



PORTUGAL: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS

NOVEMBER 2015

This report, submitted by Portugal, provides information on the progress made by Portugal in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 5 November 2015.

The Phase 3 report evaluated Portugal's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

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SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

Summary of Findings

1. In June 2015, Portugal presented a Written Follow-Up Report describing its implementation of the Recommendations in the June 2013 Phase 3 Report by the OECD Working Group on Bribery. The Follow-up Report also described developments regarding the Follow-Up Issues identified in the Phase 3 Report. Overall, the Working Group considered that Portugal has taken some positive steps. Out of 33 Phase 3 Recommendations, 7 are fully implemented, 19 partially implemented and 7 not implemented.

2. Regarding the foreign bribery offence, the Phase 3 Report noted that Portugal's definition of a foreign public official did not expressly cover bribery of "a person exercising a public function for a foreign country". Portugal amended the definition in April 2015 to partially address this concern by expanding the definition to include a person who takes part or exercises a public service function "in a private company within the scope of a public contract". Portugal has not taken steps to clarify that its foreign bribery offence covers bribery of officials in "an autonomous territory or a separate custom territory", and bribery in order that an official acts outside his competence. Portugal maintains that Law 20/2008 covers these situations. Recommendation 1(b) is partially implemented. Portugal's Written Follow-Up Report does not describe actions implementing Recommendations 1(a) and (c). These Recommendations are therefore not implemented. Portugal amended Article 5(b) of Law 20/2008 in April 2015 so that the release from liability for foreign bribery due to effective regret is no longer automatic but left to the discretion of a judge. This is a positive development which fully implements Recommendation 2.

3. Regarding the liability of legal persons, the Phase 3 Report noted that the corporate liability provision in Article 11 of the Criminal Code (CC) excluded state-owned or state-controlled companies (SOEs) from potential liability. The provision was amended in April 2015 to apply corporate liability to all "public legal persons" except those "competent to exercise public powers" from liability; whether the new language still excludes some or all SOEs from liability is unclear. Recommendation 3(a) is thus partially implemented. The Phase 3 Report also expressed concerns about Article 11(6) CC. This provision states that a company is not liable if the natural person who committed the offence acted against the express orders or instruction of authorised persons. Portugal has not amended this provision or taken any other action. Recommendation 3(b) is not implemented.

4. Regarding sanctions, the Phase 3 Report observed that natural persons cannot be fined for foreign bribery except when he/she receives a one-year prison sentence that can be converted to a fine. Portugal has not changed this system or taken other action since Phase 3. Recommendation 4(a) is not implemented. Regarding confiscation, Portugal has frozen assets in several on-going cases with a view to ultimately seeking confiscation. Concerns remain, however, whether these seizures would lead to final confiscation. Recommendation 4(b) is partially implemented.

5. Portugal has taken notable steps to implement the Working Group's recommendation regarding enforcement. Portugal has reviewed its policies and created a team on economic and financial crimes within the Central Department for Criminal Investigation and Prosecution (DCIAP). Recommendation 5(a) is fully implemented. The National Anti-Corruption Unit of the Criminal Police (UNCC) has increased staffing. However, concerns about the adequacy of specialised expertise in DCIAP and UNCC remain. DCIAP has faced increasing demands because of domestic corruption cases. Experts from the Tax Authority participated regularly in investigation teams led by prosecutors in economic crime investigations and analyse bank and tax data. Recommendation 5(g) is partially implemented.

6. As for actual cases, Portugal currently has nine on-going foreign bribery investigations, four of which were opened after Phase 3. There are also three on-going investigations of money laundering predicated on foreign bribery, two of which were opened after Phase 3. MLA has been sought in many of these cases. These are positive developments. Nevertheless, these investigations have not yet been successfully concluded or resulted in foreign bribery and/or money laundering charges. Portugal has not taken further steps in the *Real Estate (Macau) Cases* described in the Phase 3 Report. In addition, media reports in November 2014 indicated that a US company self-disclosed to US authorities that its Portuguese and Angolan subsidiaries may have bribed foreign public officials. Portuguese authorities, however, did not inquire about the allegations with their US counterparts until the lead examiners raised this matter with Portuguese authorities in June 2014. The Written Follow-Up Report also does not describe steps taken to ensure Portuguese authorities use the corporate liability provisions, or conduct concurrent or joint investigations. Recommendations 5(b), 5(c) and 5(e) are only partially implemented. Since Phase 3, investigations have been opened in cases in which Portugal has provided MLA to foreign authorities. Recommendation 5(d) is thus fully implemented.

7. Regarding Article 5 of the Convention, the Phase 3 Report expressed concerns about executive interference in sensitive investigations, especially those involving Angola. The Report noted that Portugal's Minister of Foreign Affairs made public statements regarding two on-going money laundering investigations that implicated senior Angolan officials. Since Phase 3, Portugal's Minister of Foreign Affairs again made public statements about these two investigations in September 2013. On a positive note, other investigations implicating Angolan officials have been opened since Phase 3. The Centre for Judicial Studies and the Criminal Police School have organised training events. However, Portugal has not raised awareness of Article 5 of the Convention. Recommendation 5(f) is partially implemented.

8. Regarding jurisdiction, Portuguese authorities and practitioners took different positions in Phase 2 and Phase 3 on whether Article 3(a) of Law 20/2008 or Article 5 CC would provide nationality jurisdiction in foreign bribery cases. Portugal's Written Follow-Up Report reiterates its argument made during Phase 3 that Law 20/2008 is *lex specialis* and would prevail over Article 5 CC. Portuguese authorities, however, have not taken steps to clarify this matter to practitioners. Recommendation 6(a) is not implemented. Since Phase 3, Portugal has opened foreign bribery cases based on territorial jurisdiction. It has not, however, taken specific steps to ensure that its law enforcement authorities consider the exercise of nationality jurisdiction, and thoroughly explore territorial links to Portugal in foreign bribery cases. Recommendations 6(b) and 6(c) are partially implemented.

9. Portugal still does not maintain detailed statistics on investigations, prosecutions and sanctions for false accounting and money laundering; confiscation in foreign bribery cases; pre-trial seizures; and expiry of the statute of limitations. Portugal indicated that the DCIAP keeps track of the cases under investigation and seizures but did not provide any data. The Ministry of Justice has a [website](#) recording the total number of criminal convictions for "corruption" and other crimes per year but not more detailed statistics (e.g. on active and passive domestic and foreign bribery). There was no information on other types of data, such as cases that have been statute-barred. Recommendation 7 is not implemented.

10. Some notable efforts have been made to implement Recommendations concerning money laundering. Portugal states that money laundering allegations are duly investigated after an analysis of suspicious transaction reports (STRs). The Written Follow-Up Report refers to money laundering investigations that have been opened since Phase 3. These cases have yet to result in convictions, however. Portugal has provided some general training to the financial intelligence unit (FIU), law enforcement, reporting entities and their supervisory authorities on money laundering. More intensive PEP-specific training would be preferable, however. Portugal has not prepared guidelines and typologies to reporting entities that specifically refer to foreign bribery. Recommendations 8(a) and 8(b) are thus partially implemented. The FIU gives feedback to reporting entities as well as the supervision and inspection

authorities on the progress and the outcomes of STRs. It meets regulated entities biannually to discuss AML/CFT prevention, and participates in training activities of regulated entities. Recommendation 8(c) is fully implemented.

11. Several awareness-raising measures have been undertaken, particularly by the Ministry of Justice and DCIAP. However, several bodies that were identified as inactive in the Phase 3 Report, such as the Securities Market Commission (CMVM), have not taken any action. Recommendation 11(a) is thus partially implemented. Portugal has reminded its embassy staff to report crimes, including foreign bribery. Embassies have made actual reports, including one involving foreign bribery. The Portugal Global Trade and Investment Agency (AICEP) has undertaken awareness-raising activities. Recommendation 11(b) is fully implemented.

12. The Order of Chartered Accountants (OTOC) and Order of Statutory Auditors (OROC) have also made positive efforts by training accountants and auditors on reporting foreign bribery; disseminating Law 20/2008; and adding foreign bribery to training for new auditors and annual educational courses. OTOC also organised debates and clarification sessions with accountants. Recommendation 9(a) is fully implemented. Regarding corporate compliance programmes, the Institute for Support to Small and Medium-Sized Enterprises and Innovation informed companies about precautions for preventing foreign bribery. AICEP is preparing a relevant communication on corporate compliance measures to prevent foreign bribery. CMVM has not taken any action. Other awareness-raising activities do not address corporate compliance measures. Recommendation 9(b) is thus only partially implemented.

13. Regarding tax, Portugal will include fundamental elements of the OECD Bribery Awareness Handbook for Tax Examiners in the soon-to-be-finished update of the Manual for Tax Auditing. Expected training of new recruits would use the Manual and would include modules on corruption. Recommendation 10(a) is partially implemented. Tax legislation does not allow the deductibility of undocumented expenses, which was reaffirmed through an amendment of the Article 23A(1)(b) of the Corporate Income Tax Code. However, a similar provision in the Personal Income Tax Code has not been amended. In any event, both Income Tax Codes continue to allow undocumented expenses. New tax auditing software to assess whether undocumented expenses are bribes is planned but not yet in use. Recommendation 10(b) is not implemented. Portugal became Party to the Convention on Mutual Administrative Assistance in Tax Matters on 1 March 2015. Its draft bilateral tax treaty and recent treaties concluded with several countries include the language of Article 26 of the OECD Model Tax Convention. Recommendation 10(c) is fully implemented.

14. Regarding whistleblower protection, in April 2015, Portugal extended Article 4 of Law 19/2008 to also protect whistleblowers in the private sector. However, Portugal has not addressed shortcomings in this provision that were identified in the Phase 3 Report. For instance, the provision does not explain how whistleblowers can seek redress for reprisals, what types of redress are available (beyond a job transfer), and how the anonymity of whistleblowers would be protected. Portugal states that Law 93/2009 on witness protection applies to whistleblowers. However, as the Working Group has noted on many occasions, witness protection is not sufficient to protect whistleblowers. Recommendation 11(c) is partially implemented.

15. Concerning debarment from public procurement, the Phase 3 Report noted that some procurement officials were not aware of Article 90-H CC. One procuring authority did not verify whether companies have been convicted of foreign bribery before awarding contracts. Portugal did not specifically address these two matters; its public procurement agency only sent a booklet on the Convention and

information about debarment to entities that are part of its framework agreement. Recommendation 12(a) is partially implemented.

