

**Portugal: Report on the Observance of Standards and Codes—
FATF Recommendations for Anti-Money Laundering
and Combating the Financing of Terrorism**

This Report on the Observance of Standards and Codes on the FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism for Portugal was prepared by the Financial Action Task Force on Money Laundering (FATF), using the assessment methodology adopted by the FATF in February 2004 and endorsed by the Executive Board of the IMF in March 2004. The views expressed in this document, as well as in the full assessment report, are those of the FATF and do not necessarily reflect the views of the Government of Portugal or the Executive Board of the IMF.

A copy of the full assessment report can be found on the website of the FATF at <http://www.FATF-GAFL.ORG>.



Financial Action Task Force

Groupe d'action financière

PORTUGAL

**Report on Observance of Standards and Codes
FATF Recommendations for Anti-Money Laundering
and Combating the Financing of Terrorism**

27 April 2007

REPORT ON OBSERVANCE OF STANDARDS AND CODES
FATF RECOMMENDATIONS FOR ANTI-MONEY LAUNDERING
AND COMBATING THE FINANCING OF TERRORISM

PORTUGAL

Introduction

1. This Report on the Observance of Standards and Codes for the FATF 40 + 9 Recommendations was prepared by the Financial Action Task Force. The report provides a summary of the AML/CFT measures in place in Portugal, the level of compliance with the FATF 40+9 Recommendations, and contains recommendations on how the AML/CFT system could be strengthened. The assessment is based on the information available at the time it was completed on March 2006 and was produced using the 2004 Assessment Methodology. The views expressed in this document have been agreed by the FATF and Portugal, but do not necessarily reflect the views of the Boards of the IMF or World Bank.

Key Findings

2. The Portuguese legal framework for combating money laundering and terrorist financing is generally comprehensive. The ML offence is broad in scope and in accordance with the UN Vienna and Palermo Conventions. The TF offences are broadly satisfactory, although they do not appear to cover autonomously acts of the financing of an individual terrorist (that is not related to a terrorist group). The Portuguese confiscation and seizing system is also generally comprehensive. The system for freezing terrorist related funds has some deficiencies relating to its scope and certain limitations on the length of time during which terrorist funds may be frozen (that is, for the duration of the Portuguese judicial proceedings). Statistics on prosecutions for money laundering and terrorist financing, as well as related confiscation data are maintained by Portuguese authorities; however, they are not comprehensive in all areas, thus it is difficult to assess fully the effectiveness of these regimes. Portugal has a generally clear and complete framework for providing international co-operation.

3. The Portuguese financial intelligence unit (FIU) has been an active member of the Egmont Group since 1999. The Portuguese AML system requires obligated parties to report suspicious transactions to the Attorney General's office, which then immediately forwards the reports to the FIU. The Unit thus receives Suspicious Transaction Reports (STRs) and Currency Transaction Reports (CTRs) indirectly, and it uses both types of reports for developing cases that are forwarded to the public prosecutor for action against money laundering. The FIU is generally effective in its functions. Portuguese national authorities have adequate legal powers for gathering evidence and compelling the production of documents, as well as a broad range of special investigative techniques.

4. The preventive side of the Portuguese AML/CFT regime is covered by Law 11/2004, and implementing regulations issued by the supervisory authorities (in particular, the Bank of Portugal (BdP), the Portuguese Insurance Institute (ISP) and the Securities Market Commission (CMVM) and Law 5/2002 and Law 11/2002 which introduced CFT prevention and freezing. Together these laws deal with customer identification and other AML/CFT obligations and apply to a broad range of financial institutions and DNFBPs. Law 11/2004 offers generally complete coverage of requirements for the customer due diligence regime, though there are a few minor shortcomings that mean the current regime does not meet all of the subtleties of FATF requirements, and CFT legislation does not explicitly extend CDD to the risk associated with terrorist financing. Mechanisms for determining the beneficial owner do not fully meet the FATF requirements. A broad range of categories of designated non-financial businesses and professions (DNFBPs) are subject to the Portuguese AML law and ultimately to the CFT law. The principal deficiencies in this area also relate to those that are found in

the broader financial sector, and monitoring of the implementation of AML/CFT measures by DNFBPs should be reinforced.

5. Portuguese authorities identified that narcotics related crimes provide the main source of criminal proceeds. Due to its geographical location Portugal provides passage for, and is a point of logistical support, in the transit of drugs destined to other countries in Europe and, as one of the entry points for international drug trafficking into Europe, it could therefore be vulnerable to the placement of funds from crimes committed outside the country. Other types of crimes that generate significant criminal proceeds are corruption, trafficking in works of art and cultural artefacts, extortion, embezzlement, tax offences and aiding or facilitating illegal immigration.

6. Investigations into ML have confirmed that the proceeds from drug trafficking are most likely to involve the attempted placement of cash into the financial system. There is no clear evidence of TF operations in Portugal, although there are some indications of fundraising for the support of radical organisations outside Portugal.

7. Portugal has a developing and diverse financial sector that has undergone important changes, in part, associated with the accession to the EU. In 2004, 246 credit institutions were licensed to operate, and perform a variety of financial activities, including insurance, money market instruments and money transmission services. The Portuguese banking system is concentrated within five banking groups, with an increasing of foreign banking institutions (accounting for 20% of the banking market share in 2004). Insurance companies provide direct insurance and re-insurance alongside a number of connected activities. Portugal has a stock exchange (including a futures and options exchange) and bureaux de change, which under certain conditions may also perform money remittance services, are licensed to operate.

