed offence, with the respective minimum and maximum limits increased in one third if equal or higher than the earlier mentioned penalty.

2 - The provisions laid out in the preceding Article, paragraphs 2 and 3, are correspondingly applicable.

Article 5-A
Terrorism financing

1- Whoever, by any means, directly or indirectly, provides, collects or holds funds or assets of any type, as well as products or rights liable of being transformed into funds, with the intention that they should be used or in the knowledge that they may to be used, in full or in part, in the planning, preparation or commission of the set out in paragraph 1 of Article 2, or whoever commits these facts with the intention referred to in paragraph 1 of Article 3 or in paragraph 1 of Article 4, shall be punishable with a penalty of 8 up to 15 years.

2 - For an act to constitute the offence set forth in the preceding paragraph, it shall not be necessary that funds originate from a third party, or have been transferred to whom they were destined, or have actually been used to commit the facts therein mentioned.

3 - The penalty shall be specially reduced or not take place where the offender voluntarily renounces his activity, prevents or mitigates the danger caused by him/her or actually helps in a concrete manner to collect conclusive evidence for the identification or arrest of other persons responsible."

Article 6
Liability of legal persons or comparable entities and applicable penalties

Legal persons and equivalent entities shall be criminally liable, in general terms, by the commission of crimes set forth in this Law.

Article 7
Subsidiary law

1 - The provisions of the Penal Code and the respective complementary legislation shall subsidiary apply to the matter set forth in this Act.

Article 8
Territorial application

1 – For the purposes of this Act, unless otherwise provided for in any international treaty or convention, the Portuguese penal law shall apply to facts committed outside the national territory:

a) Where the facts incorporate the offences provided for in Articles 2 and 4;
b) Where the facts incorporate the offences provided for in Articles 3 and 5, as long as the offender has been found in Portugal and he cannot be extradited or handed over while complying with a European arrest warrant.

2 – The provisions laid out in Article 6, paragraph 2, of the Penal Code shall not apply to the offences provided for in the preceding paragraph, sub-paragraph a).

Article 9
Amendments to the Code of Criminal Procedure

Article 1 of the Code of Criminal Procedure, approved by Decree-Law No. 78/87, of 17 February, and amended by Decree-Law No. 387-E/87, of 29 December, by the Laws No. 17/91, of 10 January, and No. 578/91, of 13 August, by the Decree-Laws No. 343/93, of 1 October, No. 423/91, of 30 October, and No. 317/95, of 28 November, by the Laws No. 59/98, of 25 August, No. 3/99, of 13 January, and

No. 7/2000, of 27 May, by Decree-Law No. 320-C/2000, of 15 December, and by Law No. 30-E/2000, of 20 December, shall read as follows:

« Article 1
[…]

1 - …….

2 - …….

a) They incorporate the offences provided for in Article 299 of the Penal Code, and in Articles 2 and 3 of Law No. …/2003, of …;

b) ……»

Article 10
Amendments to the Penal Code

Article 5 of the Penal Code, approved by Decree-Law No. 400/82, of 23 September, and amended by Law No. 6/84, of 11 May, by the Decree-Laws No. 132/93, of 23 April, and No. 48/95, of 15 March, by the Laws No. 65/98, of 2 September, No. 7/2000, of 27 May, No. 77/2001, of 13 July, No. 97/2001, No. 98/2001, 99/2001 and 100/2001, of 25 August, and No. 108/2001, of 28 November, and by the Decree-Laws No. 323/2001, of 17 December, and No. 38/2003, of 8 March, shall read as follows:

« Article 5
[…]

1 - …….

a) Where they incorporate the offences provided for in Articles 221, 262 to 271, 308 to 321 and 325 to 345;
b) ……..
c) ……..
d) ……..
e) ……..

2 - ……...»

Article 11
Revocation

Articles 300 and 301 of the Penal Code are hereby revoked.

Passed on 26th June 2003.
The President of the Assembly of the Republic, João Bosco Mota Amaral.
Enacted on 4th August 2003.
Let it be published.
The President of the Republic, JORGE SAMPAIO.
Countersigned on 8th August 2003

The Prime Minister, *José Manuel Durão Barroso*.

Annex 4

EC Regulation no. 1889/2005, of the European Parliament and the Council, of 26th October 2005 on controls of cash entering or leaving the Community

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 95 and 135 thereof,

Having regard to the proposal from the Commission [1],

After consulting the European Economic and Social Committee,

Acting in accordance with the procedure referred to in Article 251 of the Treaty [2],
Whereas:

(1) One of the Community's tasks is to promote harmonious, balanced and sustainable development of economic activities throughout the Community by establishing a common market and an economic and monetary union. To that end the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured.

(2) The introduction of the proceeds of illegal activities into the financial system and their investment after laundering are detrimental to sound and sustainable economic development. Accordingly, Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering [3] introduced a Community mechanism to prevent money laundering by monitoring transactions through credit and financial institutions and certain types of professions. As there is a risk that the application of that mechanism will lead to an increase in cash movements for illicit purposes, Directive 91/308/EEC should be supplemented by a control system on cash entering or leaving the Community.

(3) At present such control systems are applied by only a few Member States, acting under national legislation. The disparities in legislation are detrimental to the proper functioning of the internal market. The basic elements should therefore be harmonized at Community level to ensure an equivalent level of control on movements of cash crossing the borders of the Community. Such harmonization should not, however, affect the possibility for Member States to apply, in accordance with the existing provisions of the Treaty, national controls on movements of cash within the Community.

(4) Account should also be taken of complementary activities carried out in other international fora, in particular those of the Financial Action Task Force on Money Laundering (FATF), which was established by the G7 Summit held in Paris in 1989. Special Recommendation IX of 22 October 2004 of the FATF calls on governments to take measures to detect physical cash movements, including a declaration system or other disclosure obligation.

(5) Accordingly, cash carried by any natural person entering or leaving the Community should be subject to the principle of obligatory declaration. This principle would enable the customs authorities to gather information on such cash movements and, where appropriate, transmit that information to other authorities. Customs authorities are present at the borders of the Community, where controls are most effective, and some have already built up practical experience in the matter. Use should be made of Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [4]. This

mutual assistance should ensure both the correct application of cash controls and the transmission of information that might help to achieve the objectives of Directive 91/308/EEC.

(6) In view of its preventive purpose and deterrent character, the obligation to declare should be fulfilled upon entering or leaving the Community. However, in order to focus the authorities' action on significant movements of cash, only those movements of EUR 10 000 or more should be subject to such an obligation. Also, it should be specified that the obligation to declare applies to the natural person carrying the cash, regardless of whether that person is the owner.

(7) Use should be made of a common standard for the information to be provided. This will enable competent authorities to exchange information more easily.

(8) It is desirable to establish the definitions needed for a uniform interpretation of this Regulation.

(9) Information gathered under this Regulation by the competent authorities should be passed on to the authorities referred to in Article 6(1) of Directive 91/308/EEC.

(10) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [5] and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [6] apply to the processing of personal data by the competent authorities of the Member States pursuant to this Regulation.

(11) Where there are indications that the sums of cash are related to any illegal activity, associated with the movement of cash, as referred to in Directive 91/308/EEC, information gathered under this Regulation by the competent authorities may be passed on to competent authorities in other Member States and/or to the Commission. Similarly, provision should be made for certain information to be transmitted whenever there are indications of cash movements involving sums lower than the threshold laid down in this Regulation.

(12) Competent authorities should be vested with the powers needed to exercise effective control on movements of cash.

(13) The powers of the competent authorities should be supplemented by an obligation on the Member States to lay down penalties. However, penalties should be imposed only for failure to make a declaration in accordance with this Regulation.

(14) Since the objective of this Regulation cannot be sufficiently achieved by the Member States and can therefore, by reason of the transnational scale of money laundering in the internal market, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(15) This Regulation respects the fundamental rights and observes the principles recognized in Article 6(2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, in particular in Article 8 thereof,

HAVE ADOPTED THIS REGULATION:

Article 1

Objective

1. This Regulation complements the provisions of Directive 91/308/EEC concerning transactions through financial and credit institutions and certain professions by laying down harmonized rules for the control, by the competent authorities, of cash entering or leaving the Community.
2. This Regulation shall be without prejudice to national measures to control cash movements within the Community, where such measures are taken in accordance with Article 58 of the Treaty.