16. Regarding official development assistance (ODA), Portugal has made some efforts to raise awareness and to address debarment. The Risk Management Plan 2015-2017 of the Camões-Institute for Co-operation and Language (CICL) refers to foreign bribery, and training on the Plan is expected. CICL's new Code of Conduct addresses corruption but focuses more on corruption of its own officials rather than foreign bribery. However, the *Sociedade para o Financiamento do Desenvolvimento, Instituição Financeira de Crédito, S.A.* (SOFID) has not engaged in similar awareness-raising efforts. SOFID added a clause to its standard contract allowing the agreement to be cancelled in case of foreign bribery. CICL states that its contracts with multilaterals, private sector and NGOs have a clause to prevent fraud and corruption. The Written Follow-Up Report did not indicate, however, whether CICL may revoke a contract and recover funds in case of foreign bribery. SOFID indicates that it would decline any project proposals submitted by entities with foreign bribery convictions. How it would enforce this policy is unclear. CICL and SOFID have not developed guidelines to staff on reporting. Recommendation 12(b) is partially implemented.

17. Concerning export credits, the Phase 3 Report raised three concerns: awareness-raising, due diligence on agent fees and commissions, and reporting. Since then, Portugal stated that it provided some training on agent fees. This is positive, though details about the training were not provided. Only very general information was provided about two other matters. The *Companhia de Seguros de Crédito* (COSEC) informed its clients of "the regulatory framework of the activities it develops on behalf of the Portuguese State, including those concerning the fight against corruption and its legal effects on the insurance policies." It is unclear how this measure addressed foreign bribery. COSEC revised its guidelines on reporting but there is no explanation of what the new procedure is, or how it reconciled the conflicting procedures described in Phase 3. Recommendation 12(c) is partially implemented.

Conclusions of the Working Group

18. Portugal has satisfactorily implemented recommendations 2, 5(a), 5(d), 8(c), 9(a), 10(c) and 11(b); partially implemented recommendations 1(b), 3(a), 4(b), 5(b), 5(c), 5(e), 5(f), 5(g), 6(b), 6(c), 8(a), 8(b), 9(b), 10(a), 11(a), 11(c), 12(a), 12(b) and 12(c); and not implemented recommendations 1(a), 1(c), 3(b), 4(a), 6(a), 7 and 10(b). Follow-up Issues 13(a)-(i) remain outstanding. The Working Group will revisit the outstanding recommendations and follow-up issues in Portugal's Phase 4 evaluation.

PHASE 3 EVALUATION OF PORTUGAL: WRITTEN FOLLOW-UP REPORT

Name of country: Portugal
Date of approval of Phase 3 evaluation report: 14 June 2013
Date of information: 11 May 2015

PART I: RECOMMENDATIONS FOR ACTION

Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery

Text of recommendation:

1. With regards to the foreign bribery offence, the Working Group recommends that Portugal take all measures to clarify that:

(a) The offence does not require proof that (i) the foreign public official knows of the offer or promise of the bribe for a completed offence, (ii) the briber knows the details and identity of the recipient of the bribe, when the bribery is committed through an intermediary, and (iii) the official knows that an improper advantage has been given to a third party (Convention Article 1; 2009 Recommendation III.ii and V);

Action taken as of the date of the follow-up report to implement this recommendation:

National legislation already covers the mentioned subject matters.

In the Portuguese legal system the criminal type of foreign bribery is directed to an active briber, it requires the briber's specific purpose to give an advantage to a foreign public official or to a third party designated by him.

If the advantage is given through an intermediary, the agent may not directly know the official, but evidence must show that the briber had the purpose to give an advantage to an official or to someone designated by him.

Difficulty arises when evidence only shows that the advantage (cash or other) has been given to an intermediary to streamline businesses abroad.

Building up a type of active corruption where the agent commits a crime, when he/she does not know that the advantage given is for an official, would not be feasible in the Portuguese legal system.

As set forth in Article 7 of Law nr 20/2008, of 21 April, the cases where the agent knows that the advantage is for an official, but does not specifically know such official, are comprised in this criminal type.

Likewise, the mere provision of an undue advantage, even when such does not reach the official or even if the official does not know it, is enough to fulfill the type of foreign bribery crime.

Only with jurisprudence on the application of the type of crime referred to, is it possible to assess the opinion of the high courts on the scope of the incrimination. Notwithstanding, in investigation cases where intermediaries are resorted to, the question of whether the official is unaware and does not know of the

offer of the undue advantage cannot, for now, be raised.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

1. With regards to the foreign bribery offence, the Working Group recommends that Portugal take all measures to clarify that:

(b) The offence covers (i) bribery of any person exercising a public function for a foreign country, and officials of autonomous territories and separate customs territories; and (ii) bribery in order that an official act or refrain from acting in relation to the performance of official duties (Convention Article 1; 2009 Recommendation III.ii and V);

Action taken as of the date of the follow-up report to implement this recommendation:

The definition of employee, foreseen in Article 2(a) of Law nr 20/2008, has been extended through the amendment introduced by the Law nr 30/2015, of 22 April.

According to this new wording, “a foreign public official” means the person who, working for a foreign country as an employee, agent or in any other capacity, even if temporarily, either for free or paid, in a voluntary or compulsory manner, is called to work or take part in the administrative or judicial public service or, in the same circumstances, is called to work or take part in national bodies, or has a managing position or holds a supervisory post or is an employee in a public, nationalized company with public capital or with controlling public interest or in any public concession company, as well as a person who takes part or exercises a public service function in a private company within the scope of a public contract.

The definition of employee, set out in article 2(a), (b) and (c) of Law nr 20/2008, is built up taking into account the work performed and not the link to a specific territorial public entity, as far as foreign countries are concerned.

It is therefore considered that all the employees of autonomous or separate customs territories are covered.

The Criminal Code, supplementary applied to the crimes set out in the Law nr 20/2008(which is a special law) has a general provision - Article 10(1) - that relates the commission of the action to the omission of the action: as such, the omission of duties inherent to the post are clearly foreseen in this type.

Portugal thus considers that, with this legislative amendment, this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

1. With regards to the foreign bribery offence, the Working Group recommends that Portugal take all measures to clarify that:

(c) Criminal Code Article 374 and Law 34/1987 Article 18 do not apply to foreign bribery cases (Convention Article 1; 2009 Recommendation III.ii and V).

Action taken as of the date of the follow-up report to implement this recommendation:

According to the principles applicable to civil law legal systems *lex specialis derogat legi generali* (special law repeals general laws).

Where two laws govern the same factual situation, a law governing a specific subject matter (*lex specialis*) overrides a law which only governs general matters (*lex generalis*).

In this specific case, Law nr 20/2008, as a special law on foreign bribery, is precisely within a relationship of specialty in relation to the Criminal Code's provisions on corruption, as the latter does not include any provision on foreign bribery matters.

On its turn, Law nr 34/87 refers to the liability of political office holders or of holders of high public offices for offences committed in the course of their duties as well as the applicable penalties and effects deriving from such penalties. It regulates the active and passive corruption, which cannot be mistaken with passive corruption in foreign bribery.

In Article 7 of Law nr 20/2008 it is also foreseen the offer of an undue advantage to a national official, theoretically would be possible to envisage that such norm concurs with the provisions of Article 374 of the Criminal Code. However, as the crime mentioned in Article 7 of Law nr 20/2008 refers to the specific purpose of obtaining an undue advantage in international trade, establishing thus a more serious penalty, it is understood there is a relationship of specialty.

Hence, should they concur, and if the specific purpose of obtaining an undue advantage in international trade is evinced, Article 7 always prevails. The provisions of the Criminal Code or of the Law nr 34/87 do not apply.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

2. With regards to defences to the foreign bribery offence, the Working Group recommends that Portugal amend Article 5(b) of Law 20/2008 and eliminate the effective regret defence from the active foreign bribery offence (Convention, Article 1; 2009 Recommendation III.ii, V).

Action taken as of the date of the follow-up report to implement this recommendation:

Article 5(b) of Law nr 30/2008 was amended by Law nr 30/2015, of 22 April.

According to the new wording, exemption from penalty is no longer automatically applied. It is up to the

judge to discharge or not the agent, even if voluntarily and before the act is committed, he rejects the offer or the assumed promise, returns the advantage or, if it is a fungible thing, its value.

Portugal considers thus that this recommendation is implemented in accordance with what is referred, as concerns Article 1 of the Convention, in the document “Good practices for the implementation of specific articles of the Convention on combating bribery of foreign public officials in international business transactions”, attached to the 2009 Recommendation on this matter.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

3. With regards to liability of legal persons, the Working Group recommends that Portugal amend Article 11 of the Criminal Code (a) so that all legal persons, including state-owned or state-controlled enterprises, can be held criminally responsible for foreign bribery, and (b) to repeal the defence of acting against express orders of legal persons (Convention Article 2; 2009 Recommendation Annex I.B).

Action taken as of the date of the follow-up report to implement this recommendation:

As regards part (a) of the recommendation, Law nr 30/2015, of 22 April, has introduced some amendments to Article 11(2) of the Criminal Code.

In accordance with the new wording, exemption from criminal liability for foreign bribery crimes only applies to the State, public legal persons competent to exercise public powers and international public law organizations, whenever foreign bribery is committed:

- a) On their behalf and in the collective interest by persons who hold a leading position therein; or
- b) By whoever acts under the authority of the persons referred to in the previous paragraph by virtue of a breach of the surveillance or control duties which are incumbent upon them.

Portugal thus considers that part (a) of this recommendation is implemented

As regards part (b) of the recommendation it must be recalled that, on one hand, the Portuguese legal system, as general rule, does not admit the possibility of criminal objective liability. As such, Article 11 (6) of the Criminal Code has to be read in conjunction with Article 2(b) of the same Code that refers that legal persons are held criminally liable for foreign bribery, when this crime is committed by a person that acts under the authority of a legal person, by virtue of a breach of the surveillance or control duties which are incumbent upon them.

Moreover, it must be recalled that the OECD Convention does not require Member States to establish the criminal liability of legal persons for the bribery of a foreign public official. Its Article 2 (responsibility of legal persons) only states that Each Party shall take such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for bribery of a foreign public official.

Annex I.B of the 2009 Recommendation, regarding best practices, states that Member States’ systems on the liability of legal persons for bribery of foreign public officials in international business transactions should not restrict the liability to cases where the natural person or persons who perpetrated the offence are

prosecuted or convicted.

On the contrary Annex I.B provides that Member States' systems on the liability of legal persons for bribery of foreign public officials in international business transactions should take one of the following approaches:

a. the level of authority of the person whose conduct triggers the liability of the legal person is flexible and reflects the wide variety of decision-making systems on legal persons; or

b. the approach is functionally equivalent to the foregoing even though it is only triggered by acts of persons with the highest level managerial authority, because the following cases are covered:

- A person with the highest level managerial authority offers, promises or gives a bribe to a foreign public official;
- A person with the highest level managerial authority directs or authorizes a lower level person to offer, promise or give a bribe to a foreign public official; and
- A person with the highest level managerial authority fails to prevent a lower level person from bribing a foreign public official, including through failure to supervise him or her or through failure to implement adequate internal controls, ethics and compliance with programmes or measures.