8. A full range of designated non-financial businesses and professions (DNFBPs) operate in Portugal: Casinos, real estate agents, dealers in precious metals and stones, lawyers, *solicitadores*, notaries, statutory auditors and chartered accountants.

9. Portugal is a democratic republic based on its Constitution of 1976 with a parliamentary system of government, a President and it belongs to the civil law legal tradition. The Ministry of Finance and Public Administration is responsible for defining and executing Portuguese financial policy, setting out fiscal policy and co-ordinating financial relations between the State and the EU. The Ministry of Justice is responsible for conceiving, conducting, carrying out and assessing Portuguese policies for justice. The Ministry is also the competent authority for domestic judicial legislation and policies relating to the prevention and repression of criminal behaviour including ML and TF. Portugal is currently in the process of further reviewing its criminal legislation and updating its legislation for the purposes of implementing the Third EU Money Laundering and Terrorism Financing Directive.

Legal System and Related Institutional Measures

10. Portugal has an all-crimes money laundering (ML) offence, which meets the FATF requirements; however the number of ML investigations, prosecutions and convictions remains low. ML is criminalised under Law 11/2004. This text added Article 368-A to the Criminal Code and includes a list of predicate offences for ML. It also criminalised self-laundering. Portugal has a mixed approach to the ML offence, which combines a list of predicate offences and the criteria of the applicable penalty. All those crimes that are punishable with a minimum penalty of more than 6 months imprisonment, regardless of the maximum limit, as well as those punishable with a maximum penalty of 5 years, regardless of the minimum limit, are considered predicate offences for ML. Only natural persons are criminally liable for a ML offence; criminal liability for ML therefore does not

extend to legal persons. However, Law 11/2004 foresees a range of proportional and dissuasive sanctions that can be applied to legal persons.

11. The offence of Terrorist Financing (TF) was established by Law 52/2003 which punishes funding in any way terrorist acts or terrorist organisations and defines the offences of a terrorist organisation, terrorism and international terrorism. The broad wording of the TF offence captures both illicit and licit funds if they support a terrorist act or organisation, but does not extend coverage as such to the provision of funds to a single terrorist. Law 52/2003 clearly provides for the criminal liability of legal persons with regard to TF.

12. Between 2000 and 2005, 16 people were convicted of ML offences, and criminal sanctions ranging from 1 to 8 ½ years imprisonment were applied. A lack of comprehensive statistics on ML investigations, prosecutions and convictions prevents a full evaluation of effectiveness. There have been no prosecutions for TF.

13. Articles 109 – 111 of the Criminal Code allow for the confiscation and seizing of the proceeds of crime. Article 9 (2) of Law 11/2004 also allows the Public Prosecution to suspend or freeze funds if there is a suspicion that the transaction may be related to the commission of a laundering offence. Law 5/2002 Article 4 provides for the suspension of movements of banking accounts and Article 7 provides a special confiscation regime applicable, among others to the TF and ML offences.

14. Measures are in place to freeze terrorist funds and to implement UN Security Council Resolutions 1267 (1999) and 1373 (2001) under EU Council Regulations and through judicial inquiries applying Law 5/2002 and Law 144/99. EU Regulations have direct force of law in Portugal, and financial institutions are required to freeze assets from the date of such EU Regulations and UN Security Council Resolutions, according to Law 11/2002. Regulations made under this Law further provide for criminal penalties for non-compliance with EU or UN Security Council Resolutions. Communication procedures are largely effective in informing the financial sector of their freezing obligations.

15. The FIU was created in 2002 as an autonomous department within the Criminal Police replacing the BIB-ML Investigation Squad (created in 1994). All STRs are received by the FIU from the Attorney General's office, as they are the designated competent authority by law to receive and disseminate STR information. The number of STRs received by the FIU has increased from 166 in 2002 to 330 in 2005. The FIU also received CTR reports (some 44,165 in 2005) that are also used in developing analysis of ML cases.

16. Adequate powers are available to investigative authorities to gather evidence and compel the production of financial records and files from financial institutions and DNFBPs. Portuguese authorities have sufficient powers to prosecute ML and TF offences; however, the structures, staffing and resources to investigate these offences are also responsible for examining a range of crimes. While legal measures are available to investigate and prosecute for ML or TF offences, a relatively small number of cases have been successfully prosecuted.

Preventive Measures - Financial Institutions

17. Law 11/2004 defines those financial institutions that are subject to AML/CFT obligations, classifying them as designated bodies under the Act. Designated bodies include all relevant financial institutions as defined. Designated bodies are obliged under Law 11/2004 to comply with several duties, to identify customers, to retain records in relation to customers and transactions, and to adopt measures to prevent and detect ML – including training employees and detecting and reporting suspicious transactions. The Portuguese legislative framework does not impose AML/CFT obligations on the basis of risk.

18. The requirements to conduct customer due diligence (CDD) are set forth in part in Law 11/2004 which requires that financial entities obtain identification from customers and their representatives when opening accounts, when entering into a business relationship, such as opening accounts, when carrying out transactions or a series of linked transactions exceeding €12,500 and when there is a suspicion of ML.

19. BdP Notices and Instructions, ISP Standards and CMVM Regulations oblige financial institutions to undertake additional measures including detailed requirements on what type of documents institutions require in each case. Duties are imposed on financial institutions to identify legal persons. Beneficial ownership must be established whenever an institution knows or suspects that a natural person is not acting on their own behalf. Identification of those with holdings in capital or voting rights equal to or higher than 25% of a legal entity is required as well as the identification of the members of its board of directors.

20. BdP Notices and Instructions and ISP Regulatory Standards require financial institutions to keep an ongoing monitoring of the business relationship, including the examination of operations undertaken during the course of the relationship. BdP Instructions also require banks define risk profiles of both clients and transactions.