Article 2

Definitions

For the purposes of this Regulation:

1. "competent authorities" means the customs authorities of the Member States or any other authorities empowered by Member States to apply this Regulation;

2. "cash" means:

(a) bearer-negotiable instruments including monetary instruments in bearer form such as travellers cheques, negotiable instruments (including cheques, promissory notes and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery and incomplete instruments (including cheques, promissory notes and money orders) signed, but with the payee's name omitted;

(b) currency (banknotes and coins that are in circulation as a medium of exchange).

Article 3

Obligation to declare

1. Any natural person entering or leaving the Community and carrying cash of a value of EUR 10000 or more shall declare that sum to the competent authorities of the Member State through which he is entering or leaving the Community in accordance with this Regulation. The obligation to declare shall not have been fulfilled if the information provided is incorrect or incomplete.

2. The declaration referred to in paragraph 1 shall contain details of:

(a) the declarant, including full name, date and place of birth and nationality;

(b) the owner of the cash;

(c) the intended recipient of the cash;

(d) the amount and nature of the cash;

(e) the provenance and intended use of the cash;

(f) the transport route;

(g) the means of transport.

3. Information shall be provided in writing, orally or electronically, to be determined by the Member State referred to in paragraph 1. However, where the declarant so requests, he shall be entitled to provide the information in writing. Where a written declaration has been lodged, an endorsed copy shall be delivered to the declarant upon request.

Article 4

Powers of the competent authorities

1. In order to check compliance with the obligation to declare laid down in Article 3, officials of the competent authorities shall be empowered, in accordance with the conditions laid down under national legislation, to carry out controls on natural persons, their baggage and their means of transport.

2. In the event of failure to comply with the obligation to declare laid down in Article 3, cash may be detained by administrative decision in accordance with the conditions laid down under national legislation.

Article 5

Recording and processing of information

1. The information obtained under Article 3 and/or Article 4 shall be recorded and processed by the competent authorities of the Member State referred to in Article 3(1) and shall be made available to the authorities referred to in Article 6(1) of Directive 91/308/EEC of that Member State.

2. Where it appears from the controls provided for in Article 4 that a natural person is entering or leaving the Community with sums of cash lower than the threshold fixed in Article 3 and where there are indications of illegal activities associated with the movement of cash, as referred to in Directive 91/308/EEC, that information, the full name, date and place of birth and nationality of that person and details of the means of transport used may also be recorded and processed by the competent authorities of the Member State referred to in Article 3(1) and be made available to the authorities referred to in Article 6(1) of Directive 91/308/EEC of that Member State.

Article 6

Exchange of information

1. Where there are indications that the sums of cash are related to any illegal activity associated with the movement of cash, as referred to in Directive 91/308/EEC, the information obtained through the declaration provided for in Article 3 or the controls provided for in Article 4 may be transmitted to competent authorities in other Member States.

Regulation (EC) No 515/97 shall apply mutatis mutandis.

2. Where there are indications that the sums of cash involve the proceeds of fraud or any other illegal activity adversely affecting the financial interests of the Community, the information shall also be transmitted to the Commission.

Article 7

Exchange of information with third countries

In the framework of mutual administrative assistance, the information obtained under this Regulation may be communicated by Member States or by the Commission to a third country, subject to the consent of the competent authorities which obtained the information pursuant to Article 3 and/or Article 4 and to compliance with the relevant national and Community provisions on the transfer of personal data to third countries. Member States shall notify the Commission of such exchanges of information where particularly relevant for the implementation of this Regulation.

Article 8

Duty of professional secrecy

All information which is by nature confidential or which is provided on a confidential basis shall be covered by the duty of professional secrecy. It shall not be disclosed by the competent authorities without the express permission of the person or authority providing it. The communication of

information shall, however, be permitted where the competent authorities are obliged to do so pursuant to the provisions in force, particularly in connection with legal proceedings. Any disclosure or communication of information shall fully comply with prevailing data protection provisions, in particular Directive 95/46/EC and Regulation (EC) No 45/2001.

Article 9

Penalties

1. Each Member State shall introduce penalties to apply in the event of failure to comply with the obligation to declare laid down in Article 3. Such penalties shall be effective, proportionate and dissuasive.

2. By 15 June 2007, Member States shall notify the Commission of the penalties applicable in the event of failure to comply with the obligation to declare laid down in Article 3.

Article 10

Evaluation

The Commission shall submit to the European Parliament and the Council a report on the application of this Regulation four years after its entry into force.

Article 11

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from 15 June 2007.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 26 October 2005.

For the European Parliament

The President

J. Borrell Fontelles

For the Council

The President

D. Alexander

[1] OJ C 227 E, 24.9.2002, p. 574.

[2] Opinion of the European Parliament of 15 May 2003 (OJ C 67 E, 17.3.2004, p. 259), Council Common Position of 17 February 2005 (OJ C 144 E, 14.6.2005, p. 1), Position of the European Parliament of 8 June 2005 and Council Decision of 12 July 2005.

[3] OJ L 166, 28.6.1991, p. 77. Directive as amended by Directive 2001/97/EC of the European Parliament and of the Council (OJ L 344, 28.12.2001, p. 76).

[4] OJ L 82, 22.3.1997, p. 1. Regulation as amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

[5] OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

[6] OJ L 8, 12.1.2001, p. 1.

Annex 5

Decree-Law no 61/2007, of 14th March.

The need to improve the prevention and fight against money laundering, as well as the financing of terrorism, has led the international community to join forces to promote and reinforce legal instruments in these areas. Examples of this at the level of the European Community are the adoption of Council Directive No. 91/308/EEC, of 10th June, repealed by Directive 2005/60/EC of the European Parliament and of the Council, of 26 October, and Regulation (EC) No. 1889/2005, of the European Parliament and of the Council, of 26th October.

Of particular note regarding initiatives carried out in this area is the action of the Financial Action Task Force (FATF), of which Portugal is a member, concerning money laundering and in particular their Special Recommendation IX, which requests Governments to apply measures to detect the physical movement of cash at their borders, as one of the ways of preventing and fighting the financing of terrorism and money laundering.

The provisions of Regulation (EC) No. 1889/2005, of the European Parliament and of the Council, of 26th October require that measures to control the amounts transported in or out of community territory be strengthened, through establishing the principle of obligatory disclosure.

The measures now being adopted have precedents in the existing control procedures in Portuguese law, as laid down in the legal system for external economic and financial operations and money exchange operations, approved by Decree-Law No. 295/2003, of 21st November. The legal measure that is being substituted enshrines the principle of disclosure, made only upon request to the relevant authorities, applicable to all movements involving means of payment, certificated securities, and minted gold entering and leaving national territory. It has however been decided to keep this procedure with regard to movements between Portugal and the other Member States.

In this manner the provisions of Article 58 of the European Community Treaty have been safeguarded, which establishes the possibility of establishing restrictions of the free movement of capital and payments, as laid down in the Community legal system since the third phase of Economic and Monetary Union and the adoption of the Euro as the single currency.

The present regulation ensures a level of control at the national level equivalent to the movements of cash crossing the external border of the Community, thus allowing customs authorities to gather and process information and, whenever necessary, inspect the contents of traveller's luggage or carry out personal searches, as laid down in Decree-Law No. 176/85, of 22 May, and also inspect the means of transport used.
Sanctions applicable in the event of non-compliance with the disclosure obligation are laid down in the general system of tributary offences, approved by Law No. 15/2001, of 5 June, taking into consideration the nature of the controls envisaged in Regulation No. 1889/2005, of the European Parliament and of the Council, of 26 October, regarding customs administration.

The Portuguese Data Protection Authority has been consulted.

Thus:
Under the terms of paragraph *a*) of no. 1 of Article 198 of the Constitution, the Government hereby decrees the following:

CHAPTER I

General provisions

Article 1

Subject matter

The subject matter of the present Decree-Law is to control the amounts of cash that enter or leave the Community through national territory, by carrying out the provisions of Regulation (EC) No. 1889/2005, of the European Parliament and of the Council, of 26 October, as well as controlling cash movements with other Member States.

Article 2

Cash

1 — For the purposes of the present Decree-Law, cash is considered as:

a) Means of payment to the bearer, including financial items, such as traveller's cheques and transferable securities, namely cheques, promissory notes and payment orders, whether made out to the bearer or endorsed without restrictions, to a real or fictitious beneficiary, or any other form which enables the transfer of the right to payment through simple delivery and items not fully completed, including signed cheques, promissory notes and payment orders, without the name of the beneficiary.
b) Money:

i) Paper money or metallic coins in circulation, which are legal tender in their respective countries of emission;
ii) Paper money and coins no longer in circulation which are still redeemable.