What is referred to is merely the breach of surveillance or of adequate control duties by a legal person's board of directors to prevent acts of corruption being committed by an employee. There is no express or even implicit obligation for the States to repeal the defence of acting against express orders of legal persons.

It must also be mentioned that a legal person shall always be held criminally liable in the cases foreseen in Article 11(2)(b) of the Criminal Code, which is in accordance with what the 2009 Recommendation refers when a person with the highest level managerial authority fails to prevent a lower level person from bribing a foreign public official, including through a failure to supervise him or her or through a failure to implement adequate internal controls, ethics and compliance with programmes or measures.

Thus, Article 11(6) of the Criminal Code fulfills the obligations arising from the OECD Convention and the 2009 Recommendation.

Moreover, it should be borne in mind that the responsibility of legal persons and equivalent entities does not exclude, in Portugal, the individual liability of the respective agents nor is dependent on them being held liable.

Finally, State Parties to the OCDE Convention, whose systems provide for the criminal liability of legal persons, should not be forced to follow stricter conditions than the States where such criminal liability does not exist.

Portugal thus considers that part (b) of this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

4. With regards to sanctions and confiscation, the Working Group recommends that Portugal:

(a) Take steps to ensure that sanctions against natural persons are effective, proportionate and dissuasive in all foreign bribery cases, in light of the system of converting prison sentences to fines (Convention Article 3(1));

Action taken as of the date of the follow-up report to implement this recommendation:

The recommendation was internally discussed and was decided not to propose any legislative amendment, taking into account the principles and the architecture of the Portuguese legal-criminal system. Bearing in mind the very serious nature of the crime of corruption, the Portuguese jurisprudence consistently punishes it with high imprisonment sentences.

Replacing the imprisonment sentence for a fine, as foreseen in Article 43 of the Criminal Code, is only possible as regards sentences of less than 1 year and requires the conversion is to be compatible with the needs of prevention, which are assessed on a case-by-case basis. In corruption cases such needs are particularly demanding.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

4. With regards to sanctions and confiscation, the Working Group recommends that Portugal:

(b) Take steps to make full use of confiscation measures available in its law and ensure that law enforcement authorities routinely consider confiscation in foreign bribery cases (Convention Article 3(3)).

Action taken as of the date of the follow-up report to implement this recommendation:

Confiscation of crime proceeds is a measure used whenever these proceeds are identified or when products obtained through an undue advantage given by the agent, are identified.

Hence, in the cases currently pending, several funds were seized, totaling around 14 million euros, including in bank accounts abroad.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

5. Regarding investigations and prosecutions, the Working Group recommends that Portugal:

(a) Review its overall approach to enforcement, especially regarding corporations, in order to effectively combat international bribery of foreign public officials (Convention Articles 1, 2, 5; 2009 Recommendation V);

Action taken as of the date of the follow-up report to implement this recommendation:

In addition to the DCIAP new operational model – now comprising an area exclusively in charge of economic and financial crimes and another area entrusted with the investigation of the remaining serious crimes for which it is competent -, a new investigation and prosecution strategy has also been established.

The new charge delivered in the case of “supply of buses” which holds directly liable the company that sold the buses and to whom the undue advantages were paid is a good example of this new approach.

A court decision on a company for this crime was delivered (Proc. 1581/12.1 TACBR) and other legal persons are subject to pending investigations.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

5. Regarding investigations and prosecutions, the Working Group recommends that Portugal:

(b) Increase the use of proactive steps to gather information from diverse sources at the pre-investigative stage both to increase sources of allegations and enhance investigations (Convention Article 5, Commentary 27; 2009 Recommendation IX(i), Annex I.D);

Action taken as of the date of the follow-up report to implement this recommendation:

The competent authorities for criminal investigation and prosecution in Portugal are taking proactive steps to gather information from several sources at the pre-investigative stage, as well as during the investigation stage.

The national authorities seek to gather information from diverse sources at the pre-investigative stage both to increase sources of allegations and enhance investigations.

For instance, the financial entities have been warned by DCIAP, as far as money laundering prevention is concerned, to movements related to overseas payments, especially when involving instrumental entities or politically exposed persons (PEP’s).

Portuguese authorities also resort to news broadcasted by the media, to the information that is sent by the Portuguese consular and diplomatic network abroad as well as the allegations referred in public sources gathered by the Working Group.

Whenever there is a direct or indirect knowledge (e.g. anonymous denunciation or media) a preventive inquiry is compulsorily opened (pre-investigative) in order to determine whether there are facts that may constitute criminal offences.

The denunciations, even if anonymous, can be made to the authorities, through communication mechanisms in electronic platforms, but so far without particular success as to relevant information.

The Public Prosecution has also been crossing the information available in the preceding phase with the opening of the inquiry and has proceeded with seizures whenever there are legal grounds to carry them out.

In fact, as an example, all the information obtained in the scope of money laundering prevention involving the payment of funds to foreigners that have bank accounts in Portugal has been examined so as to confirm whether there is payment of undue advantages. This approach has already allowed the identification of new cases in the last years.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

5. Regarding investigations and prosecutions, the Working Group recommends that Portugal:

(c) Take steps to ensure that its authorities (i) do not prematurely terminate cases involving foreign bribery allegations, (ii) proactively seek co-operation and MLA from foreign countries whenever appropriate, (iii) consider whether to conduct concurrent or joint investigations, where appropriate, and (iv) use the corporate liability provisions where appropriate (Convention Articles 2, 5, Commentary 27; 2009 Recommendation XIII, Annex I.D);

Action taken as of the date of the follow-up report to implement this recommendation:

The Portuguese judicial authorities do not prematurely terminate cases involving alleged foreign bribery.

As derives from the legality principle set forth in the Criminal Procedure Code, the Public Prosecution and the Criminal Police must investigate all the evidence, suspicions or crime denunciations.

Thus, contrary to what the recommendation refers, all allegations of active foreign bribery are investigated in Portugal, as established in the OECD Convention. In addition, Portuguese authorities investigate all the cases that have an element of connection with Portugal even when Portuguese nationals or companies are not involved for example, where the funds involved are in bank accounts in Portuguese financial institutions or whenever financial transactions occur in such institutions - this goes beyond what the above mentioned Convention requires from State Parties.

Moreover, as it may be observed from the opening of new cases, regardless of knowing at the beginning of the investigative diligences, the crime that may be involved – money laundering, domestic corruption or foreign bribery – investigative diligences are carried out and an inquiry should be opened whenever alleged facts (denunciations, media, etc.) are known, when there is strong evidence of a criminal offence, grounded suspicious or sufficient probative elements to bring up a charge.

This means that all the investigations based on sufficient information have led to the opening of inquiries.

After investigation, many of these facts of alleged foreign bribery are prosecuted as money laundering crimes or attempted money laundering crimes because they do not fulfill the elements of the foreign bribery legal type. In these cases the alleged foreign bribery investigations are closed while the money

laundering investigation continues.

In pending cases related to foreign bribery that are under investigation, the resort to international cooperation in criminal matters has increased, and rogatory letters have been sent to countries like Switzerland, South Africa, Nigeria, Austria, Malawi, Argentina and Luxembourg.

Likewise, the information received via the mechanisms of cooperation requests has given rise to the opening of investigations at national level; 3 of these cases are still pending and one started in 2014.

In the cases where Portuguese speaking countries are involved, the Convention on Mutual Legal Assistance among Member States of CPLP, signed in 2005, was resorted to.

It should be mentioned that, in order to make use of all the possibilities that international cooperation can provide, the Public Prosecution has appointed a Deputy Prosecutor in charge of developing direct mechanisms of international judicial cooperation, on a priority basis. It has also been created a digital platform to register cooperation requests, received and sent them, where the time limit for compliance with international cooperation requests submitted to Portugal is monitored.

In the context of investigations carried out on these cases of alleged bribery of foreign public officials, the Criminal Police, within the scope of international police cooperation, has also sought to obtain information resorting to INTERPOL and EUROPOL channels.

Whenever deemed necessary, the Criminal Police has resorted to collaboration requests with foreign entities, either through FIU channels as regards financial intelligence or through EUROPOL and INTERPOL as concerns information/police collaboration, or even through judicial cooperation in criminal matters via judicial channels.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

5. Regarding investigations and prosecutions, the Working Group recommends that Portugal:

(d) Ensure that Portugal is not prevented from commencing a criminal investigation or prosecution solely because it has provided MLA to a foreign country in the same case (Convention Article 5, 9, Commentary 27; 2009 Recommendation Annex I.D);

Action taken as of the date of the follow-up report to implement this recommendation:

According to the principle of legality, Public Prosecutors have the duty to initiate investigations whenever there are allegations of acts that fall within the Portuguese jurisdiction. The Portuguese jurisdiction is not precluded on the basis on international judicial cooperation with foreign prosecution authorities.

In particular in the cases alluded to by the Working Group in the past, namely the Case #5 – Real Estate (Macau) Case: , the State where the acts were committed claimed full jurisdiction over the facts under investigation, including those related to the practice of money laundering. For this reason the investigation

taking place under the direction of Portuguese prosecutors was discontinued.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

5. Regarding investigations and prosecutions, the Working Group recommends that Portugal:

(e)Where foreign bribery allegations involve senior foreign public officials and/or major Portuguese companies, (i) ensure these allegations are promptly and proactively investigated on a high priority basis and with sufficient resources, and (ii) take appropriate steps to ensure that all prosecutors are aware of the requirement to record their reasons for terminating investigations of the bribery of foreign public officials (Convention Article 5, Commentary 27; 2009 Recommendation Annex I.D);

Action taken as of the date of the follow-up report to implement this recommendation:

According to the provisions set out in the Law nr 49/2008, of 27 August (Law for the Organization of Criminal Investigation - LOIC), all crimes of corruption are investigated on a high priority basis.

As regards this recommendation, since 2013, progress has been made in order to ensure more efficacy and proactivity in the investigation of alleged cases of foreign bribery.

For instance, the investigation where the international dimension of the business and the advantages received were examined lead to a charge in 2014.

Moreover, regarding the above mentioned cases, more than 30 searches were made and 5 persons were charged.

At present, the effort generated regarding further investigations for corruption at the level of employees with high functional responsibilities, has also allowed the discovery of suspicious facts related to the expanding of market share overseas, whether in South America or in Africa, that have been investigated in connection with cases with a broader object.