21. There are certain exceptions to the duty of identification: when a customer is a financial entity subject to the ML regime in Portugal, or a regime that is considered equivalent. Equivalent jurisdictions include member States of the EU or FATF. Certain insurance transactions are also exempted from ML obligations. Identification is not exempted when there is a suspicion of ML or a jurisdiction is considered as non-cooperative.

22. Law 11/2004 states that financial institutions should not enter into business relationships if their customer does not supply adequate identification. BdP Instructions and ISP Regulatory Standards require that customer files must be periodically updated.

23. However, measures imposed by laws and regulations do not comprehensively and explicitly provide for all of the CDD requirements set forth under Recommendation 5: Identification requirements for beneficial owners are not completely contained in law but in supervisory regulations; there is no explicit mention of TF in relation to the duty of CDD in suspicious transactions, and in low risk situations some of the current exemptions mean that, rather than reduced or simplified CDD measures. CDD measures must apply when there is a suspicion of ML.

24. There are no specific obligations regarding higher risk relationships for politically exposed persons (PEPs) or for financial institutions to have policies in relation to correspondent banking to prevent misuse for ML/TF.

25. Financial institution secrecy does not inhibit the implementation of the FATF Recommendations and co-operation occurs between financial institutions, judicial authorities and supervisors in appropriate circumstances.

26. Law 11/2004 requires that identity documents must be retained for 10 years from the point of identification and for 5 years after the termination of the business relationship. Financial entities are obliged to supply financial information and document of interest whenever required by the supervisory authorities (within the time period established by them) or by judicial authorities within 5 days (if computerised) or 30 days (if other storage methods are used). Financial entities are informed of a special duty to identify everyone involved in operations relating to jurisdictions that are deemed to be non-cooperative. There are no provisions imposing specific requirements to gather, retain and onward transmit information with reference to wire transfers under Special Recommendation VII.

27. All designated bodies are required to pay attention to suspicious transactions, and Article 7 and 18 of Law 11/2004 requires that, if they detect or suspect or become aware of facts which indicate a ML offence, they must submit an STR to the AG office (who in turn forward the report to the FIU). Law 11/2004 defines what operations could be considered as suspicious, and BdP and ISP Regulatory Instruments provide annexes with lists of potentially suspicious activities that financial entities may use to detect potential instances of ML. TF is an autonomous offence under Law 52/2003 and a predicate offence for ML; suspected instances of TF should also be reported as STRs. Feedback is provided by the FIU on all STRs submitted.

28. Comprehensive obligations are placed on financial institutions to have internal controls to prevent and detect ML or TF contained in Article 11 (1) of the Law 11/2004, paragraphs 10 and 11 of BdP Instruction 26/2005 and ISP Regulatory Standard 10/2005, paragraphs 6 of BdP Instruction 72/96 and Article 19, (3) c) and (4), and Article 36 (2) d) of CMVM Regulation 12/2000. BdP Instructions and ISP Regulatory Standards also require financial entities to have internal control mechanisms to ensure that their duties regarding the prevention of ML are also observed in their foreign subsidiaries and branches. There is, however, no explicit obligation to have a position of compliance officer at a senior management level within a financial institution.

29 Under Article 11, paragraphs 1 and 2 of Law 11/2004, financial entities are bound to create control mechanisms including in subsidiaries and branch offices abroad. They are obliged to have internal control and reporting mechanisms that enable compliance with the duties provided for in the law and prevent the execution of operations related with ML. However, an explicit regulation that requires institutions to pay particular attention to their branches and subsidiaries in countries which do not or insufficiently apply the FATF recommendations is absent. Although, there is the requirement to inform the supervisor if local rules inhibit the application of the ML duties imposed by the Portuguese legislation.

30. The Portuguese financial system is supervised by the BdP, the ISP and the CMVM. Articles 19 (1) and 48 of Law 11/2004 requires supervisory authorities within their respective sectors to impose compliance duties on financial entities to prevent ML and empowers them to investigate administrative breaches of the law and apply administrative sanctions. The three supervisors are independent, adequately structured and staffed and have a full range of supervisory powers to inspect financial institutions and impose sanctions for breaches of laws or regulations. They have sufficient operational independence and autonomy to ensure freedom from undue influence or interference. Law 11/2004 requires that supervisory authorities impose compliance duties on financial entities to prevent ML. Law 5/2002 provides a general provision in relation to “untruthful information”; criminal sanctions can be applied when, in the course of an enquiry, or during legal proceedings or hearings relating to ML and TF an employee or institution refuses to supply, or supplies false information.

31. Responsibility for implementing sanctions for AML/CFT is shared between the Supervisors and the Ministry of Finance. The Supervisors are responsible for instituting the administrative offence proceedings. The Minister of Finance applies fines and ancillary sanctions (e.g. the prohibition from assuming the management of legal persons) for non-compliance of the duties of Law 11/2004 and Law 5/2002, whilst the supervisors institute and apply the sanctions for breaches of BdP Notices and Instructions, ISP Regulatory Standards and CMVM Regulations. Penalties for administrative offences range from €750,000 to €2,500,000. Criminal sanctions can also be imposed under Article 13 of Law 5/2002. No sanctions have been imposed by the supervisors since the new Law 11/2004 came into effect, although there are some proceedings pending.

32. The various procedures for licensing financial institutions appear adequate to prevent criminals from gaining control or significant influence of these businesses. Market entry for financial institutions is carried out by the supervisors who ensure that fit and proper checks are conducted on those holding management positions in financial institutions. Ongoing supervision for AML purposes is assessed by the regulators who ensure that financial institutions have adequate systems for analysing transactions and detecting those that are suspicious.