2 — For the purposes of the present Decree-Law, minted gold, gold bars and other non-wrought forms are also considered as cash.

CHAPTER II

Procedures and exchange of information

Article 3

Duty to disclose

1 — Any natural person, entering or leaving national territory and coming from or going to an area which does not form part of the European Community, who is carrying an amount of cash equal to or greater that 10 000 Euros, should disclose this amount to the customs authorities, through filling out a model declaration to be approved by order of the minister responsible in the area of finances.

2 — Whenever the aforementioned cash movements are processed with Member States of the European Union, the amount carried should be disclosed, when requested to do so by the customs authorities.

3 — The model declaration referred to in number 1 should specifically include information identifying the declarant, the owner and destination of the cash amount, as well as information regarding the amount, type, origin and use intended for the cash, means of transport and its respective itinerary.

4 — The provisions of paragraph no. 1 do not prejudice the satisfaction of other formalities required by customs legislation.

Article 4

Information collection and processing

1 — It is the duty of the General Directorate for Customs and Special Taxes on Consumption (DGAIEC) to centralise, collect, register and process the information contained in the declaration referred to in the previous paragraph.

2 — Whenever customs controls exercised over natural persons, luggage and means of transport utilised show that these persons are carrying amounts less that the threshold envisaged in the previous paragraph, with circumstantial evidence that these cash movements may be connected to illicit activities, the DGAIEC has to register, in addition to that information, the full name of the person, place and date of birth, nationality and details concerning the means of transport used, without prejudice to any legally applicable criminal procedure.

3 — Information collected under the scope of the present Decree-Law must be retained for a period of five years counting from the moment it was registered.

4 — In the case of records regarding circumstantial evidence of illicit activity, linked to cash movements referred to in no. 2, the data must be erased before the deadline established in the previous number has been reached in the event that the aforementioned circumstantial evidence is judged to be without foundation, or a final and binding decision (*res judicata*) of acquittal has been reached regarding this matter.

Article 5

National exchange of information

1 — The data obtained under the terms of articles 3 and 4 must be sent to the Criminal Police, for the purposes of processing and disseminating the information under the scope of criminal prevention and investigation.

2 — Any information collected under the scope of the present Decree-Law must be supplied to the Bank of Portugal upon request, with a view to carrying out its functions, such as for statistical purposes.

Article 6

International exchange of information

1 — When there is circumstantial evidence that the cash amounts being transported are related to illicit activities associated with the movements of money, the information obtained under the scope of the present Decree-Law may be transmitted to the competent authorities of other Member States of the European Union, with the mechanisms applicable, with suitable modifications, which are laid down in Council Regulation (EC) No. 515/97, of 13 March.

2 — The same information should be sent to the European Commission whenever there is circumstantial evidence that the cash amounts being transported are connected the product of illicit activities liable to prejudice the financial interests of the Community.

3 — The information referred to in no. 1 may also be sent to third countries, within the framework of mutual administrative assistance, upon request by the respective competent authorities, respecting national and Community legislation regarding the protection of personal data.

4 — When the transfer of information envisaged in the previous number involves personal data and constitutes a necessary measure for the prevention, investigation and repression of penal infractions, this must be carried out in keeping with the international accords and conventions to which Portugal is a signatory.

5 -The information referred to in the previous numbers may only be used in strict compliance with the functions and competences of the authorities to which it is given and, in the case of no. 3, only for

the purposes stated in the request.

CHAPTER III

Final Provisions

Article 7

Rights of the owner of the data

The owner of the data has the right to access, update and rectify records relating to its personal data that have been obtained and managed under the scope of the present Decree-Law, in accordance with Section II of Law No. 67/98, of 26 October.

Article 8

Duty of confidentiality

1 — The duties resulting from the confidentiality of investigations, as well as tax and professional secrecy, are incumbent upon all staff and agents of entities that have access to information collected with regard to the present Decree-Law.

2 — This is further applicable with regard to the consultation of information collected and the subsequent exchange of information, under the provisions of the legislation referred to in the previous article.

Article 9

Amendments to Decree-Law no. 295/2003, of 21st November

Articles 1 and 19 of Decree-Law No. 295/2003, of 21 November, will have the following format:

"Article 1

[. . .]

1— ....
2— ....

a) .....
b) .....
c) .....
d) Payment for paper money and coins no longer in circulation that are still redeemable remain the responsibility of the respective national central banks.

Article 19

[. . .]

1 — Paper money and metallic coins in circulation may freely be imported, exported and re-exported, as legal tender in the respective countries of issue, or other means of payment, expressed in coins or units used in international payments, as well as paper money and coins no longer in circulation which are still redeemable, payment for which remains the responsibility of the respective national central banks.
2— .....
3 — *(Revoked).*

4 — *(Revoked)*"

Article 10

Revocation

Nos. 3 and 4 of article 19 and No. 2 of article 20 of Decree-Law No. 295/2003, of 21st November, are hereby revoked.

Article 11.º

Entry into force

This Decree-Law will come into force on 15th June 2007.

Seen and approved in the Council of Ministers of 18 January 2007. — *José Sócrates Carvalho Pinto de Sousa — Fernando Teixeira dos Santos — José Manuel Vieira Conde Rodrigues.*

Adopted on 26th February 2007.
Let this be enacted.
The President of the Republic, ANÍBAL CAVACO SILVA

Countersigned on 1st March 2007.

The Prime Minister, *José Sócrates Carvalho Pinto de Sousa*

Annex 6

Decree-Law no. 125/2008, of 21st of June

MINISTRY OF FINANCE AND PUBLIC ADMINISTRATION

Decree-Law no.125/2008 of 21st July

(…)

Article 1

Subject matter

The present decree-law establishes the national measures necessary for the effective implementation of Regulation (EC) nº 1781/2006 of the European Parliament and of the Council, of the 15 November 2006, on information on the payer accompanying the transfers of funds, hereinafter referred to as Regulation.

Article 2

Scope

1 - The provisions of the present decree-law are applicable to the transfers of funds, in any currency, which are received or sent by payment service providers established in Portugal, with the exception of the postal vouchers (vales postais) included in the universal postal service.

2 – The provisions of the Regulation and the regime applicable to the breaches of the mentioned Regulation established by this decree-law apply without prejudice to the legal regime on the prevention of money laundering and terrorism financing.

Article 3

Monitoring and penalties/legal proceedings

It is incumbent on Banco de Portugal to monitor the compliance with the requirements of the Regulation, to initiate legal proceedings against breaches of the duties stated in the Regulation and to impose the correspondent penalties.

Article 4

Liability for breach of regulations

1 – The following persons may be held liable for the breaches of regulations referred to in this decree-law:

a) Legal persons established in Portugal that receive or send transfers of funds;
b) Natural persons who are responsible for the management of the legal persons referred to in the foregoing paragraph or are holders of executive posts.

2 – Legal persons shall be liable for offences committed by the members of their bodies, managers, nominees, representatives, employees or any other permanent or occasional workers, acting in the performance of their functions or in the name or on behalf of the legal person.

3 – The liability of legal persons shall not preclude the individual liability of the natural persons referred to in subparagraph b) of paragraph 1.

