

Executive Summary

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

A. *Key Findings*

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

unprofitable for criminals.

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

B. *Risks and General Situation*

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

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

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

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

C. Overall Level of Effectiveness and Technical Compliance

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

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

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

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

¹ The list of those countries is part of the confidential information of the NRA.

² These measures have been adopted by the Parliament in May 2017 and promulgated by the President of the Republic in August 2017.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Priority Actions

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

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

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings (High, Substantial, Moderate, Low)

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

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

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