33. Only licensed entities are permitted to conduct money value / transfers services. Exchange offices (governed, *inter alia*, by Decree Law 3/94) can only carry out operations involving money transfers to and from foreign countries if they have a specific BdP authorisation for this purpose. All the financial institutions providing a remittance service are subject to the supervisory powers conferred to BdP. The exercise of money transfers operations without the authorisation of BdP and the non-compliance of the rules of special registration of financial entities are considered a serious offence and are punishable by fines and ancillary sanctions.

Preventive Measures – Designated Non-Financial Businesses and Professions

34. Most categories of DNFBPs operate in Portugal: casinos, real estate agents, dealers in precious metals and stones, chartered accountants lawyers, *solicitadores*, notaries and statutory auditors and register officials. Most DNFBPs have been required since 1995 to comply with AML requirements. In 2004 these obligations were extended to lawyers and *solicitadores* and all relevant DNFBPs are subject to the duties of Law 11/2004, subsection II.

35. All the general AML duties that are required of financial institutions apply to DNFBPs and are subject to an appropriate adjustment to DNFBPs in accordance with the provisions of subsection II of the law - Articles 22 to 31 of Law 11/2004. The deficiencies in the implementation of Recommendation 5 noted in section 3 of the report apply equally to reporting financial institutions and nominated DNFBPs. For some DNFBPs there are no complementary instructions to add detail to the provisions laid down in law; the absence of such instructions means that CDD obligations are therefore less developed than for financial institutions. There are no specific obligations for PEPs or policies to deal with the misuse of technological developments.

36. As with financial institutions, record keeping obligations are contained in Article 5 of Law 11/2004 and meet the standard of Recommendation 10. Article 6 of Law 11/2004 requires DNFBPs to comply with the general duty to thoroughly examine suspect operations that are likely to represent a risk of ML. However from the time the new reporting obligation came into force in 2005, the FIU had received only 3 STRs from all DNFBPs. There are concerns about the implementation of FATF requirements by DNFBPs given the low number of STRs submitted.

37. There are limited or no requirements for DNFBPs to have internal procedures and controls outside the STR reporting obligation and there are no specific obligations for DNFBPs to pay special attention to business relationships from countries who do not or insufficiently apply FATF Recommendations.

38. Administrative sanctions can be applied to DNFBPs under Articles 45 and 47 of Law 11/2004; these are enforced by the government department or SRO responsible for monitoring the business sector concerned. Sanctions provided by law are proportionate, fines have a wide range of amounts and Article 47 of Law 11/2004 allows the imposition of supplementary penalties. However no sanctions have been imposed yet, except in the supervisory area of the Authority for Food and Economic Security (ASAE). Under Article 32 of Law 11/2004, monitoring authorities are responsible for ensuring the effective monitoring of compliance requirements preventing of ML. It is also important to work with the different sectors (via their professional associations for instance) to improve awareness and the application of AML/CFT requirements.

Legal Persons and Arrangements & Non-Profit Organisations

39. A number of types of legal persons exist in Portugal: Of a private nature these can be divided into *associations, foundations and unincorporated associations*. The Company Code includes different types of companies – *general partnerships, limited liability companies, joint-stock companies, limited partnerships* and *partnerships limited by shares*. All companies operating in Portugal and organisations representing international legal persons, or those registered under foreign law operating in Portugal must be recorded in the National Register of Legal Persons (RNPC) and in the Commercial Register. Competent authorities do have access to the National Register. However, this does not include all information needed to reveal the beneficial ownership of associations, foundations and cooperatives.

40. Bearer shares are in use in Portugal, although in a minority of joint stock companies (joint stock companies represent only 4% of all companies registered). Non-public companies' owners of bearer shares have an obligation to inform the company of the number of shares held by them if they represent more than 10%, 33% or 50% of the share capital. In other commercial companies (partnerships, limited liability companies and limited partnerships) all partners are identified in the bylaws which are subject to compulsory commercial registration and publicly available. The transfer of company shares is also subject to compulsory commercial registration. However, there is no obligation to register information concerning the beneficial ownership and the control of the legal persons.

41. The law in Portugal does not recognise the legal concept of a trust; however, foreign trusts can be established in the Madeira Free Trade Zone. Trusts that have been legally constituted under foreign legal regimes, and whose settlor and beneficiaries are non residents in Portugal, can be recognised and authorised to perform business activities exclusively in that zone, under the provisions of Decree-Law 352-A/88. These must be registered in the Commercial Registry in the Free Trade Zone, and the documents of recognition of the trust and all the mandatory elements, such as the purpose of the trust, the date of creation, the duration period, the denomination and headquarter of the trustee and the facts modifying the trust. The names of the settlor and trust beneficiaries are also recorded. Although these last two items are recorded in the Registry they are not available to the public. Competent authorities may access this information with a judicial order.

42. Portugal has undertaken a national review of its NPO sector and concluded that existing legislation can be applied to TF threats in the sector. Laws 5/2002 and 52/2003 provide regimes for the collection and investigation of evidence in cases of suspected ML or TF. Portuguese authorities should continue monitoring the ML/TF risks with NPOs and consider implementing specific measures required by Best Practices Paper to Special Recommendation VIII and the revised Interpretative Note issued in February 2006.

National and International Co-operation

43. Procedures exist in Portugal to ensure that there is co-operation between relevant organisations at a national level. At a policy level Portugal is diligent in ensuring that EU directives are enforced. Portugal should continue to conduct the review of the current system with all stakeholders involved in its AML/CFT regime in order to identify any weaknesses and shortcomings that need to be addressed.