Article 5

Breach of regulations

Infringements of the provisions of Regulation (EC) Nº 1781/2006 of the European Parliament and of the Council, of 15 November 2006, as follows, shall be punishable by a fine from EUR 500 to EUR 3500, where the agent is a natural person, and from EUR 2500 to EUR 44000, where the agent is a legal person:

a) In the case of payment service providers of the payer:

   i) Failure to comply with the duty of ensuring that transfers of funds are accompanied by complete information on the payer as well as of verifying that information in the situations and conditions set out in paragraphs 1 to 4 of article 5 and paragraph 1 of article 7 of the Regulation.
   ii) Non-compliance with the duty of ensuring that transfers of funds are accompanied by the account number of the payer or a unique identifier, in the situations and conditions set out in paragraph 1 of article 6 of the Regulation.
   iii) Non-compliance with the duty of ensuring that, in case of batch file transfers from a single payer, the batch file contains complete information on the payer, as well as of verifying that information, and of ensuring that the individual transfers carry included in the batch file carry the account number of the payer or a unique identifier, in the situations and conditions set out in paragraph 2 of article 7 of the Regulation.
   iv) Non-compliance with the duty of keeping records of the information in accordance with the terms of paragraph 5 of article 5 of the Regulation.
   v) Non-compliance with the duty of making available information, in the situations and in accordance with the terms set out in paragraph 2 of article 6 of the Regulation.

b) In the case of intermediary payment service providers:

   i) Non-compliance with the duty of ensuring that all information received on the payer is kept with the transfer in accordance with the terms set out in article 12 of the Regulation;
   ii) Non-compliance with the duty of informing the payment service provider of the payee, in the situations and in accordance with the terms set out in paragraphs 3 and 4 of article 13 of the Regulation.
   iii) Non-compliance with the duty of keeping the records of information received, in the situations and in accordance with the terms set out in paragraph 5 of article 13 of the Regulation.

c) In the case of payment service providers of the payee:

i) Non-compliance with the duty of verifying and detecting whether the information on the payer is missing or incomplete, in accordance with the provisions set out in the first part of article 8 of the Regulation;
ii) Non-compliance with the duty to have effective procedures in place in order to detect any omission of information on the payer as referred to in paragraphs a) to c) of article 8. of the Regulation;
iii) Non-compliance with the duty of rejecting the transfers of funds or of asking for complete information on the payer, in the situations and conditions set out in paragraph 1 of article 9 of the Regulation.
iv) Non-compliance with the duty to reject any future transfers of funds or to decide to restrict or to terminate business relationships, in the situations and conditions set out in paragraph 2 of article 9 of the Regulation.
v) Non-compliance with the duty to communicate set out in the second part of paragraph 2 of article 9 of the Regulation.
vi) Non-compliance with the duty of keeping records of information received, in accordance with the terms set out in article 11 of the Regulation.

d) In relation to any of the payment service providers mentioned in a), b) and c), non-compliance with the duty to cooperate with the authorities responsible for combating money laundering and terrorist financing, in accordance with the terms set out in article 14 of the Regulation.

Article 6

Additional penalties

In addition to the fines and depending on the seriousness of the infringement and guilt of the offender, the following additional penalties may be applied to the responsible for any of the breaches of regulations referred to in the previous article:

a) Where the offender is a natural person, prohibition from holding management or executive functions in credit institutions or financial companies for a period up to two years;
b) Publication by Banco de Portugal of the final decision, with the costs supported by the offender, in one widely read newspaper of the area where the offender has its head office or its establishment or, if the offender is a natural person, of the area of his residence.

Article 7

Attempted offences and negligence

Attempted offences and negligence shall always be punishable, being in this case, the upper and lower limits of the fine set out in article 5 reduced by half.

Article 8

Allocation of fines

Regardless of the phase in which the conviction becomes final or the judgement becomes *res judicata*, the proceeds of fines shall revert 60% to the State and 40% to the Deposit Guarantee Fund, created by

Article 154 of the Legal framework of credit institutions and financial companies, approved by Decree-Law nº 298/92 of 31 December, or, in the case of fines imposed on *caixas* belonging to the Integrated System of Mutual Agricultural Credit, to the guarantee fund of the mutual agricultural credit, ruled by Decree-Law nº 345/98, of 9 November.

Article 9

Responsibility of legal persons for payment

Legal persons are jointly liable for the payment of fines and costs which the members of their bodies may be sentenced to pay for the practice of the offences punishable under this decree-law.

Article 10

Subsidiary law

The general regime governing the breaches of regulations shall be subsidiary applicable to the offences referred to in this decree-law.

Article 11

Communication under paragraph 2 of article 9 of Regulation (EC) nº 1781/2006.

Without prejudice of the notification of suspicious transactions to the competent judicial authorities, whenever this should occur in accordance with article 10 of the Regulation, the payment service providers of the payee shall report to the authorities responsible for combating money laundering and terrorist financing, as well as to Banco de Portugal, the fact that a payment service provider is regularly failing to supply the required information on the payers.

Article 12

Entry into force

This Decree-Law shall enter into force the day following to its publication.

Examined and approved by the Council of Ministers on 23 May 2008.- *José Sócrates Carvalho Pinto de Sousa – António Fernandes da Silva Braga – Fernando Teixeira dos Santos.*
Promulgated on 7 July 2008.
Let it be published.
The President of the Republic, ANÍBAL CAVACO SILVA.
Countersigned on 9 July 2008.
The Prime-Minister, *José Sócrates Carvalho Pinto de Sousa*

Annex 7

EC Regulation no. 1781/2006 of the European Parliament and of the Council of 15th November 2006 on information on the payer accompanying transfers of funds

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Central Bank [1],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [2],

Whereas:

(1) Flows of dirty money through transfers of funds can damage the stability and reputation of the financial sector and threaten the internal market. Terrorism shakes the very foundations of our society. The soundness, integrity and stability of the system of transfers of funds and confidence in the financial system as a whole could be seriously jeopardized by the efforts of criminals and their associates either to disguise the origin of criminal proceeds or to transfer funds for terrorist purposes.

(2) In order to facilitate their criminal activities, money launderers and terrorist financers could try to take advantage of the freedom of capital movements entailed by the integrated financial area, unless certain coordinating measures are adopted at Community level. By its scale, Community action should ensure that Special Recommendation VII on wire transfers (SR VII) of the Financial Action Task Force (FATF) established by the Paris G7 Summit of 1989 is transposed uniformly throughout the European Union, and, in particular, that there is no discrimination between national payments within a Member State and cross-border payments between Member States. Uncoordinated action by Member States alone in the field of cross-border transfers of funds could have a significant impact on the smooth functioning of payment systems at EU level, and therefore damage the internal market in the field of financial services.

(3) In the wake of the terrorist attacks in the USA on 11 September 2001, the extraordinary European Council on 21 September 2001 reiterated that the fight against terrorism is a key objective of the European Union. The European Council approved a plan of action dealing with enhanced police and judicial cooperation, developing international legal instruments against terrorism, preventing terrorist funding, strengthening air security and greater consistency between all relevant policies. This plan of action was revised by the European Council following the terrorist attacks of 11 March 2004 in Madrid, and now specifically addresses the need to ensure that the legislative framework created by the Community for the purpose of combating terrorism and improving judicial cooperation is adapted to the nine Special Recommendations against Terrorist Financing adopted by the FATF.

(4) In order to prevent terrorist funding, measures aimed at the freezing of funds and economic resources of certain persons, groups and entities have been taken, including Regulation (EC) No 2580/2001 [3], and Council Regulation (EC) No 881/2002 [4]. To that same end, measures aimed at protecting the financial system against the channeling of funds and economic resources for terrorist purposes have been taken. Directive 2005/60/EC of the European Parliament and of the Council [5] contains a number of measures aimed at combating the misuse of the financial system for the purpose of money laundering and terrorist financing. Those measures do not, however, fully prevent terrorists and other criminals from having access to payment systems for moving their funds.

(5) In order to foster a coherent approach in the international context in the field of combating money laundering and terrorist financing, further Community action should take account of developments at that level, namely the nine Special Recommendations against Terrorist Financing adopted by the FATF, and in particular SR VII and the revised interpretative note for its implementation.

(6) The full traceability of transfers of funds can be a particularly important and valuable tool in the prevention, investigation and detection of money laundering or terrorist financing. It is therefore appropriate, in order to ensure the transmission of information on the payer throughout the payment chain, to provide for a system imposing the obligation on payment service providers to have transfers of funds accompanied by accurate and meaningful information on the payer.

(7) The provisions of this Regulation apply without prejudice to Directive 95/46/EC of the European Parliament and of the Council [6]. For example, information collected and kept for the purpose of this Regulation should not be used for commercial purposes.

(8) Persons who merely convert paper documents into electronic data and are acting under a contract with a payment service provider do not fall within the scope of this Regulation; the same applies to any natural or legal person who provides payment service providers solely with messaging or other support systems for transmitting funds or with clearing and settlement systems.

(9) It is appropriate to exclude from the scope of this Regulation transfers of funds that represent a low risk of money laundering or terrorist financing. Such exclusions should cover credit or debit cards, Automated Teller Machine (ATM) withdrawals, direct debits, truncated cheques, payments of taxes, fines or other levies, and transfers of funds where both the payer and the payee are payment service providers acting on their own behalf. In addition, in order to reflect the special characteristics of national payment systems, Member States may exempt electronic giro payments, provided that it is always possible to trace the transfer of funds back to the payer. Where Member States have applied the derogation for electronic money in Directive 2005/60/EC, it should be applied under this Regulation, provided the amount transacted does not exceed EUR 1 000.