As to the second part of the recommendation, it should be mentioned that, according to the Criminal Procedure Code all reasons for terminating an investigation, to bring up a charge or to file a case, have to be duly grounded in a written form.

Hence, all the Prosecutors have to comply with the law, lest they be subject to criminal and disciplinary proceedings.

The investigations related to corruption are always carried out on a priority basis as laid down in the mentioned Law (LOIC). No cases or investigations due to lack or insufficiency of human or material resources were identified.

The termination of the investigations is decided by the Public Prosecutor, based on factual grounds that are always referred to in the decision. The concentration of the investigations on a limited number of Public Prosecutors in the DCIAP has allowed the establishment of uniform criteria as regards the obtaining of evidence and the requirements of proof.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

5. Regarding investigations and prosecutions, the Working Group recommends that Portugal:

(f) Train investigators, prosecutors and judges on investigating and prosecuting foreign bribery (including on the enforcement of corporate liability), and raise awareness of Article 5 within the DCIAP, UNCC and other relevant government bodies (Convention Article 5, Commentary 27; 2009 Recommendation III.i, Annex I.D);

Action taken as of the date of the follow-up report to implement this recommendation:

Awareness raising sessions on Article 5 of the OECD Convention were provided in the Public Prosecution Services, in the UNCC and in the High Council for Judicature.

Non-interference of economic interests or of the impact of hypothetical investigations in the diplomatic relations with foreign States is insured through the principle of legality, which entails the opening of investigations on a mainly technical basis, relies on the existence of factual suspicions legitimating the conduction of investigative diligences. Any attempts to influence the judicature are excluded on the basis of the principles of legality and of the separation of powers, enshrined in the Constitution of the Portuguese Republic. Similarly, investigations carried out by the UNCC, which acts under the authority of the Public Prosecution, are conducted with independence.

As regards the reinforcement of investigation and prosecution skills of judicial and public prosecution magistrates in foreign bribery cases, in addition to the regular thematic training consisting of courses, conferences and workshops, the **Centre for Judicial Studies (CEJ)** published in 2014 an e-book on the theoretical and practical specificities of this type of crime.

The publication collects the interventions of the Judges, Prosecutors, University Lecturers, Criminal Investigation Officers and experts made during the training actions conducted by the Centre for Judicial Studies in the last 3 years, and is available at http://www.cej.mj.pt/recursos/ebook_penal.php (E-book I: General and theoretical issues about economic-financial crimes on criminal law; E-book II: Specific crimes; E-book III: The gathering of evidence and its standards of proof in economic-financial crimes).

Throughout 600 pages, matters such as the specificity of the economic-financial investigation, the gathering of evidence in offshores, the authorship of complex business organizations, offshores, money laundering and banking secrecy, criminal liability of legal persons and related persons and corruption and other types of laundering are addressed.

The CEJ promoted and organized several on-going training events with the purpose to sensitizing judges and prosecutors to the fight against complex and violent crimes of economic and transnational dimension, including corruption and foreign bribery. Since September 2014, the following training events have taken place:

Production, appreciation and appraisal of evidence in criminal proceedings;

- Economic and financial crime and recovery of the proceeds of crime;
- Taxation criminality: jurisprudential perspectives;
- Conducting criminal investigation in taxation criminality;
- Criminal taxation liability of legal persons and their representatives;
- Portuguese Criminal Procedure and foreign residents;
- Executing the European Arrest Warrant.

The **Criminal Police School** regularly organizes training activities for criminal investigators.

During 2013 (May-June) a Module on Economic and Financial Crime, with 144 hours, was organized in the framework of the training course for 73 new Criminal Police Inspectors. Training sessions have been held in 21-23 January (18 hours) on the issue of Economic and Financial Crime, in 29-20 January and in 7-8 and 12 May (21 hours) on the prevention of money laundering/terrorism financing including predicate offences.

In 2014 a training session for criminal investigators, was organized, from 28 to 30 April (37 hours), on the issue of economic and financial crime, including corruption.

In 2015, a training session for criminal investigators was organized in 3-5 February (21 hours) on the issue of money laundering and corruption. A seminar is planned for 12-13 May (14 hours) on the issue of money laundering and asset recovery and, in 25-26 May, a thematic training session on corruption (12 hours) will take place in the Criminal Police School.

Work and training actions between the DCIAP Magistrates and the Criminal Police in the area of money laundering and corruption are also planned to take place during the year of 2015.

Portugal thus considers that the recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

5. Regarding investigations and prosecutions, the Working Group recommends that Portugal:

(g) Give sufficient priority to investigating and prosecuting foreign bribery, and provide the DCIAP and UNCC with sufficient specialised expertise (Convention Article 5, Commentary 27; 2009 Recommendation Annex I.D).

Action taken as of the date of the follow-up report to implement this recommendation

Given the dispersion of investigation cases of internal corruption, the human resources available in the **DCIAP** have been faced with increasing demands.

Technical aid to investigation has been provided by inspectors from the Tax Authority, whose work is of extreme importance in the analysis of bank data required in the context of criminal investigations, and

criminal investigators from the criminal Police.

As regards specialized expertise within the Criminal Police, the following Units deserve to be mentioned:

- The Telecommunications and IT Unit (UT), which supports the collection of evidence in the context of criminal investigations involving telecommunications and computer equipment, both on the ground (searches) and in the further analysis of the contents of the seized equipment;
- The Financial and Accounting Expertise Unit (UPFC), which supports the collection of documentary evidence, both on the ground (searches) and in the further analysis of the evidence collected, drafting expertise reports that accompany the inquests for appreciation as evidence during the trial phase;
- The Forensic Science Laboratory (LPC), which provides assistance in the collection of evidence, including handwritten documents and document forgery, both on the ground (searches) and in the further analysis of the data collected, drafting expertise reports that accompany the inquests for appreciation as evidence during the trial phase;
- The National Anti-Corruption Unit (UNCC) of the Criminal Police has admitted 25 new inspectors in January 2015, thus reinforcing its specialized staff.

Portugal thus considers that the recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

6. Regarding jurisdiction over foreign bribery cases, the Working Group recommends that Portugal:

(a) Clarify whether jurisdiction to prosecute Portuguese nationals for extraterritorial foreign bribery is governed by Article 3 of Law 20/2008 or Article 5 of the Criminal Code (Convention Article 4(2));

Action taken as of the date of the follow-up report to implement this recommendation:

Please refer to the previous comments on *lex specialis vis a vis legi generali*.

As previously stated, Law nr 20/2008 (which expressly regulates foreign bribery), is *lex specialis* in relation to the provisions of the Criminal Code on corruption which, by the way, does not include any provision on foreign bribery.

Article 3 (a) of Law nr 20/2008 prevails over Article 5 of the Criminal code this guaranteeing the application of the extraterritoriality principle.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

reasons why no action will be taken:

Text of recommendation:

6. Regarding jurisdiction over foreign bribery cases, the Working Group recommends that Portugal:

(b) Take steps to ensure that its law enforcement authorities consider the exercise of nationality jurisdiction to prosecute foreign bribery wherever appropriate (Convention Article 4(2));

Action taken as of the date of the follow-up report to implement this recommendation:

In accordance with the available jurisprudence and as laid down by law, proceeds related to foreign bribery may be seized if they are found in Portugal.

Portuguese authorities have jurisdiction to prosecute foreign bribery cases involving companies with Portuguese head office and Portuguese nationals, including where the acts have been committed abroad and even where they do not involve other national citizens or companies.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

6. Regarding jurisdiction over foreign bribery cases, the Working Group recommends that Portugal:

(c) Thoroughly explore territorial links to Portugal in foreign bribery cases, so as to rely on territorial jurisdiction to prosecute wherever possible (Convention Article 4(1)).

Action taken as of the date of the follow-up report to implement this recommendation:

This principle has been applied by the Portuguese authorities, claiming jurisdiction to prosecute the perpetrators of the crime of money laundering in particular, even when no Portuguese citizens are involved and provided that the funds have circulated through a national bank – Case #15 (Zimbabwe), referred to in the present document.

That principle may also, where appropriate, be applied to the investigation of alleged cases of foreign bribery.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

7. With regards to enforcement data, the Working Group recommends that Portugal maintain detailed statistics on (i) investigations, prosecutions and sanctions for false accounting and money laundering, including data on whether foreign bribery is the predicate offence, (ii) the application of confiscation in foreign bribery cases, (iii) pre-trial seizures, including on the offence involved and the amount seized, (iv) cases in which the statute of limitations had expired (Convention Articles 3(3), 6, 7, 8).

Action taken as of the date of the follow-up report to implement this recommendation:

The DCIAP keeps track of the cases under investigation and of the seizures that were made.

The Ministry of Justice also publishes the official “Statistics of Justice” every year, which record all activity on investigations, indictments, convictions as well as on seized and lost assets. These statistics are available to the public and can be consulted at:

http://www.siej.dgpj.mj.pt/webeis/index.jsp?username=Publico&pgmWindowName=pgmWindow_633918141195530467

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

8. With regards to money laundering, the Working Group recommends that Portugal:

(a) Take appropriate measures to enforce the money laundering offence, particularly where foreign bribery is the predicate offence (Convention Article 7);

Action taken as of the date of the follow-up report to implement this recommendation:

Alleged cases of money laundering are duly investigated and enforced, including where foreign bribery is the predicate offence, after the analysis of suspicious transaction reports.

The reports on suspicious transactions (STRs) are the main source of information for the opening of investigations related to alleged foreign bribery.

At least 4 cases under investigation are originated from information coming from the prevention of money laundering structures in place.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

reasons why no action will be taken:

Text of recommendation:

8. With regards to money laundering, the Working Group recommends that Portugal:

(b) Provide guidelines and typologies to reporting entities that specifically refer to foreign bribery, as well as additional training to the FIU, law enforcement authorities, reporting entities and their supervisory and oversight authorities on adequately detecting, preventing and prosecuting money laundering by politically exposed persons (Convention Article 7; 2009 Recommendation III.i);

Action taken as of the date of the follow-up report to implement this recommendation:

Under the national law on prevention of money laundering and terrorist financing, the reports of suspicious transactions (STRs) are made directly and simultaneously to the FIU and to DCIAP.

Whenever a STR is received the DCIAP has the authority to request – and has requested - additional information to the financial and non-financial entities. It has also been setting parameters in cases of suspicious circuits of funds relating to foreign bribery.

Thus, either through special attention given to accounts referred to PEPs, or through the use of funds circuits through instrumental companies by domestic and foreign companies, with recognized activity in international trade, entities with the obligation to report suspicious transactions are on alert concerning the identification of suspicious situations.

The overall number of suspicious reports received on money laundering prevention has been growing, already exceeding 3000 a year; it is estimated that about 5% involve transactions that arouse suspicions of corruption in general.