44. Portugal ratified the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1991, the International Convention for the Suppression of Terrorism Financing in 2001 and the Convention against Transnational Organised Crime in 2004. The country is also party to a number of multilateral conventions containing provisions for mutual legal assistance (MLA), including the Council of Europe Convention on Mutual Assistance in Criminal Matters 1957,

and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime 1990.

45. Portugal is in broad compliance with its mutual legal assistance obligations (in particular with respect to the identification, seizure and confiscation of assets). Both ML and TF are extraditable offences. Law 144/99 regulates the forms of international judicial co-operation in criminal matters where international treaties, conventions or agreements that bind the Portuguese State are non-existent or do not suffice. Through Article 145 and following of Law 144/99, Portugal is obliged to render the widest MLA in the investigations and proceedings of criminal nature and connected proceedings, in a constructive, effective and timely way. Extradition is one of the forms of MLA and a simplified procedure for extradition is provided by the law. For EU States Portugal can utilise the procedures set forth in the European Arrest Warrant allowing the efficient processing of extradition actions between Member States without the requirement for dual criminality for certain types of offences, including ML and TF.

46. Mechanisms have been put in place to ensure that Portugal can co-operate internationally, and it has negotiated a number of memoranda of understanding. The FIU has 22 agreements and the BdP, ISP and CMVM also have a number of MOUs either in place, or under negotiation. Other forms of co-operation are available to the various competent authorities in Portugal.

47. As far as statistics are concerned, Portugal should maintain more data. More efforts should be made in collecting figures in the following areas: (1) number of ML/TF investigations, prosecutions and convictions; (2) data on the amounts of property frozen, seized and confiscated relating to money laundering, terrorist financing and criminal proceeds; statistics on whether the request for mutual legal assistance was granted or refused and on how much time was required to respond; (3) number of requests for extradition for ML/TF cases and figures on whether the request was granted or refused and how much time was required to respond.

Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A).

Forty Recommendations	Rating	Summary of factors underlying rating ¹
Legal systems		
1. ML offence	LC	<ul style="list-style-type: none"> The statistics that are available suggest doubts as to the effectiveness of the ML offences in Portugal given the low number of convictions.
2. ML offence – mental element and corporate liability	LC	<ul style="list-style-type: none"> Criminal liability for ML does not clearly extend to legal persons. However, law 11/2004 foresees a range of proportional and dissuasive sanctions that can be applied to legal persons. The statistics that are available suggest doubts as to the effectiveness of the ML offences in Portugal given the low number of convictions
3. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> Only a small amount of money has been confiscated which may reflect on the effectiveness of the system.
Preventive measures		<ul style="list-style-type: none">
4. Secrecy laws consistent with the Recommendations	C	<ul style="list-style-type: none"> This Recommendation is fully met.
5. Customer due diligence	LC	<ul style="list-style-type: none"> There is no specific, explicit, requirement for CDD for occasional wire transfers that are not suspicious, under SR VII below €12,500. Identification requirements for beneficial owners are not completely contained in law, but also in supervisors instructions. For some entities in securities sector that are not covered by BdP regulations (venture capital companies and securitisation companies) the CMVM regulations do not explicit comply with some requirements regarding identification of beneficial owners of legal persons, ongoing due diligence, failure to satisfy complete CDD. There are no provisions for securities sector that impose the duty to scrutiny transactions undertaken throughout the course of the relationship to ensure that this transactions are consistent with the institutions knowledge of the customer, their business and risk profile and where necessary, the source of funds. Regulations for the securities sector do not provide explicit mention of the termination of accounts where there is

¹ These factors are only required to be set out when the rating is less than Compliant.

		<p>insufficient CDD information.</p> <ul style="list-style-type: none"> • In regard to low risk situations particularly the application of situations with EU and FATF members (when there is no suspicion of ML) some of the current exemptions mean that, rather than reduced or simplified CDD measures, no CDD measures apply whatsoever for these cases. • There is no explicit mention of TF in relation to the duty of CDD in suspicious transactions. • Issue of effectiveness of the supervisors instructions due to the short period of time since their entry into force (June/July 2005).
6. Politically exposed persons	NC	<ul style="list-style-type: none"> • There is no requirement for appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP. • There is no legal requirement for financial institutions to obtain senior management approval for establishing business relationships with a PEP nor to take reasonable measures to establish the source of wealth and the source of funds. • It is not so clear about effectiveness in practice in part due to some confusion about national versus international PEPs.
7. Correspondent banking	PC	<ul style="list-style-type: none"> • The obligation to gather information should be applicable to all respondent institution and not exempt institutions from EU members or FATF members. Article 2.8 of BdP Instruction 26/2005 does not include the explicit mention “including whether it has been subject to a ML or TF investigation or regulatory action.” • The requirement to obtain approval from senior management is not set up in legislation or regulation. • There is no regulation with respect to payable-through accounts.
8. New technologies & non face-to-face business	C	<ul style="list-style-type: none"> • This Recommendation is fully met.
9. Third parties and introducers	N/A	<ul style="list-style-type: none"> •
10. Record keeping	C	<ul style="list-style-type: none"> • This Recommendation is fully met.
11. Unusual transactions	LC	<ul style="list-style-type: none"> • There is no regulation to set forth findings in writing for those entities falling only under the regulations and supervision of the CMVM.
12. DNFBP – R.5, 6, 8-11	PC	<ul style="list-style-type: none"> • The deficiencies in the implementation of Recommendation 5, 6 and 11 that apply to financial institutions also apply to DNFBPs. • There are few implementation measures that clarify the specific obligations of DNFBPs (similar to regulations and circulars for financial institutions) • Portugal has not implemented explicit AML/CFT measures concerning PEPs applicable to DNFBPs. • There is no requirement that DNFBPs have policies in place to deal with the misuse of technological developments (Recommendation 8). • More generally, the implementation of the FATF requirements (both ML and TF) by DNFBPs raises concerns given the low number of STRs submitted.