(10) The exemption for electronic money, as defined by Directive 2000/46/EC of the European Parliament and of the Council [7], covers electronic money irrespective of whether the issuer of such money benefits from a waiver under Article 8 of that Directive.

(11) In order not to impair the efficiency of payment systems, the verification requirements for transfers of funds made from an account should be separate from those for transfers of funds not made from an account. In order to balance the risk of driving transactions underground by imposing overly strict identification requirements against the potential terrorist threat posed by small transfers of funds, the obligation to check whether the information on the payer is accurate should, in the case of transfers of funds not made from an account, be imposed only in respect of individual transfers of funds that exceed EUR 1 000, without prejudice to the obligations under Directive 2005/60/EC. For transfers of funds made from an account, payment service providers should not be required to verify information on the payer accompanying each transfer of funds, where the obligations under Directive 2005/60/EC have been met.

(12) Against the background of Regulation (EC) No 2560/2001 of the European Parliament and of the Council [8] and the Commission Communication "A New Legal Framework for Payments in the Internal Market", it is sufficient to provide for simplified information on the payer to accompany transfers of funds within the Community.

(13) In order to allow the authorities responsible for combating money laundering or terrorist financing in third countries to trace the source of funds used for those purposes, transfers of funds from the Community to outside the Community should carry complete information on the payer. Those authorities should be granted access to complete information on the payer only for the purposes of preventing, investigating and detecting money laundering or terrorist financing.

(14) For transfers of funds from a single payer to several payees to be sent in an inexpensive way in batch files containing individual transfers from the Community to outside the Community, provision should be made for such individual transfers to carry only the account number of the payer or a unique identifier provided that the batch file contains complete information on the payer.

(15) In order to check whether the required information on the payer accompanies transfers of funds, and to help to identify suspicious transactions, the payment service provider of the payee should have effective procedures in place in order to detect whether information on the payer is missing.

(16) Owing to the potential terrorist financing threat posed by anonymous transfers, it is appropriate to enable the payment service provider of the payee to avoid or correct such situations when it becomes aware that information on the payer is missing or incomplete. In this regard, flexibility should be allowed as concerns the extent of information on the payer on a risk-sensitive basis. In addition, the accuracy and completeness of information on the payer should remain the responsibility of the payment service provider of the payer. Where the payment service provider of the payer is situated outside the territory of the Community, enhanced customer due diligence should be applied, in accordance with Directive 2005/60/EC, in respect of cross-border correspondent banking relationships with that payment service provider.

(17) Where guidance is given by national competent authorities as regards the obligations either to reject all transfers from a payment service provider which regularly fails to supply the required information on the payer or to decide whether or not to restrict or terminate a business relationship with that payment service provider, it should inter alia be based on the convergence of best practices and should also take into account the fact that the revised interpretative note to SR VII of the FATF allows third countries to set a threshold of EUR 1000 or USD 1000 for the obligation to send information on the payer, without prejudice to the objective of efficiently combating money laundering and terrorist financing.

(18) In any event, the payment service provider of the payee should exercise special vigilance, assessing the risks, when it becomes aware that information on the payer is missing or incomplete, and should report suspicious transactions to the competent authorities, in accordance with the reporting obligations set out in Directive 2005/60/EC and national implementing measures.

(19) The provisions on transfers of funds where information on the payer is missing or incomplete apply without prejudice to any obligations on payment service providers to suspend and/or reject transfers of funds which violate provisions of civil, administrative or criminal law.

(20) Until technical limitations that may prevent intermediary payment service providers from satisfying the obligation to transmit all the information they receive on the payer are removed, those intermediary payment service providers should keep records of that information. Such technical limitations should be removed as soon as payment systems are upgraded.

(21) Since in criminal investigations it may not be possible to identify the data required or the individuals involved until many months, or even years, after the original transfer of funds, it is appropriate to require payment service providers to keep records of information on the payer for the purposes of preventing, investigating and detecting money laundering or terrorist financing. This period should be limited.

(22) To enable prompt action to be taken in the fight against terrorism, payment service providers should respond promptly to requests for information on the payer from the authorities responsible for combating money laundering or terrorist financing in the Member State where they are situated.

(23) The number of working days in the Member State of the payment service provider of the payer determines the number of days to respond to requests for information on the payer.

(24) Given the importance of the fight against money laundering and terrorist financing, Member States should lay down effective, proportionate and dissuasive penalties in national law for failure to comply with this Regulation.

(25) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [9].

(26) A number of countries and territories which do not form part of the territory of the Community share a monetary union with a Member State, form part of the currency area of a Member State or have signed a monetary convention with the European Community represented by a Member State, and have payment service providers that participate directly or indirectly in the payment and settlement systems of that Member State. In order to avoid the application of this Regulation to transfers of funds between the Member States concerned and those countries or territories having a significant negative effect on the economies of those countries or territories, it is appropriate to provide for the possibility for such transfers of funds to be treated as transfers of funds within the Member States concerned.

(27) In order not to discourage donations for charitable purposes, it is appropriate to authorize Member States to exempt payment services providers situated in their territory from collecting, verifying, recording, or sending information on the payer for transfers of funds up to a maximum amount of EUR 150 executed within the territory of that Member State. It is also appropriate to make this option conditional upon requirements to be met by non-profit organizations, in order to allow Member States to ensure that this exemption does not give rise to abuse by terrorists as a cover for or a means of facilitating the financing of their activities.

(28) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(29) In order to establish a coherent approach in the field of combating money laundering and terrorist financing, the main provisions of this Regulation should apply from the same date as the relevant provisions adopted at international level,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, DEFINITIONS AND SCOPE

Article 1
Subject matter

This Regulation lays down rules on information on the payer to accompany transfers of funds for the purposes of the prevention, investigation and detection of money laundering and terrorist financing.

Article 2
Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) "terrorist financing" means the provision or collection of funds within the meaning of Article 1(4) of Directive 2005/60/EC;

(2) "money laundering" means any conduct which, when committed intentionally, is regarded as money laundering for the purposes of Article 1(2) or (3) of Directive 2005/60/EC;
(3) "payer" means either a natural or legal person who holds an account and allows a transfer of funds from that account, or, where there is no account, a natural or legal person who places an order for a transfer of funds;
(4) "payee" means a natural or legal person who is the intended final recipient of transferred funds;
(5) "payment service provider" means a natural or legal person whose business includes the provision of transfer of funds services;
(6) "intermediary payment service provider" means a payment service provider, neither of the payer nor of the payee, that participates in the execution of transfers of funds;
(7) "transfer of funds" means any transaction carried out on behalf of a payer through a payment service provider by electronic means, with a view to making funds available to a payee at a payment service provider, irrespective of whether the payer and the payee are the same person;
(8) "batch file transfer" means several individual transfers of funds which are bundled together for transmission;
(9) "unique identifier" means a combination of letters, numbers or symbols, determined by the payment service provider, in accordance with the protocols of the payment and settlement system or messaging system used to effect the transfer of funds.

Article 3
Scope

1. This Regulation shall apply to transfers of funds, in any currency, which are sent or received by a payment service provider established in the Community.
2. This Regulation shall not apply to transfers of funds carried out using a credit or debit card, provided that:
(a) the payee has an agreement with the payment service provider permitting payment for the provision of goods and services;
and
(b) a unique identifier, allowing the transaction to be traced back to the payer, accompanies such transfer of funds.
3. Where a Member State chooses to apply the derogation set out in Article 11(5)(d) of Directive 2005/60/EC, this Regulation shall not apply to transfers of funds using electronic money covered by that derogation, except where the amount transferred exceeds EUR 1000.
4. Without prejudice to paragraph 3, this Regulation shall not apply to transfers of funds carried out by means of a mobile telephone or any other digital or Information Technology (IT) device, when such transfers are pre-paid and do not exceed EUR 150.
5. This Regulation shall not apply to transfers of funds carried out by means of a mobile telephone or any other digital or IT device, when such transfers are post-paid and meet all of the following conditions:
(a) the payee has an agreement with the payment service provider permitting payment for the provision of goods and services;
(b) a unique identifier, allowing the transaction to be traced back to the payer, accompanies the transfer of funds; and
(c) the payment service provider is subject to the obligations set out in Directive 2005/60/EC.
6. Member States may decide not to apply this Regulation to transfers of funds within that Member State to a payee account permitting payment for the provision of goods or services if:
(a) the payment service provider of the payee is subject to the obligations set out in Directive 2005/60/EC;
(b) the payment service provider of the payee is able by means of a unique reference number to trace back, through the payee, the transfer of funds from the natural or legal person who has an agreement with the payee for the provision of goods and services; and
(c) the amount transacted is EUR 1000 or less.
Member States making use of this derogation shall inform the Commission thereof.
7. This Regulation shall not apply to transfers of funds:

(a) where the payer withdraws cash from his or her own account;
(b) where there is a debit transfer authorization between two parties permitting payments between them through accounts, provided that a unique identifier accompanies the transfer of funds, enabling the natural or legal person to be traced back;
(c) where truncated cheques are used;
(d) to public authorities for taxes, fines or other levies within a Member State;
(e) where both the payer and the payee are payment service providers acting on their own behalf.