The FIU regularly participates in training activities under the FIU.Net Platform of the European Union, the Egmont Group and the annual exercises conducted by the FATF.

In addition, as noted in the answer given to recommendation 8 (b) FIU provides training to reporting entities and their supervisory and oversight authorities on adequately detecting, preventing and prosecuting money laundering including by politically exposed persons (PEPs).

Also, the Criminal Police School provides specialized training to criminal investigators in the areas of corruption, prevention of money laundering and terrorist financing, with particular focus on the detection of PEPs.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

8. With regards to money laundering, the Working Group recommends that Portugal:

(c) Ensure better feedback by the FIU to reporting institutions regarding STRs (Convention Article 7; 2009 Recommendation III.i).

Action taken as of the date of the follow-up report to implement this recommendation:

Under Article 43 of Law nr 25/2008 of 5 June (AML/CFT Law), FIU has the responsibility to give timely feedback to the reporting entities and the supervision and inspection authorities on the progress and the outcomes of suspicious reports on money laundering or terrorist financing.

Since 2005 the FIU, even before the existence of a legal obligation, gives feedback to the reporting entities. The updating of information takes place quarterly and is provided through a standard form that includes information with detailed progress on a case-by-case basis. The following information is provided:

- a) "Under analysis" when the information is being analyzed by FIU in order to confirm or disconfirm the suspicions,
- b) "Completed" when the analysis is concluded. It is a purely administrative status, given that the information can be retrieved at any time and used in further analysis when confronted with further information received;
- c) "Referral to investigation" when the analysis by FIU confirmed the suspicion on the communication received. In this case information on the outcome shall be provided (DCIAP / Unit of the Criminal Police responsible for the investigation / Other OPC - for example the Tax Authority).

In addition to this feedback all reporting entities receive the FIU's annual report providing information, by sector (financial and non-financial), of statistical data on:

- a) Number of reports on suspicious transaction received;
- b) Number of suspicious communications confirmed;
- c) Offences underlying money laundering operations detected;
- d) Number and value of suspension proposals / freezing of bank accounts made to the Judicial Authorities arising from the analysis conducted;
- e) Data relating to international and national cooperation verified;
- f) Training / awareness actions held;
- g) Analysis of case studies - laundering typologies and / or terrorist financing.

The FIU holds biannual meetings on issues related to money laundering and terrorist financing, with the entities subject to the duties of AML/CFT prevention.

In the period under review (June 2013-2014) the FIU conducted in collaboration with the Criminal Police School the "II Meeting with the non-financial sector", which brought together about 170 participants from various professions covered by this sector. The meeting aimed to disseminate good practices and mutual cooperation between these entities, supervisory / inspection entities and the FIU. It also aimed to prepare the timely and effective implementation of the standards adopted at national and international level for the prevention of money laundering and terrorist financing and predicate offences in the non-financial sector, particularly in terms of the new FATF recommendations.

In addition and whenever requested, the FIU participates in training activities for entities with prevention duties under Law nr 25/2008 of 5 June. These training activities are conducted by FIU experts and held in collaboration and coordination with the Criminal Police School. During the years of 2013 and 2014 about

110 and 135 hours of training were given, respectively.

Feed-back is also given by the FIU through the participation in the national risk analysis working group which brings together all the supervision and inspection entities and representatives of the reporting entities set out in the Law nr 25/2008, as well as representatives of the Public Prosecution Service and Ministries, as the Ministry of Finance and the Ministry of Justice.

Finally, feed-back is also given through the daily contact maintained between the FIU and the reporting entities.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

9. With regards to accounting and auditing, corporate compliance, internal control and ethics, the Working Group recommends that Portugal:

(a) Train external auditors on how to detect foreign bribery, and further raise awareness among external auditors of their key role in detecting foreign bribery and their duty to report suspected foreign bribery (2009 Recommendation III.i, X.B);

Action taken as of the date of the follow-up report to implement this recommendation:

Since the evaluation of Portugal – Phase 3, in June 2013, OROC and OTOC promoted training for external auditors on how to detect foreign bribery, and raised awareness to their key role in detecting foreign bribery and their duty to report suspicions of foreign bribery.

OTOC conducted the following action:

- Communication to the Portuguese Public Prosecution of all complaints presented by the accountants that might represent a public crime, regardless of the nature of the crime;
- Legal advise to accountants about money laundering/terrorism financing legal framework, predicate offences and which actions to adopt in case of evidences, signs or suspicions;
- During trainings organized by OTOC, accountants are informed of their professional duties in the report of suspicious operations under Law nr 25/2008, of 5 June, and Law nr 20/2008, of 21 April.
- Publication of several opinion articles and information about money laundering and corruption in OTOC official magazine and in national daily newspapers such as “Jornal de Negócios” and “Vida Económica”;
- Dissemination in the professional community of Law nr 25/2008, of 5 June, and Law nr 20/2008, of 21 April, in OTOC website, such as SITOC (online working tool with all the accounting sector relevant laws);
- Implementation, organization and execution of verification and control systems to all accountants’ services and professional actions, in order to prevent crime.

Moreover, in addition to the training sessions regarding the prevention of crimes in the framework of their

activity, the Preparation Course for New auditors organized by OTOC includes a thematic cluster devoted to the issue of foreign bribery. Also, this subject has been included in a few annual educational courses and events related to fraud and money laundering.

Regarding the duty to report suspected foreign bribery, **OROC** has raised awareness to its members to the legislation in force regarding this issue and its relations with the fraud and money laundering areas.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

9. With regards to accounting and auditing, corporate compliance, internal control and ethics, the Working Group recommends that Portugal:

(b) Make greater efforts to encourage Portuguese companies (particularly SMEs) to adopt internal control, ethics and compliance measures that explicitly address foreign bribery, and ensure that these efforts involve all government bodies that interact with Portuguese companies, including AICEP, Ministry of Economy and Employment, IAPMEI, DGAE and the CMVM (2009 Recommendation X.C).

Action taken as of the date of the follow-up report to implement this recommendation:

Action undertaken by **OTOC** as of the date of the follow-up report to implement this recommendation:

- Trainings and awareness raising sessions for accountants aimed at providing the necessary tools and education that enable these professionals to inform and implement internal control measures next to their clients regarding money laundering, foreign bribery and cooperation with the relevant authorities as regards prevention and prosecution in these fields,
- Bearing in mind the fact that under Portuguese law accountants may be held responsible for illegal actions committed by their clients, OTOC advises professionals to create personal and specific files, regarding their client's needs, type of entity and work, internal control mechanisms able to detect foreign bribery and money laundering, among other crimes.

The OECD Convention on Combating Bribery of Foreign Public Officials in International Commercial Transactions is available in the **AICEP** website.

Action undertaken by AICEP as of the date of the follow-up report to implement this recommendation:

At the moment, a text on this subject is being prepared for approval by the AICEP Board of Directors. It will be sent to Portuguese companies by the Large Companies (GE's) and Small and Medium Businesses (SME's) Operational Areas as well as by the Entrepreneurial Associations Area. It will also be disseminated during AICEP's seminars for businesses which focus on approaching external markets. This text covers internal controls, ethics and compliance with the prevention of corruption as referred to in the OECD Council Recommendations for Combating Bribery of Foreign Public Officials in International Business Transactions of 26 November 2009.

A brochure from the Ministry of Justice on the OECD Anti-Bribery Convention and Recommendations of

the OECD Council will be attached.

Action undertaken by **IAPMEI** as of the date of the follow-up report to implement this recommendation:

IAPMEI has worked with departments that deal directly with the companies in order to ensure that all employees are aware of the scope and content of the OECD Convention and the available procedures to report any allegations against Portuguese companies.

Furthermore, IAPMEI also works to inform Portuguese companies about these matters and, in particular, to compel them to avoid all behaviours that could constitute or be interpreted as acts of corruption and to alert them to the precautions they should adopt not to be unwillingly and/or unknowingly involved into such activities by third parties, especially when participating in consortiums and when dealing with specific markets.

In particular, the Direction of Enterprise Support of IAPMEI conducted an awareness raising action of the companies by sending informational alerts about foreign bribery having as recipients SMEs.

Information about the OECD Convention has been made available on the intranet of the Agency, which is accessible to all departments. IAPMEI's public website also has the link to the Business Anti-Corruption Website.

Action undertaken by OROC as of the date of the follow-up report to implement this recommendation:

As auditors working in Portuguese companies, the members of **OROC** have duties related to the knowledge of the internal control systems of their clients and the duty to communicate significant deficiencies in the internal control systems to the management board and to those charged with management functions. Depending on the type, dimension and activity of an audit client, foreign bribery can be an area with audit risks that the auditor has to address in the audit work plan he establishes for a particular company, namely companies operating in international business.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

10. With regards to tax-related measures, the Working Group recommends that Portugal:

(a) Incorporate the essential elements of the OECD Bribery Awareness Handbook into the standard Manual for Tax Auditing, regularly update the Manual to reflect latest trends on how the crime of foreign bribery is committed, and provide guidelines and training with the Handbook to existing and newly recruited tax examiners (2009 Recommendation III.i, III.iii, VIII.i; 2009 Tax Recommendation II);

Action taken as of the date of the follow-up report to implement this recommendation:

The updating of the Manual for Tax Auditing is almost finished. This will include the fundamental elements on corruption phenomena contained in the OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors. This new version of the Manual for Tax Auditing will be handed over to the 1.000 tax inspectors recently recruited (January 2015), in advance of the training sessions scheduled for June and July 2015.

The training sessions will include two specific modules addressing corruption, specially focusing on International Businesses/Commerce.

The module on Corruption and Money Laundering is based on the OECD Money Laundering Awareness Handbook for Tax Examiners and Tax Auditors as well as on the OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors.

The module on Tax Auditing also comprises lectures on corruption including discussion of case studies.

These modules will reinforce the tax inspector's role and ability, at this initial stage, in detecting and preventing those types of crime.

Regarding the training of experienced Tax Inspectors, whenever the subject is somehow related with the corruption phenomena, the later will be addressed in order to strengthen the competencies of the participants. For instance, in the context of a course regarding the derogation of bank secrecy, the topic of corruption was included in order to meet OECD recommendations.

In order to support trainers who are in charge of such areas, the Training Department has created a web community of practice (within the *Centro de Aprendizagem Virtual*, available on the Tax and Customs Authority Intranet) where they can find all the OECD and other documents related with the topic.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

10. With regards to tax-related measures, the Working Group recommends that Portugal:

(b) Take all appropriate measures to discourage the use of undocumented expenses, and ensure that tax examiners routinely assess whether undocumented expenses are hidden bribes (2009 Recommendation III.iii, VIII.i; 2009 Tax Recommendation II);

Action taken as of the date of the follow-up report to implement this recommendation:

According to the Corporate Income Tax Code (*Código do Imposto sobre o Rendimento das Pessoas Coletivas – IRC*) undocumented expenses (Article 23 (1) (b)), as well as illicit expenses, are not tax deductible. Thus, as has already been explained in previous meetings, the use of undocumented expenses is not allowed.