13. Suspicious transaction reporting	LC	<ul style="list-style-type: none"> The low number of STRs filed by the financial entities by a limited number of financial institutions raises the issue of effectiveness of the reporting requirement.
14. Protection & no tipping-off	C	<ul style="list-style-type: none"> This Recommendation is fully met.
15. Internal controls, compliance & audit	LC	<ul style="list-style-type: none"> There is no explicit regulation that the compliance officer should be at the management level. Training facilities for employees have been established but effectiveness could be improved especially in the insurance sector.
16. DNFBP – R.13-15 & 21	PC	<ul style="list-style-type: none"> All DNFBPs are subject to comprehensive regulations with regard to reporting duties. However only 10 suspicious transactions were reported from 2003 to 2005. No co-operation procedures have been so far established between the Bar Association and the Chamber of Solicitadores on the one hand, and the DCIAP or FIU/PJ, on the other hand. Even though training is not satisfactory yet except in the area of casinos, the evaluation team noted the planning for improvements concerning this matter. There is no obligation to give special attention to business relationships and transactions with persons (including legal persons) from or in countries which do not or insufficiently apply the FATF Recommendations. Sanctions provided by law are in particular proportionate, as fines have a wide range of amounts and Article 47 of Law 11/2004 allows to imposition of supplementary penalties. However no sanctions have been imposed yet, except in the supervisory area of ASAE (formerly the IGAE).
17. Sanctions	LC	<ul style="list-style-type: none"> No sanctions have been imposed by the supervisors since Law 11/2004 (the main AML Law) came into effect, although some proceedings are pending.
18. Shell banks	LC	<ul style="list-style-type: none"> There is no explicit regulation that obliges financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
19. Other forms of reporting	C	<ul style="list-style-type: none"> This Recommendation is fully met.
20. Other NFBP & secure transaction techniques	C	<ul style="list-style-type: none"> This Recommendation is fully met.
21. Special attention for higher risk countries	LC	<ul style="list-style-type: none"> The requirement to monitor business relationships and transactions from or in non-cooperative countries, or for countries that do not or insufficiently apply FATF Recommendations, is not clearly articulated in the law, although the BdP is able to require this through circular letters. There does not appear to be a mechanism for advising institutions about concerns on weakness in AML/CFT systems of other countries.
22. Foreign branches & subsidiaries	LC	<ul style="list-style-type: none"> An explicit regulation that requires institutions to pay particular attention to their branches and subsidiaries in countries which do not or insufficiently apply the FATF recommendations is missing.

		<ul style="list-style-type: none"> There is no definite legal obligation that, where the minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries are required to apply the higher standard, to the extent that local laws and regulations permit.
23. Regulation, supervision and monitoring	LC	<ul style="list-style-type: none"> The number of AML./CFT supervisory / regulatory visits made is relatively low.
24. DNFBP - regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> With regard to all DNFBPs competent authorities or SROs are designated to perform monitoring and ensuring compliance of DNFBPs with AML/CFT requirements. However except for the IGJ and IGAE/ASAE, no inspections or other monitoring activities were carried out by the competent authorities. Where an oversight role exists the SROs do not have sufficient resources to perform these functions.
25. Guidelines & Feedback	PC	<ul style="list-style-type: none"> There is very little guidance provided to the DNFBPs under the new Law 11/2004 by the competent authorities, except for IGAE/ASAE and casinos.
Institutional and other measures		<ul style="list-style-type: none">
26. The FIU	LC	<ul style="list-style-type: none"> The FIU is not the recognised competent authority to receive and analyse STRs in relation to TF.
27. Law enforcement authorities	LC	<ul style="list-style-type: none"> There are relatively few ML prosecutions initiated. This raises effectiveness issues under the requirement of recommendation 27 to ensure that ML or TF cases are properly investigated [issue of effectiveness].
28. Powers of competent authorities	C	<ul style="list-style-type: none"> This Recommendation is fully met.
29. Supervisors	LC	<ul style="list-style-type: none"> Few sanctions have been imposed by the supervisory to date. The ISP and CMVM have not imposed any sanctions since the introduction of law 11/2004. Therefore it is not possible to assess the effectiveness of the sanctions regime. [issue of effectiveness]
30. Resources, integrity and training	LC	<ul style="list-style-type: none"> DNFBPs are not adequately supervised for AML/CFT compliance.
31. National co-operation	LC	<ul style="list-style-type: none"> Although formal co-operation may take place, there is still room for improvement in more effective interagency co-operation. [Effectiveness Issue] There is room for more formal increased interagency co-operation particularly between supervisory authorities, the FIU and prosecutors.
32. Statistics	PC	<ul style="list-style-type: none"> Portugal has not conducted a full, complete and comprehensive review of its AML/CFT regime. There are no comprehensive statistics on ML and TF investigations, prosecutions and convictions. There are no TF statistics on which to judge the effectiveness of the TF legislation as no TF cases have been tried. More detailed statistics should be kept, particularly concerning the nature and disposition of investigations and prosecutions. It is not possible to assess the effectiveness of freezing of