CHAPTER II
OBLIGATIONS ON THE PAYMENT SERVICE PROVIDER OF THE PAYER

Article 4
Complete information on the payer

1. Complete information on the payer shall consist of his name, address and account number.
2. The address may be substituted with the date and place of birth of the payer, his customer identification number or national identity number.
3. Where the payer does not have an account number, the payment service provider of the payer shall substitute it by a unique identifier which allows the transaction to be traced back to the payer.

Article 5
Information accompanying transfers of funds and record keeping

1. Payment service providers shall ensure that transfers of funds are accompanied by complete information on the payer.
2. The payment service provider of the payer shall, before transferring the funds, verify the complete information on the payer on the basis of documents, data or information obtained from a reliable and independent source.
3. In the case of transfers of funds from an account, verification may be deemed to have taken place if:
(a) a payer's identity has been verified in connection with the opening of the account and the information obtained by this verification has been stored in accordance with the obligations set out in Articles 8(2) and 30(a) of Directive 2005/60/EC; or
(b) the payer falls within the scope of Article 9(6) of Directive 2005/60/EC.
4. However, without prejudice to Article 7(c) of Directive 2005/60/EC, in the case of transfers of funds not made from an account, the payment service provider of the payer shall verify the information on the payer only where the amount exceeds EUR 1000, unless the transaction is carried out in several operations that appear to be linked and together exceed EUR 1000.
5. The payment service provider of the payer shall for five years keep records of complete information on the payer which accompanies transfers of funds.

Article 6
Transfers of funds within the Community

1. By way of derogation from Article 5(1), where both the payment service provider of the payer and the payment service provider of the payee are situated in the Community, transfers of funds shall be required to be accompanied only by the account number of the payer or a unique identifier allowing the transaction to be traced back to the payer.
2. However, if so requested by the payment service provider of the payee, the payment service provider of the payer shall make available to the payment service provider of the payee complete information on the payer, within three working days of receiving that request.

Article 7
Transfers of funds from the Community to outside the Community

1. Transfers of funds where the payment service provider of the payee is situated outside the Community shall be accompanied by complete information on the payer.
2. In the case of batch file transfers from a single payer where the payment service providers of the payees are situated outside the Community, paragraph 1 shall not apply to the individual transfers bundled together therein, provided that the batch file contains that information and that the individual transfers carry the account number of the payer or a unique identifier.

CHAPTER III
OBLIGATIONS ON THE PAYMENT SERVICE PROVIDER OF THE PAYEE

Article 8
Detection of missing information on the payer

The payment service provider of the payee shall detect whether, in the messaging or payment and settlement system used to effect a transfer of funds, the fields relating to the information on the payer have been completed using the characters or inputs admissible within the conventions of that messaging or payment and settlement system. Such provider shall have effective procedures in place in order to detect whether the following information on the payer is missing:
(a) for transfers of funds where the payment service provider of the payer is situated in the Community, the information required under Article 6;
(b) for transfers of funds where the payment service provider of the payer is situated outside the Community, complete information on the payer as referred to in Article 4, or where applicable, the information required under Article 13; and
(c) for batch file transfers where the payment service provider of the payer is situated outside the Community, complete information on the payer as referred to in Article 4 in the batch file transfer only, but not in the individual transfers bundled therein.

Article 9
Transfers of funds with missing or incomplete information on the payer

1. If the payment service provider of the payee becomes aware, when receiving transfers of funds, that information on the payer required under this Regulation is missing or incomplete, it shall either reject the transfer or ask for complete information on the payer. In any event, the payment service provider of the payee shall comply with any applicable law or administrative provisions relating to money laundering and terrorist financing, in particular, Regulations (EC) No 2580/2001 and (EC) No 881/2002, Directive 2005/60/EC and any national implementing measures.
2. Where a payment service provider regularly fails to supply the required information on the payer, the payment service provider of the payee shall take steps, which may initially include the issuing of warnings and setting of deadlines, before either rejecting any future transfers of funds from that payment service provider or deciding whether or not to restrict or terminate its business relationship with that payment service provider.
The payment service provider of the payee shall report that fact to the authorities responsible for combating money laundering or terrorist financing.

Article 10
Risk-based assessment

The payment service provider of the payee shall consider missing or incomplete information on the payer as a factor in assessing whether the transfer of funds, or any related transaction, is suspicious, and whether it must be reported, in accordance with the obligations set out in Chapter III of Directive 2005/60/EC, to the authorities responsible for combating money laundering or terrorist financing.

Article 11
Record keeping

The payment service provider of the payee shall for five years keep records of any information received on the payer.

CHAPTER IV
OBLIGATIONS ON INTERMEDIARY PAYMENT SERVICE PROVIDERS

Article 12
Keeping information on the payer with the transfer

Intermediary payment service providers shall ensure that all information received on the payer that accompanies a transfer of funds is kept with the transfer.

Article 13
Technical limitations

1. This Article shall apply where the payment service provider of the payer is situated outside the Community and the intermediary payment service provider is situated within the Community.
2. Unless the intermediary payment service provider becomes aware, when receiving a transfer of funds, that information on the payer required under this Regulation is missing or incomplete, it may use a payment system with technical limitations which prevents information on the payer from accompanying the transfer of funds to send transfers of funds to the payment service provider of the payee.
3. Where the intermediary payment service provider becomes aware, when receiving a transfer of funds, that information on the payer required under this Regulation is missing or incomplete, it shall only use a payment system with technical limitations if it is able to inform the payment service provider of the payee thereof, either within a messaging or payment system that provides for communication of this fact or through another procedure, provided that the manner of communication is accepted by, or agreed between, both payment service providers.
4. Where the intermediary payment service provider uses a payment system with technical limitations, the intermediary payment service provider shall, upon request from the payment service provider of the payee, make available to that payment service provider all the information on the payer which it has received, irrespective of whether it is complete or not, within three working days of receiving that request.
5. In the cases referred to in paragraphs 2 and 3, the intermediary payment service provider shall for five years keep records of all information received.

CHAPTER V
GENERAL OBLIGATIONS AND IMPLEMENTING POWERS

Article 14
Cooperation obligations

Payment service providers shall respond fully and without delay, in accordance with the procedural requirements established in the national law of the Member State in which they are situated, to enquiries from the authorities responsible for combating money laundering or terrorist financing of that Member State concerning the information on the payer accompanying transfers of funds and corresponding records.
Without prejudice to national criminal law and the protection of fundamental rights, those authorities may use that information only for the purposes of preventing, investigating or detecting money laundering or terrorist financing.

Article 15
Penalties and monitoring

1. Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. Such penalties shall be effective, proportionate and dissuasive. They shall apply from 15 December 2007.
2. Member States shall notify the Commission of the rules referred to in paragraph 1 and the authorities responsible for their application by 14 December 2007at the latest, and shall notify it without delay of any subsequent amendment affecting them.
3. Member States shall require competent authorities to effectively monitor, and take necessary measures with a view to ensuring, compliance with the requirements of this Regulation.