The Tax Audit software - Integrated Information System for Tax Auditing (SII IT – Sistema Integrado de Informação da Inspeção Tributária) contains a Methodology Check List. Contacts have already been established with the IT Department in order to include in the Methodology Check List specific procedures regarding this recommendation. This step will be based on the updated version of the Manual for Tax Auditing

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the

measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

10. With regards to tax-related measures, the Working Group recommends that Portugal:

(c) Promptly ratify the Convention on Mutual Administrative Assistance in Tax Matters, and consider systematically including the language of Article 26 of the OECD Model Tax Convention (on the use of information for non-tax purposes) in its future bilateral tax treaties with countries that are not signatories of the Convention on Mutual Administrative Assistance in Tax Matters (2009 Recommendation VIII.i; 2009 Tax Recommendation I.iii).

Action taken as of the date of the follow-up report to implement this recommendation:

Portugal has signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) in 27 May 2010. Portugal deposited its instrument of ratification in 17 November 2014. The Multilateral Convention entered into force to Portugal in the 1st of March 2015.

Portugal has adopted in its Draft for bilateral Conventions the language of Article 26 of the OECD Model Tax Convention on the use of information for non-tax purposes. Recent Tax Conventions concluded with Norway, Cyprus, Switzerland (Protocol), Peru, Senegal and Ivory Coast already include this language.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

11. With regards to awareness-raising and reporting, the Working Group recommends that Portugal:

(a) Take steps to raise awareness in the private sector and media with the involvement of all relevant ministries and bodies (2009 Recommendation III.i);

Action taken as of the date of the follow-up report to implement this recommendation:

Despite severe budgetary constraints, Portugal has, with the few available resources, in particular, through the Justice, Economy and Foreign Affairs Ministries, directly or through the services under their remit, pursued since 2013 several activities and initiatives related to awareness-raising in the private sector and media.

Hence, the Portuguese version of the OECD booklet containing the Convention and the several Recommendations, as well as the Law nr 20/2008, and a copy of the assessment report, a link to the Phase 3 report and the press release were sent to several Portuguese corporate associations and to the main national newspapers.

All the Ministries competent in this area, as well as the services under their remit, provide information on

the Convention and on applicable internal legislation, as well as the Criminal Code provisions, in particular, the sanctions applicable to legal persons in their websites.

Several entities (Institutes and Directorates General) involved in the assessment have also made efforts regarding the training of personnel and raising awareness and have tried to convey to their stakeholders information on the OECD Convention and on national legislation, calling their attention to the need to prevent foreign bribery.

It is the case, for instance, of AICEP, of ESPAP, of IAPMEI, of SOFID or of COSEC.

The **DCIAP** held working meetings with private sector companies raising awareness to the criminalization of acts of foreign bribery; as a result, legal departments and lawyers from large companies are currently strongly aware of the unlawfulness of these acts and of their responsibilities as concerns prevention and reporting to the authorities. In spite of this effort, the number of reported cases, including reports made by companies that have been excluded from competitions, has not increased.

OTOC has organized debates and clarification sessions with all the accountants. As a result, OTOC considers accountants to be more aware of these problems and equipped with the necessary skills and tools to prevent and report illegal actions connected with the foreign bribery offence.

AICEP directs its awareness raising efforts to the private sector (Portuguese companies, their associations and other AICEP stakeholders) endeavoring to alert them to the necessity of a rigorous compliance with the OECD Anti-Bribery Convention and the OECD Recommendation on Further Combating Bribery of Foreign Public Officials in International Business Transactions. Portuguese companies have received extensive documentation on the OECD Anti-Bribery Convention sent by AICEP during the years of 2008 to 2011. In addition, the Associations' Operational Area of AICEP has invited Portuguese Entrepreneurial and Professional Associations to disseminate the OECD Anti-bribery Convention and the OECD Recommendation on Combating the Bribery through their sites and among their associated members.

ESPAP, besides disclosing on the Intranet and on the Internet the booklet on the OECD Convention, has sent this publication, in an electronic format, to all those that are part of this institution's framework agreements, drawing the attention to the fact that, on the terms set forth in the Code of Public Procurement, the participation in public tenders of companies convicted for corruption crimes is forbidden.

COSEC has actively promoted awareness on corruption in international business transactions to its personnel and to its "client" companies, through periodic training activities; it also explains to every new client the rules in force in the scope of the activities it develops on behalf of the Portuguese State, including the rules on foreign bribery.

COSEC's website displays information on the OECD Convention and on the 2006 Recommendation related to export credits. In addition, the insurance forms and proposals contain an anticorruption declaration that must be compulsory signed by the client, where attention is drawn to the consequences of corruption in the insurance contract.

SOFID requires its client companies' transparency in their management structures, management procedures and controls as well as ethical practices and integrity in the business they are involved. To that extent, it has tried to bring awareness to the companies that want to expand their business abroad, in emerging or developing countries, to the prevention of foreign bribery. Moreover, SOFID elaborated an update of the minutes of the contracts in order to include a specific clause against corruption in international business transactions as a contractual condition, entailing the cancellation of the contract where acts of corruption are manifestly identified and confirmed.

Portugal maintains its commitment in bringing awareness to all relevant national actors, including to the press and, in particular, to the companies that have expanded or want to expand their business abroad,

regardless of their dimension.

In addition to the work that is being developed by the Ministries and the services under their remit that more directly deal with the companies, the **Ministry of Justice** was involved in the preparation of a Recommendation on corruption of foreign public officials, which was approved at the VI Conference of Ministers of Justice of the Ibero-American Countries (COMJIB), in March 2013, in Chile.

Part of a strategy designed to call the attention to the prevention in matters related to corruption of foreign public officials in other countries with which it has economic relations, Portugal, through the Ministry of Justice, has presented a Declaration on corruption of foreign public officials and the so-called Action Plan of Lisbon that were approved during the XIII Conference of Ministers of the Portuguese Speaking Countries, held in Lisbon in 29-30 May 2013 and are currently carried out.

The Action Plan refers, among other awareness raising measures, to the objective of approximation of national legislations in order to improve and facilitate international cooperation in criminal matters and to the criminalization of conducts related to active corruption of foreign public officials in compliance with the provisions set forth in Article 16 of the UN Convention against Corruption, already ratified by eight countries of the Conference of Ministers of the Portuguese Speaking Countries, of which Brazil and Portugal are members; the OECD Convention on this matter was also taken as reference.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

11. With regards to awareness-raising and reporting, the Working Group recommends that Portugal:

(b) Take steps to ensure that (i) Portugal provide information and training as appropriate to its public officials posted abroad on implementing the Convention, (ii) MFA and AICEP proactively reach out to Portuguese companies, and (iii) MFA take further steps to ensure that its overseas missions report all foreign bribery allegations involving Portuguese companies or individuals to Portuguese law enforcement authorities (2009 Recommendation IX.i, IX.ii, Annex I);

Action taken as of the date of the follow-up report to implement this recommendation:

Supplementing the Circular Letter 211/2012, the **Ministry of Foreign Affairs** (MFA) has addressed a communication to all diplomatic missions (21/03/2014) where it asked, in the context of the obligations prescribed under the OECD Convention, for periodic and regular information on irregular/illicit/reproachable practices of companies and natural persons, in particular:

- News from the local press;
- Information requests from local authorities;
- Business reports or economic activities reports making reference to suspects of acts committed by Portuguese nationals or Portuguese legal persons, that implied the attribution of benefits to employees or foreign entities; reference to sponsorship or any form of support provided by Portuguese entities or Portuguese nationals to foreign officials and politicians, as well as their families and other persons and entities involved; allusions to aggressive commercial practices,

developed by individuals and national employees and responsible foreign political entities, as well as their family members and other persons and entities involved; allusions to aggressive commercial practices developed by national persons or entities in foreign markets, namely the existence of complaints from local competitors or breach of good business conduct.

Insinuations on the association of interests between national entities or natural persons and third persons in relation to whom there are suspicions falling within the scope of the aforementioned facts; references to any fraudulent activities undertaken by individuals and national entities taking place on account of the breach of duties or violation of the legal framework of foreign countries.

The documents should be transmitted as received in its original form (through the local press), without any amendment except the note translation, if the original text is not in English, French or Spanish.

The circular also refers to the need to disclose the OECD Convention with the targeted national recipients, by the way deemed most appropriate.

As a result of the dissemination of this document through the embassies and consular posts of the MFA, a number of cases were referred to the Directorate-General for External Policy ((1) Portuguese Embassy in Athens, 26/03/2014, case involving a Portuguese citizen presumably involved in a case of arms supplies. (2) Portuguese Embassy in Buenos Aires, 21/05/2014, reporting on an alleged case of money laundering through a “bank in Portugal”.; (3) Embassy of Portugal Buenos Aires, 15/04/2014 – Portuguese citizen ex-Secretary of State in the transportation sector prosecuted for illegal /illicit enrichment – News about the selling of trains related material to Argentina; Portuguese Embassy in Copenhagen, 30/04/2014).

Furthermore, the MFA has produced an internal report on the identification of possible corruption cases of Portuguese public officials on the part of Portuguese nationals or companies in the year of 2014.

Between 2009 and 2011, **AICEP** sent to its employees posted abroad a set of documents for the implementation of the Anti-Corruption Convention. Currently, the AICEP website contains the OECD Anti-Bribery Convention, as well as the AICEP Management Plan of Corruption Risks and Conflicts of Interests, the latter having been approved by the Board on March 31, 2014.

In February and April 2015, three training sessions for AICEP employees (at home and abroad) were organized to raise awareness concerning the issues related to corruption prevention in businesses. These training sessions were performed by two national experts (the first one belonged to the Corruption Prevention Council and the other one from [GestãoTransparente.org](http://GestaoTransparente.org)).

These entities are committed to preventing corruption both in the public and private sectors. We emphasize that the representative from [GestãoTransparente.org](http://GestaoTransparente.org) delved into some detail concerning the OECD Anti-Bribery Convention and the 2009 Recommendation, the UN Convention against Corruption, the UK Bribery Act (2011) and the activities of Transparency International as instruments in the prevention of corruption and the promotion of transparency in international commercial transactions. During these sessions, it has been highlighted that firms seeking to do business in foreign markets must be familiar with those international legal instruments because they prohibit corrupt payments (required or offered) to foreign public officials and political parties for the purpose of obtaining, maintaining or holding business.