		<p>terrorist funds under Special Recommendation III as no funds have been identified for freezing action.</p> <ul style="list-style-type: none"> • There are very limited statistics on the number of cases and the amounts of property frozen seized and confiscated relating to ML, TF and criminal proceeds. • There are insufficient statistics upon which to assess the efficiency of the measures in place [issue of effectiveness SR IX].
33. Legal persons – beneficial owners	PC	<ul style="list-style-type: none"> • The National Register of Legal Persons does not include information on the beneficial ownership and the persons who control a legal person. • There is not full transparency of the shareholders of companies that have issued bearer shares.
34. Legal arrangements – beneficial owners	PC	<ul style="list-style-type: none"> • Competent authorities have limited powers to have timely access to information on the beneficial ownership and control of trusts.
International Co-operation		<ul style="list-style-type: none"> •
35. Conventions	C	<ul style="list-style-type: none"> • This Recommendation is fully met.
36. Mutual legal assistance (MLA)	C	<ul style="list-style-type: none"> • This Recommendation is fully met.
37. Dual criminality	C	<ul style="list-style-type: none"> • This Recommendation is fully met.
38. MLA on confiscation and freezing	C	<ul style="list-style-type: none"> • This Recommendation is fully met.
39. Extradition	C	<ul style="list-style-type: none"> • This Recommendation is fully met.
40. Other forms of co-operation	C	<ul style="list-style-type: none"> • This Recommendation is fully met.
Nine Special Recommendations		<ul style="list-style-type: none"> •
SR.I Implement UN instruments	PC	<ul style="list-style-type: none"> • S/RES/1267 has been implemented but S/RES/1373 (2001) is not yet comprehensively implemented. • There is no system for effectively communicating action taken by the authorities under the freezing mechanisms to some designated non-financial business and professions. • Designated non-financial businesses and professions are not adequately monitored for compliance with measures taken under the Resolutions.
SR.II Criminalise TF	LC	<ul style="list-style-type: none"> • The TF offence does not extend to the provision or collection of funds for the benefit of a single terrorist. • It is too early to assess the effective implementation of the TF offence provisions.
SR.III Freeze and confiscate terrorist assets	PC	<ul style="list-style-type: none"> • Portugal has a limited ability to freeze funds in accordance with S/RES/1373 (2001) of designated terrorists outside the EU listing system. • Communication mechanisms to all DNFBPs are limited. • Portugal does not adequately monitor DNFBPs for compliance with the relevant laws for freezing of terrorist funds.
SR.IV Suspicious transaction reporting	LC	<ul style="list-style-type: none"> • As the reporting obligation relates to suspected TF offences, the evaluation team had concerns regarding the scope of the TF offence (as discussed in section 2.2). This could limit the

		reporting obligation
SR.V International co-operation	LC	<ul style="list-style-type: none"> • Since dual criminality may be required in for international co-operation it is not clear how Portugal would execute requests for MLA or extradition involving the collection/provision of funds/assets to be used by an individual terrorist.
SR VI AML requirements for money/value transfer services	LC	<ul style="list-style-type: none"> • There is an absence of STRs coming from exchange offices [Effectiveness issue in relation to application of Recommendations 11 and 13] • As with other financial institutions overall implementation of related FATF Recommendations, in particular Special Recommendation VII, negatively impacts on the effectiveness of AML/CFT measures for money transmission services.
SR VII Wire transfer rules	NC	<ul style="list-style-type: none"> • Portugal has not implemented the full range of requirements of SR VII. There is no legal obligation to include full originator information in the message or payment form that accompanies a cross-border or domestic wire transfer. • There are no obligations on intermediary reporting financial institutions in the payment chain to maintain all of the required originator information with the accompanying wire transfer. • There are no obligations on beneficiary reporting financial institutions to adopt risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. • There is no obligation to verify that the originator information is accurate and meaningful. • There are no obligations to require financial institutions to apply risk-based procedures when originator information is incomplete. • There are no sanctions for breaching many of the obligations under SR VII because many of the obligations themselves have not been implemented.
SR.VIII Non-profit organisations	LC	<ul style="list-style-type: none"> • NPOs in Portugal should be required to NPOs should maintain information on (2) the identity of the person(s) who own, control or direct their activities, including senior officers, board members and trustees. This information should be publicly available either directly from the NPO or through appropriate authorities. • NPOs should have appropriate controls in place to ensure that all funds are fully accounted for and are spent in a manner that is consistent with the purpose and objectives of the NPO's stated activities. • NPOs should follow a "know your beneficiaries and associate NPOs" rule, maintain, for a period of at least five years, and make available to appropriate authorities, records of domestic and international transactions • Appropriate authorities should monitor the compliance of NPOs with applicable rules and regulations.
SR. IX Cash Couriers	LC	<ul style="list-style-type: none"> • There are insufficient statistics upon which to assess the efficiency of the measures in place [issue of effectiveness].