Article 16
Committee procedure

1. The Commission shall be assisted by the Committee on the Prevention of Money Laundering and Terrorist Financing established by Directive 2005/60/EC, hereinafter referred to as "the Committee".
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof and provided that the implementing measures adopted in accordance with this procedure do not modify the essential provisions of this Regulation.
The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

CHAPTER VI
DEROGATIONS
Article 17
Agreements with territories or countries which do not form part of the territory of the Community

1. The Commission may authorize any Member State to conclude agreements, under national arrangements, with a country or territory which does not form part of the territory of the Community as determined in accordance with Article 299 of the Treaty, which contain derogations from this Regulation, in order to allow for transfers of funds between that country or territory and the Member State concerned to be treated as transfers of funds within that Member State.
Such agreements may be authorized only if:
(a) the country or territory concerned shares a monetary union with the Member State concerned, forms part of the currency area of that Member State or has signed a Monetary Convention with the European Community represented by a Member State;
(b) payment service providers in the country or territory concerned participate directly or indirectly in payment and settlement systems in that Member State; and
(c) the country or territory concerned requires payment service providers under its jurisdiction to apply the same rules as those established under this Regulation.
2. Any Member State wishing to conclude an agreement as referred to in paragraph 1 shall send an application to the Commission and provide it with all the necessary information.
Upon receipt by the Commission of an application from a Member State, transfers of funds between that Member State and the country or territory concerned shall be provisionally treated as transfers of funds within that Member State, until a decision is reached in accordance with the procedure set out in this Article.
If the Commission considers that it does not have all the necessary information, it shall contact the Member State concerned within two months of receipt of the application and specify the additional information required.
Once the Commission has all the information it considers necessary for appraisal of the request, it shall within one month notify the requesting Member State accordingly and shall transmit the request to the other Member States.
3. Within three months of the notification referred to in the fourth subparagraph of paragraph 2, the Commission shall decide, in accordance with the procedure referred to in Article 16(2), whether to authorize the Member State concerned to conclude the agreement referred to in paragraph 1 of this Article.

In any event, a decision as referred to in the first subparagraph shall be adopted within eighteen months of receipt of the application by the Commission.

Article 18
Transfers of funds to non-profit organizations within a Member State

1. Member States may exempt payment service providers situated in their territory from the obligations set out in Article 5, as regards transfers of funds to organizations carrying out activities for non-profit charitable, religious, cultural, educational, social, scientific or fraternal purposes, provided that those organizations are subject to reporting and external audit requirements or supervision by a public authority or self-regulatory body recognized under national law and that those transfers of funds are limited to a maximum amount of EUR 150 per transfer and take place exclusively within the territory of that Member State.
2. Member States making use of this Article shall communicate to the Commission the measures that they have adopted for applying the option provided for in paragraph 1, including a list of organizations covered by the exemption, the names of the natural persons who ultimately control those organizations and an explanation of how the list will be updated. That information shall also be made available to the authorities responsible for combating money laundering and terrorist financing.
3. An up-to-date list of organizations covered by the exemption shall be communicated by the Member State concerned to the payment service providers operating in that Member State.

Article 19
Review clause

1. By 28 December 2011 the Commission shall present a report to the European Parliament and to the Council giving a full economic and legal assessment of the application of this Regulation, accompanied, if appropriate, by a proposal for its modification or repeal.
2. That report shall in particular review:
(a) the application of Article 3 with regard to further experience of the possible misuse of electronic money, as defined in Article 1(3) of Directive 2000/46/EC, and other newly-developed means of payment, for the purposes of money laundering and terrorist financing. Should there be a risk of such misuse, the Commission shall submit a proposal to amend this Regulation;
(b) the application of Article 13 with regard to the technical limitations which may prevent complete information on the payer from being transmitted to the payment service provider of the payee. Should it be possible to overcome such technical limitations in the light of new developments in the payments area, and taking into account related costs for payment service providers, the Commission shall submit a proposal to amend this Regulation.

CHAPTER VII
FINAL PROVISIONS

Article 20
Entry into force

This Regulation shall enter into force on the 20th day following the day of its publication in the Official Journal of the European Union, but in any event not before 1 January 2007.
This Regulation shall be binding in its entirety and directly applicable in all Member States.
Done at Strasbourg, 15 November 2006.

For the European Parliament
The President
J. Borrell Fontelles

For the Council
The President
P. Lehtomäki

[1] OJ C 336, 31.12.2005, p. 109.

[2] Opinion of the European Parliament delivered on 6 July 2006 (not yet published in the Official Journal) and Council Decision delivered on 7 November 2006.

[3] OJ L 344, 28.12.2001, p. 70. Regulation as last amended by Commission Regulation (EC) No 1461/2006 (OJ L 272, 3.10.2006, p. 11).

[4] OJ L 139, 29.5.2002, p. 9. Regulation as last amended by Commission Regulation (EC) No 1508/2006 (OJ L 280, 12.10.2006, p. 12).

[5] OJ L 309, 25.11.2005, p. 15.

[6] OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

[7] OJ L 275, 27.10.2000, p. 39.

[8] Regulation as corrected by OJ L 344, 28.12.2001, p. 13.

[9] OJ L 184, 17.7.1999, p. 23. Decision as last amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

Annex 8

Securities Code - Decree-Law no. 486/99 of 13th November amended by Decree-Law no. 357-A/2007 of 31st October

Article 304
Principles

1. Financial intermediaries should conduct their activity so as to protect the legal interests of their clients and efficiency of the market.

2. In their relations with all the intermediaries in the market, financial intermediaries should observe the rule of good faith, in accordance with high standards of diligence, loyalty and transparency.

3. In so far as is necessary for the compliance of its duties in providing service, the financial intermediary should be informed of the client's knowledge and experience as to the specific type of financial instrument or service offered or sought, and in addition, if applicable, as to the client's financial position and investment objectives.

4. Financial intermediaries shall be subject to a duty of professional secrecy in the terms set out for bank secrecy, without prejudice to the exceptions contemplated in the law, notably compliance with the provisions of Article 382.

5. The principles and the duties referred to in the following Articles are applicable to the directors of the financial intermediary and the persons that effectively direct the business of the financial intermediary or the tied agent and the employees of the financial intermediary, tied agent or outsourcing entities, involved in the pursuing or supervising of financial intermediation activities or the operational functions that are essential for the provision of continual services under the conditions of quality and efficiency.

Article 304-A
Civil Liability

1. The financial intermediaries are liable for damages caused to any persons due to breach of the duties concerning the organisation and exercise of its activity which have been imposed by Law or Public Authority Regulation.

2. The financial intermediary is liable for damages caused in contractual and pre-contractual relations and always, when discloser duties have been breached.

Article 304-B
Professional Ethic Codes

The CMVM shall be informed of the codes of conduct that are approved by the professional associations of financial intermediaries within a 15 day period.

Article 304-C
Auditor Disclosure Duties

1. The auditors that provide a service to a financial intermediary or a company with which the former is in a control or group relation, or in which it holds either directly or indirectly, at least 20% of the voting rights of the company's capital, shall immediately notify the CMVM of such facts in respect of that financial intermediary or company that have come to be aware of, during the exercise of their duties, when such facts are prone to:

a) Constituting a crime or an administrative infraction establishing the authorisation conditions or that specifically regulate the financial intermediation activity; or

b) Influencing the stability of the financial intermediary's activity; or

c) Justifying the refusal to audit the accounts or the in proviso thereof.

2. The disclosure duty imposed by the present Article prevails over any restrictions to information disclosure provided for either legally or contractually, and its good faith compliance does not include liability for the parties involved.

3. Should the facts mentioned in paragraph 1 constitute inside information in accordance with Article 248, the CMVM and Bank of Portugal should coordinate supervisory objectives to be followed by each authority.

4. The auditors referred to in paragraph 1 shall annually submit to the CMVM, a report that confirms the propriety of the procedures and measure that have been adopted by the financial intermediary pursuant to the provisions of subsection iii of the current section.

Article 305
General Requirements

1. The financial intermediary should keep its business organisation equipped with the necessary human, material and technical resources in order to render services under the appropriate conditions of quality, professionalism and efficiency, and thereby avoiding incorrect procedures, by, namely:

a) Adopting an organisational structure and decision-making procedure which specify the reporting lines and allocates functions and responsibilities;

b) Ensuring that the persons referred to in Article 304 (5) are aware of the procedures to be followed for the proper discharge of their responsibilities;

c) Ensuring the compliance with the procedures adopted and the steps taken;

d) Employing personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them;

e) Adopting effective reporting and communication of internal information;

f) Maintaining records of the business and internal organisation;

g) Ensuring that the performance of several functions by the persons referred to in Article 304 (5) does not prevent said persons from discharging any particular function soundly, honestly, and professionally;

h) Adopting systems and procedures that are appropriate for safeguarding the security, integrity and confidentiality of the information;

i) Adopting a continuity policy aimed at ensuring, in the case of an interruption to the systems and procedures, the preservation of essential data and functions, and the maintenance of financial intermediation activities, or, where that is not possible, the timely recovery of said data and functions and the timely resumption of said activities;

j) Adopting an accounting procedure that will enable the delivery in a timely manner of the financial reports which reflect a true and fair view of the financial position and which comply with all the applicable accounting standards and rules, particularly, asset segregation.