AICEP regularly conducts seminars for companies on doing business in foreign markets. As a logical result of these training sessions on corruption and bribery prevention, AICEP employees are now able to proactively alert those who attend the seminars of the risks and consequences of failing to comply with the OECD Convention on Combating Bribery in International Transactions and the Council Recommendations on Combating Bribery of November 2009.

The **Directorate-General for Economic Activities** (DGAE) has taken steps towards the development of the first integrated public policy concerning Corporate Social Responsibility (CSR) in particular by

drafting a Guiding Plan on CSR which shall be specifically addressed to all businesses. DGAE has been endeavoring efforts in order to assure the participation of different governmental institutions and other relevant stakeholders from civil society (like business associations that have already been focusing on the issue) in the document's development process. This Policy's main objective is to ensure that the right signals are given to companies in order to foster their competitiveness through ethical and sustainable values. The Guiding Plan is being developed to contemplate the four main dimensions that CSR should address – social, economic, environmental and cultural – and also, through an integrated and holistic approach, a specific chapter on Business and Human Rights.

The efforts of DGAE are centered in the economic dimension, by encouraging companies to incorporate best-practices within the value chain, to increase transparency in their operations, to help tackle corruption and to enhance awareness towards bribery risks, reinforcing the notion that one should not only need to comply with legal regulations, but also be conscious of the benefits that follow to those who take a step further, by reinforcing self-regulation, by adopting codes of ethics, among other a actions.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

11. With regards to awareness-raising and reporting, the Working Group recommends that Portugal:

(c) Ensure that appropriate measures are in place to protect public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of foreign bribery from discriminatory or disciplinary action (2009 Recommendation IX.iii).

Action taken as of the date of the follow-up report to implement this recommendation:

Law nr 30/2015, of 22 of April, has modified Article 4 (1) and (3)(c) of Law nr 19/2008, of 21 of April, enlarging the protection afforded to those who report (whistleblowers) to private sector's employees.

Thus, in accordance with Article 4(1), officials from the Public Administration and State-owned companies, as well as private sector employees who report offences they become aware of in the exercise of their functions, or because of those functions, can not in any form suffer any disadvantage, including non-voluntary transfer or to be fired.

Article 4 (3)(c) states that private sector employees benefit, with the due adjustments, from the measures set forth in Law nr 93/99, of 14 of July, amended by Law nr 29/2008, of 4 of July, and by Law nr 42/2010 of 3 of September, which regulates the witnesses protection measures in criminal procedure.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

12. With regards to public advantages, the Working Group recommends that:

(a) Portugal take steps to (i) ensure that all procuring authorities verify whether participants in public procurement, including legal persons, have foreign bribery convictions, and (ii) raise awareness of Criminal Code Article 90-H among procuring authorities (Convention Article 3(4); 2009 Recommendation XI.i);

Action taken as of the date of the follow-up report to implement this recommendation:

Portugal approved in 2008 the new Code of Public Procurement – Decree-Law nr. 18/2008, of 28 January, transposing into domestic law EU Directives 2004/17/EC and 2004/18/EC, from the Council and the European Parliament, of 31 March and Directive 2005/51/EC, from the Commission of 7 of September and Directive 2005/75/EC from the Council, of 16 November.

All individuals and legal entities that have been convicted for the crimes of money laundering or corruption are forbidden to apply to public tenders.

In order to assess the capacity of tenderers (natural or legal persons) to participate in public procurements a copy of the criminal record should mandatorily be provided and is evaluated by the contractors (a criminal record data base for legal persons exists in Portugal).

Amendments to the Code of Public Procurement were adopted in July 2012 aiming at improving public contract award practices to ensure a more transparent and competitive business environment.

The amendments address, in particular, the system for awarding additional works and services, and eliminate exemptions permitting direct awards. The Court of Auditors' regulations were amended in 2012 to strengthen its auditing powers and notably its capacity to perform *ex ante* and *ex post* control of public contracts.

It should be noted that the e-procurement programme was launched in June 2003 as a centralised and high-quality platform that promotes efficiency and competition through increased transparency, as well as savings in the public procurement process. Through enhanced transparency, the use of e-procurement creates the framework for enhanced prevention and detection of irregularities affecting the procurement process, including potential corrupt practices.

The portal <http://www.ancp.gov.pt/EN/Pages/Home.aspx> offers the possibility of downloading the entire bid documentation and specifications free of charge. It also disseminates calls for tender, receives suppliers' queries and manages all information exchange online. A Contract Management Tool allows for uploading of public contracts, the monitoring of contracts concluded and e-invoicing. The Information Management System also helps collect, store and organise statistics on the procurement process.

Since 2008, after the entry into force of the Code of Public Procurement, Portugal put in place a national web portal, BASE (www.base.gov.pt) that centralises information on public contracts. The Institute of Construction and Real Estate is responsible for the management of this portal. BASE receives data from the electronic edition of the Portuguese Official Journal and from the certified electronic platforms concerning open and restricted pre-award procedures. All public contracting authorities use the reserved area of the portal to record contract data, upload the contracts and record information on their performance. From 2008 to 2011, BASE only publicised contracts relating to direct awards.

Since January 2012, and as a result of measures adopted under the Adjustment Programme, BASE advertises all contracts resulting from all types of procedures subject to the Public Procurement Code. It

also publishes information on contract performance and awareness on criminal sanctions applicable to natural and legal persons in the framework of public procurement. The publication of contracts in both BASE and in the Official Gazette is now mandatory for direct awards, increases of 15% in the price of already concluded contracts and potential penalties. Such information is recorded in the database and is accessible to the auditing authorities.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

12. With regards to public advantages, the Working Group recommends that:

(b) CICL and SOFID (i) raise awareness of foreign bribery among their staff, and their public and private sector partners, (ii) report all foreign bribery allegations involving Portuguese companies or individuals to Portuguese law enforcement authorities, and issue guidelines to staff on the reporting procedure, (iii) insert appropriate anti-corruption clauses in their contracts, and (iv) before approving support for a project, consider whether the recipient of support has a prior conviction for foreign bribery (Convention Article 3(4); 2009 Recommendation III.i, IX.ii, XI.i);

Action taken as of the date of the follow-up report to implement this recommendation:

CAMÕES (CICL) has taken the following measures to implement the above recommendation:

- The main focus has been to first raise awareness among CICL staff. For that purpose a new Code of Ethics has been prepared which states the prohibition of corruption, bribery and other offences (e.g. monetary contributions to political parties to obtain advantages in Portugal or other countries; bonus, payments, favours or gifts that might be considered as means to influence CICL staff behaviour; use of CICL private resources for private purposes, self-benefit or in benefit of others; use of information to self-benefit or in benefit of others). The Code is handed to the all Institute staff. It is also available in the CICL's website. Particularly in what concerns evaluation and audit areas, there is also a specific Code of Ethics to evaluators and auditors, aiming to avoid conflict of interests in both processes.
- Also to be mentioned is the Risk Management Plan, including the risk of Corruption and related Offenses, which raises the profile of corruption issues within CICL, as well as identifies concrete measures to avoid such kind of risk. This Plan revised and updated for implementation during the years of 2015 to 2017, contains in its annex the explanation of the various types of corruption, including foreign bribery, as well as information regarding how to report situations of corruption. Complementing all this background documentation, the provision of specific training on this subject to CICL staff and its partners is foreseen, with the technical support of the Ministry of Justice.
- All irregular practices, as well as suspicions of fraud or corruption must be reported by staff. For this purpose, an email account has been created for the use of CICL staff, its partners and general public both in Portugal and in partner countries. The report is made anonymously and all reports are investigated. Reports are reviewed by the CICL Ethic Commission and forwarded to the competent authorities. Regarding guidelines, the Risk Management Plan gives clear orientation on

how to report situations of corruption.

- All CICL contracts and agreements established with multilaterals, private sector and NGO's have a clause aiming at the prevention of fraud and corruption.
- In accordance with the Portuguese Code of Public Procurement, natural and legal persons who have been convicted for the crimes money-laundering or corruption cannot be tenderers. The proponents (individuals or entities) have to present a criminal record certificate for each public tender they apply for, in order to certify that they haven't been convicted for these crimes. As mentioned, this is applied to the entire Portuguese Public Administration and is an instrument being used by CICL. The consultation of debarment lists available by different multilaterals (particularly development banks) is being considered.

On its turn **SOFID** has also taken the following measures to implement the above recommendation:

- Raise awareness as regards foreign bribery among their staff, and their public and private sector partners. In its induction courses, SOFID conveys and stresses to all new employees the need to comply with internal practices and with legal and regulatory provisions. SOFID acts in accordance with strict ethical and moral principles based on its code of conduct, available for consultation at its institutional site.
- Report all foreign bribery allegations involving Portuguese companies or individuals to Portuguese law enforcement authorities, and issues guidelines to staff on the reporting procedure.

All SOFID employees are bound to report to internal Audit any practices or irregularities they detect which they may know or suspect in order to hinder or prevent financial or reputational damage to SOFID. Once informed of the above, and having been provided with all documentation associated with the matter, Internal Audit will evaluate and assess the situation and propose appropriate action to the Board.

- Insert appropriate anti-corruption clauses in their contracts. SOFID's Legal Department already includes specific clauses on this topic in client contracts.
- Before approving support for a project, consider whether the recipient of support has a prior conviction for foreign bribery.

SOFID declines any proposal submitted by entities identified as such or by any entities placed under any restrictions, domestically and internationally, for this or any other reason, which may tarnish its image.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

12. With regards to public advantages, the Working Group recommends that:

(c) COSEC (i) continue to proactively raise awareness of foreign bribery among its staff and clients, (ii) train its staff on how to detect foreign bribery by conducting appropriate due diligence, and strengthen its due diligence for agent fees and commissions, and (iii) adopt a clear, written policy on reporting foreign bribery allegations to law enforcement, and issue guidelines to staff on this issue (2009 Recommendation

III.i, IX.i, XII.ii; 2006 Export Credit Recommendation).

Action taken as of the date of the follow-up report to implement this recommendation:

COSEC maintains an awareness raising policy aimed at its clients and employees, regarding the OECD anti-corruption Convention.

COSEC's employees are the object of annual training sessions, either at their headquarters in Lisbon or at the regional delegation in Porto, on the subjects of corruption, fraud and money laundering. The referred training sessions intend to familiarize its employees with the legal concepts of corruption, fraud and money laundering, and to provide adequate information about the procedures to adopt concerning operation's analysis and scrutiny, notably when commission fees are due to agents.

On what concerns new clients, COSEC's policy is to systematically inform on the regulatory framework of the activities it develops on behalf of the Portuguese State, including those concerning the fight against corruption and its legal effects on the insurance policies.

COSEC continues to publicly disclose on its website the OECD recommendation text and the institution's anti-corruption policy adopted through the link:

http://www.cosec.pt/downloads/file102_pt.pdf and http://www.cosec.pt/downloads/file23_pt.pdf

Concerning the reporting of cases to the law enforcement authorities, COSEC revised, in 2014, its internal guidelines on the subject of fraud and corruption, including when illicit activities are detected by its employees. COSEC clarified the procedures to adopt by employees where indications of corruption or bribery have been detected as requested by the recommendation.

Portugal thus considers that this recommendation is implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

PART II: FOLLOW-UP BY THE WORKING GROUP

Text of issue for follow-up:

13. The Working Group will follow up the issues below as jurisprudence and practice develop:

(a) Application of the foreign bribery offence, particularly the elements of the offence that have raised issues identified in this report (Convention Article 1; 2009 Recommendation III.ii and V);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The issues raised regarding Portugal's evaluation are known to the Public Prosecutors who conduct investigations, in what inquiries are concerned, given, in particular, that there is an instruction to centralize the investigations and information at the level of the DCIAP.

Text of issue for follow-up:

13. The Working Group will follow up the issues below as jurisprudence and practice develop:

(b) Application of Article 11 of the Criminal Code, particularly the liability of legal persons for management's breach of duties of surveillance and control, and the terms "in the legal person's name" and "collective interest" (Convention Article 2, 2009 Recommendation Annex I.B);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

As referred to above, a Portuguese private company has already been indicted by Portuguese courts, during 2015, for the crime foreseen in Article 7 of Law nr 20/2008.

The liability of legal persons in what this crime is concerned follows the same criteria as for other types of criminality, such as tax criminality, where the liability of legal persons has been applied in a more frequent manner.

It should be noted that the existence of prevention plans against corruption does not exclude the liability of a legal person. In fact, an effective vigilance and application of the prevention plans is required. Thus, the occurrence of corruption acts is considered as a failure in the implementation of those plans to be effective and the legal person should, therefore, be held liable.

The legal person might even be considered liable in case of not being able to prove who specifically committed the offence on its behalf.

Text of issue for follow-up:

13. The Working Group will follow up the issues below as jurisprudence and practice develop:

(c) Sanctions imposed against natural and legal persons for foreign bribery, especially in light of the system of converting certain prison sentences into fines (Convention Article 3(1));

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Please see the answer provided to Recommendation 4 (a).

Text of issue for follow-up:

13. The Working Group will follow up the issues below as jurisprudence and practice develop:

(d) Investigations and prosecutions of foreign bribery allegations involving senior foreign public officials and/or major Portuguese companies (Convention Article 5, Commentary 27; 2009 Recommendation Annex I.D);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

There are pending investigations against major national companies, some of which have public participation. The Criminal Code, in its Article 11 establishes the criminal liability of legal persons; and it does not exempt the agent who acted on behalf of a legal person.

Text of issue for follow-up:

13. The Working Group will follow up the issues below as jurisprudence and practice develop:
(e) Application of the statute of limitations in foreign bribery cases (Convention Article 6);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Regarding the statute of limitation, Law nr 30/2015, of 22 of April, introduced amendments to Article 11 of the Criminal Code. The statute of limitation for foreign bribery crime, foreseen in Article 7 of Law 20/2008, of the 21st of April is now of 15 years.

Text of issue for follow-up:

13. The Working Group will follow up the issues below as jurisprudence and practice develop:
(f) Pre-trial seizure in foreign bribery cases (Convention Article 3(3));

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

It has been a constant practice the application of blocking measures/prohibition of bank account's transfers or restraint seizures on bank accounts in which financial flows linked to all forms of corruption are detected.

These measures have been implemented in at least two cases associated with international corruption practices in 2014.

There are still cases where blocking measures are applied to accounts detected abroad, through international judicial cooperation.

Text of issue for follow-up:

13. The Working Group will follow up the issues below as jurisprudence and practice develop:
(g) Enforcement of the non-tax deductibility of foreign bribes, particularly whether Portuguese courts promptly informs tax authorities of convictions related to foreign bribery and whether tax authorities

examine the tax returns of taxpayers convicted of foreign bribery; and the reporting of foreign bribery cases by Portuguese tax officials (2009 Recommendation VIII.i);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Regarding this issue, with the exception of one case reported by one department of the Tax and Customs Authority there are no other developments on case law, legislative, administrative, doctrinal or other relevant developments.

The reported case involved payments made by a company to inspectors of a municipality. So far the AT doesn't have any report sent by the courts regarding a decision on convictions related to foreign bribery convictions.

Text of issue for follow-up:

13. The Working Group will follow up the issues below as jurisprudence and practice develop:

(h) Provision of MLA in foreign bribery-related civil or administrative proceedings against a legal person to a foreign state whose legal system does not allow criminal liability of legal persons (Convention Article 9(1));

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

No case law, legislative, administrative, doctrinal or other relevant developments regarding this issue since the adoption of the report.

Portugal is able to provide MLA in foreign bribery-related civil or administrative proceedings against a legal person to a foreign State whose legal system doesn't allow for criminal liability of legal persons.

Law nr 144/99, of 31 of August, on international judicial co-operation in criminal matters, provides for its application subsidiary to co-operation in matters pertaining to offences of a criminal nature, during the stage of the procedure that is conducted before an administrative authority, and to offences of a regulatory/administrative nature that give rise to proceedings that are subject to review before a court of law.

Text of issue for follow-up:

13. The Working Group will follow up the issues below as jurisprudence and practice develop:

(i) Application of Article 32 of Law 144/1999 in foreign bribery cases (Convention Article 10).

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant

statistics as appropriate:

Article 32 of Law nr 144/99, of 31 August, regulates the cases in which extradition is excluded.

No cases of refusal of extradition related with Portuguese citizens (active extradition) or with foreign citizens (passive extradition) are known.

PART III. FOREIGN BRIBERY INVESTIGATIONS AND PROSECUTIONS

a) Cases Referred to in the Phase 3 Report

Case #5 – Real Estate (Macau) Case

Status of investigation/prosecution

The investigation carried out in Portugal due to money laundering suspicious was filed. Macau's authorities claimed complete jurisdiction on the corruption and money laundering cases. As far as it is known, the acts for which C was convicted in Macau constitute a crime of internal corruption in that territory; no international dimension to the imputed facts is recognized.

There is no pending arrest warrant for C at INTERPOL.

C has Portuguese nationality and the business he develops in Portugal in the area of real estate intermediation is subject to money laundering prevention rules.

Case #9 - Public Works (Malawi) Case

Status of investigation/prosecution

Payments of a suspicious nature, made through foreign bank accounts were identified. Those banking operations led to the issuance of an international judicial cooperation (MLA) request to the authorities from Malawi.

Case #10 – Parliamentarian (Brazil) No. 2 Case

Status of investigation/prosecution

An inquiry was open by the Portuguese authorities, but the investigative procedures taken so far did not confirm the payments which had been denounced to the Brazilian authorities.

The investigation is still ongoing in Portugal and an international judicial cooperation (MLA) request was sent to the Brazilian authorities, to obtain additional information.

The investigations opened in Portugal had its origin in a communication made by the Brazilian authorities in the context of international cooperation framework.

Case #11 - Angola / Guinea Case

Status of investigation/prosecution

Diligences in order to identify the origin of the funds transferred to Guinea are still ongoing. According to the information provided, the case refers to a Guinean former leader forced to step aside as a consequence of a coup d'état.

Case #12 - Real Estate (Angola) Case

Status of investigation/prosecution

An investigation involving a former director of a public entity from Angola who invested in the real estate sector as front for third agents is still ongoing.

His relation/association with Portuguese private corporations that own enterprises in Angola, through which they have gain construction work contracts in that country, is under investigation.

Case #13 – Supermarket (Angola) Case

Status of investigation/prosecution

The investigation now extends to other businesses in the construction field connected with public entities in Angola.

The Portuguese agent suspected of controlling the referred entities has already acquired the legal status of suspect (“arguido”).

Funds in Switzerland were frozen and there is a pending rogatory letter sent to Austria.

Case #14 - Aircraft Service (Angola) Case

Status of investigation/prosecution

The intermediary, responsible for conceiving the criminal scheme, as well as the Portuguese entity’s responsible for implementing it, by using false invoicing, have already been accused.

A rogatory letter sent to Switzerland is a pending.

Case #15 - Farm Equipment and Aircraft (Zimbabwe) Case

Status of investigation/prosecution

In Portugal the crime under investigation is related to money laundering.

A second cooperation request made to the South-African authorities remains to be answered. This delay in answering the rogatory letter causes inconvenience to the Portuguese authorities' in what concerns the final results of the process.

South-African authorities opened their own inquiry, based on the fact that the business concerns South-African companies and public entities from Zimbabwe.

b) New Cases after the Adoption of the Phase 3 Report

C (Macau) case

Status of investigation/prosecution

The mentioned companies did not appear, for now, as the source of funds in Portugal, so there are no grounds to open an inquiry. The prevention procedure regarding money laundering can be used to verify that funds arise from this source.

Facilitation of negotiations (African countries) case

Status of investigation/prosecution

The investigation was initiated on the basis of a rogatory letter received from Switzerland. Both States have established procedures aiming at identifying advantages that might have been granted to African political agents, through a Portuguese citizen, for the concession of construction works contracts in African countries.

Banking details on payments done through the Portuguese financial system are being collected. This information regards payments done by foreign enterprises who have been awarded construction contracts in African countries, to officials from public entities in the referred countries.

Ferrostaal (South Africa) case

Status of investigation/prosecution

There are no pending active investigations, nor known any connections to Portugal.

Payment of undue fees (Nigeria)

Status of investigation/prosecution

An inquiry for money laundering, based on undue payments received by a former Nigerian politician for the award of oil exploring licenses, was opened in Portugal.

Payments to win the supply of services (Angola)

Status of investigation/prosecution

The case is being investigated by the Criminal Police.

This case concerns payments made by a Portuguese intermediary for the award of services in the public lighting area in Angola, where such services were then subcontracted to a national company.

Payments have been made to those responsible for a public company of Angola, which financially supported the hiring of services.

Trenes (Argentina)

Status of investigation/prosecution

An inquiry based on a cooperation request made by the Argentinean authorities was opened and is related with the supply of locomotives to Argentina and the hypothesis of undue payments.

The question refers to the disconformity between the price paid and the quality of the equipment that was old and degraded.

Ongoing procedures are taking place in in order to verifying the payments destination and the quality of the sold equipment.

Wire Company (Angola, Thailand and India) case

Status of investigation/prosecution

There are no pending active investigations, nor known any connections to Portugal.