2. For the purposes of sub-paragraphs a) to g) of the preceding paragraph, the financial intermediary should take into account the nature, scale and complexity of the business, and in addition, the type of financial intermediation activities provided.

3. The financial intermediary should regularly monitor and evaluate the adequacy and effectiveness of the systems and procedures, established for the purposes of paragraph 1, and take the appropriate measures to address any possible shortcomings.

Article 305-A
Compliance Control System

1. The financial intermediary shall adopt proper policies and procedures for detecting any risks leading to the non-compliance of duties that it is subject to, and should thus apply measures to minimize and correct them in order to avoid future occurrences, allowing the competent authorities to carry out their duties.

2. The financial intermediary shall establish and keep an independent compliance control system that covers, at least, the following:

a) The regular monitoring and assessment of the adequacy and efficiency of the measures and procedures that have been adopted to detect and any type of risk of non-compliance of the duties that the financial intermediary is subject to, as well as the measures taken for correcting possible deficiency in the compliance of same;

b) Providing advice to the persons referred to in Article 304/5 that are responsible for carrying out financial intermediation activities for the purposes of compliance with the duties provided for in the current Code;

c) Identifying transactions on financial instruments that might be involved in money laundering and terrorist financing and those covered in Article 311(3);

d) Providing the Administrative Body with any evidence leading to the breach of the duties foreseen for in the standard mentioned in Article 388 (2) that may incur the financial intermediary or the persons referred to in Article 304 (5), in a serious or very serious administrative infraction;

e) Keeping a record of the breaches and the proposed and adopted measures under the terms of the previous subparagraph;

f) Compiling and submitting a report to the Supervisory Body with at least annual frequency, on the compliance control system and the breaches that occurred and the measures adopted for correcting possible deficiencies;

3. In order to secure the adequacy and independency of the compliance control system, the financial intermediary shall:

a) Appoint a person who will be responsible for the system and for any information that is provided on same and shall further confer the person with
the necessary powers to be able to undertake such duties in an independent manner, namely as regards to accessing material information;

b) Provide them with adequate technical means and capacity;

c) Ensure that the persons referred to in Article 304 (5) who are involved in the compliance control system, are not simultaneously involved in the providing services and activities that are controlled by them;

d) Ensure that the method used for determining the remuneration of those persons referred to in Article 304 (5) which are involved in the compliance control system, does not interfere with the former's objectivity.

4. The duties provided for in subparagraphs c/ and d/ of the preceding paragraph are not compulsory should the financial intermediary show that its compliance is redundant for ensuring the independency of that system, taking into account the nature, size and complexity of the financial intermediary's activities as well as the type of financial intermediation activities that are provided.

Article 305-B
Risk Management

1. The financial intermediary shall adopt and manage policies and procedures for pinpointing risk management related to its activities, procedures and systems, taking into account the tolerated level of risk.

2. The financial intermediary shall monitor the adequacy and efficiency of the policies and procedures adopted in accordance with paragraph 1, as well as compliance by those persons referred to in Article 304 (5) and the adequacy and efficiency of the measures taken for correcting any possible deficiencies.

3. The financial intermediary shall establish an independent management risk service which is responsible for:

a) Ensuring that the policy and procedures referred to in paragraph 1 are applied; and

b) Providing advice to the Administrative Body and drawing up and submitting a report to the Administrative Body and to the Supervisory Body, at least on annual basis, on the management risks as well as whether adequate measures were taken to correct any possible deficiencies.

4. The duty provided for in the previous paragraph is applicable whenever adequate and proportional, taking into consideration the nature, size and complexity of the activities as well as the type of financial intermediation activities provided.

5. The financial intermediary that according to the criteria provided for in the preceding paragraph, does not adopt an independent risk management, shall ensure that the adopted policies and procedures satisfy the requirements mentioned in paragraphs 1 and 2.

Article 305-C
Internal Audit

1. The financial intermediary shall establish an independent internal audit service, responsible for:

a) Adopting and maintaining an audit plan for examining and assessing the adequacy and efficiency of the systems, procedures and rules that are a basis for the financial intermediary's internal control system;

b) Issue recommendations based on assessment results and verify its compliance; and

c) Draw up and submit a report to the administrative body and supervisory body, at least on an annual basis, on issues concerning auditing, by indicating and identifying the recommendations that were followed.

2. The duty provided for in the preceding paragraph is always applicable whenever adequate and proportional, taking into account the nature, size and complexity of the activities as well as the type of financial intermediation activities undertaken.

Article 305-D

Duties of the Members of the Administrative Body

1. Without prejudice to the supervisory board's duties, the members of the administrative body shall ensure that the duties in the current Code are complied with.

2. The members of the administrative body shall periodically assess the efficiency of the policies, procedures and internal rules for the compliance with the duties referred to in Articles 305-A and 305-C and take adequate measures for correcting possible deficiencies in order to prevent future occurrences.

Article 305-E

Investor Complaints

1. The financial intermediary shall maintain efficient and transparent procedures to adequately and swiftly handle retail investor complaints, and should provide at least for the following:

a) The reception, forwarding and handling of the complaint by a different employee than the one mentioned in the complaint;

b) Definite procedures to be adopted for complaints handling;

c) Maximum deadline for response.

2. The financial intermediary shall keep a record of all complaints for a five-year period. The following information must be included in the records:

a) The complaint, the identification of the claimant and the date in which the complaint was received;

b) The identification of the financial intermediation activity in question and the date in which the facts occurred;

c) The identification of the employee that carried out the claimed act;

d) The assessment made by the financial intermediary, the measures taken to resolve the issue and the date of the communication sent to the claimant.

Annex 9

Decree-Law no. 144/96 of 31st July

Article 13

Aptitude

1 – Evidence of lack of aptitude, amongst other circumstances that may be taken into consideration, include the fact that the person in question:

a) To have been convicted for larceny, abuse of confidence, theft, fraud, extortion, infidelity, abuse of a guarantee or credit card, issue of a bounced check, usury, fraudulent insolvency, frustration of credits, negligent insolvency, favouring of creditors, illegitimate appropriation of the goods of the public or cooperative sector, fraudulent administration in an economic unit of the public or cooperative sector, falsification, false declarations, bribery, corruption, money laundering, insider trading, manipulation of the securities market or by the crimes foreseen in the Companies Code;

b) To have been declared bankrupt or insolvent, by means of a national or foreign sentence transited *in rem judicatam*, or judged to be responsible for the bankruptcy of companies whose control he has maintained, or of which he was administrator, director or manager;

c) To have been convicted, in Portugal or abroad, for breach of the legal or regulatory rules that govern the insurance or reinsurance mediation business, together with the activities of insurance undertakings or management undertakings of pension funds, of credit institutions, financial undertakings or institutions and the securities market, when this is justified by the gravity or recurring nature of such infringements.

2 – A natural person is presumed to satisfy the aptitude requirement if he is already registered with a supervisory authority of the financial sector, wherein such registration is subject to aptitude requirements.

Article 29

General duties of the insurance intermediary

The insurance intermediary has the following general duties:

a) Sign contracts in the name of the insurance undertaking only when the latter has conferred the necessary written powers to it;

b) Not assume coverage of risks in its own name;

c) Comply with the legal and regulatory requirements applying to the insurance activity and to the activity of insurance mediation and not intervene in contracts that stand in breach of these requirements;

d) Correctly and efficiently assist in insurance contracts in which it intervenes;

e) Pursue best efforts in order to prevent inexact or incomplete declarations by the policyholder and situations which stand in breach or constitute cases of fraud against the law or which indicate situations of money laundering;

f) Uphold professional confidentiality in relation to third parties concerning facts that it became aware of as a result of exercise of its activity;

g) Exhibit its registration certificate as an intermediary whenever any interested party so requests;

h) Maintain a register of the insurance contracts in which it acts as an intermediary, together with the elements and information required for prevention of money laundering;

i) Maintain an updated list with identification of the persons directly involved in the activity of mediation who are employed by it;
j) Maintain at its service the number of persons directly involved in the activity of insurance mediation, to be defined by the Portuguese Insurance Institute by a regulatory norm, in view of the scale and importance of the intermediary.