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional Measures	
Criminalisation of ML (R.1 & 2)	<ul style="list-style-type: none"> • Seek to extend more comprehensively the criminal liability for ML to legal persons. • Ascertain why the number of ML cases remains low. • Ensure that comprehensive statistics on ML prosecutions and convictions are kept.
Criminalisation of TF (SR.II)	<ul style="list-style-type: none"> • Specifically criminalise the collection or provision of funds for an individual terrorist.
Confiscation, freezing and seizing of proceeds of crime (R.3)	<ul style="list-style-type: none"> • Portugal should continue collect statistics on the number of cases and the amount assets seized in relation to criminal confiscation. • Ascertain why the amount of money confiscated is low.
Freezing of funds used for TF (SR.III)	<ul style="list-style-type: none"> • Portugal should extend its current limited ability to freeze funds in accordance with S/RES/1373 and ensure that all freezing actions are communicated to relevant DNFBPs. There should be adequate monitoring of DNFBPs to ensure they comply with required freezing actions.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	<ul style="list-style-type: none"> • The FIU should seek to become the recognized competent authority to receive and analyse STRs in relation to TF. • The FIU should seek and encourage regular feedback from partner agencies on the quality of the information / intelligence provided and the overall level of service of the FIU; in addition the benefits and results derived from FIU information should be fed back to the FIU. • In consultation with partner agencies, the FIU should consider how information / results can optimally be shared with reporting entities. • The FIU should continue to proactively negotiate MOUs with foreign FIUs
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	<ul style="list-style-type: none"> • Investigative and prosecutorial authorities need to focus more on investigating and prosecuting ML offences. Portuguese authorities are encouraged to make this an objective. • There is a need for Portuguese authorities to keep clearer statistics on investigations and prosecutions of the ML offence
3. Preventive Measures – Financial Institutions	
Risk of ML or TF	
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<ul style="list-style-type: none"> • All Customer Due Diligence requirements should be extended to clearly reflect the risk related to TF. • Portugal needs to require financial institutions to identify occasional customers as contemplated in SR VII for domestic transfers and in the cases where there is a suspicion of TF. • Adopt explicit requirements for financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationships and transactions. • Monitor the effectiveness of the BdP, ISP and CMVM regulations implemented in 2005.

	<ul style="list-style-type: none"> • Adopt requirements for PEPs as contemplated in Recommendation 6 and measures for correspondent relationships as contemplated in Recommendation 7.
Third parties and introduced business (R.9)	<ul style="list-style-type: none"> • No recommended action.
Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> • No recommended action.
Record keeping and wire transfer rules (R.10 & SR.VII)	<ul style="list-style-type: none"> • SR VII has not been implemented in most respects. Portugal should implement the provisions of SR VII as soon as possible
Monitoring of transactions and relationships (R.11 & 21)	<ul style="list-style-type: none"> • Ensure that enforceable regulations or guidelines are clear on the obligations of Recommendation 21
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	<ul style="list-style-type: none"> • Expand the definition of the TF offence to include the provision/collection of funds for an individual terrorist so as to ensure that transactions related to these activities are reportable.
Cross-border declaration or disclosure (SR.IX)	<ul style="list-style-type: none"> • Ascertain why the amount of cash/bearer negotiable bonds intercepted at the border remains low. • Ensure that comprehensive statistics on cross-border declarations of cash are kept.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	<ul style="list-style-type: none"> • Ensure that there are explicit requirements that a compliance officer should be a position at a senior management level. • Ensure that ongoing training of employees in AML/CFT continues to update employees on the requirements of the new legislation / regulations. <p>Consider an explicit regulation that requires institutions to pay particular attention to their branches and subsidiaries in countries which do not or insufficiently apply the FATF recommendations is missing.</p> <ul style="list-style-type: none"> • Ensure there is a definite legal obligation that, where the minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries are required to apply the higher standard, to the extent that local laws and regulations permit.
Shell banks (R.18)	<ul style="list-style-type: none"> • Require financial institutions to satisfy themselves that respondent institutions in a foreign country do not permit their account to be used by shell banks.
The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R. 23, 30, 29, 17, 32, & 25).	<ul style="list-style-type: none"> • Ensure that comprehensive statistics on supervisory sanctions in relation to ML and TF breaches. • Portugal should ensure that the sanctions regime in place is adequately implemented and fully effective.
Money value transfer services (SR.VI)	<ul style="list-style-type: none"> • Portugal should ensure that the measures in place are adequately implemented and fully effective.
4. Preventive Measures –Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> • Portugal should implement Recommendation 5 and 6 fully to all DNFBPs. • Portugal should bring in legislative changes to ensure that all DNFBPs have adequate CDD and record keeping obligations in situations required by Recommendation 12. • DNFBPs should be required to establish and maintain internal procedures, policies and controls to prevent ML and TF, and to

	<p>communicate these to their employers. These procedures, policies and controls should cover: CDD and the detection of unusual and suspicious transactions and the reporting obligation. DNFBPs should be required to maintain an independent audit function and establish ongoing employee training.</p>
Monitoring of transactions and relationships (R.12 & 16)	<ul style="list-style-type: none"> • All Customer Due Diligence requirements should be extended to clearly reflect the risk related to terrorist financing. • The requirement to identify beneficial ownership should be fully applicable to DNFBPs as well as the obligation to carry out additional identification/know-your-customer rules. • Requirements in relation to ongoing due diligence and the obligation for DNFBPs to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant should be clarified and impose direct obligations as asked for in Recommendation 5. • With regard to higher risk situations, measures in place should be completed. Portugal should also address whether or not DNFBPs should be permitted to apply simplified or reduced CDD measures, and issue appropriate guidance.
Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> • Portugal should ensure that the measures in place are adequately implemented and fully effective.
Internal controls, compliance & audit (R.16)	<ul style="list-style-type: none"> • Portugal should ensure that the measures in place are adequately implemented and fully effective.
Regulation, supervision and monitoring (R.17, 24-25)	<ul style="list-style-type: none"> • Portugal should provide more specific, timely and systematic feedback to reporting entities and should develop further its effort to raise AML/CFT awareness within the DNFBPs, especially through sectoral and very practical guidelines (especially in the CFT area). • Portugal should ensure an adequate number of inspections are conducted on a representative sample of financial institutions. • Portugal should ensure that the measures in place are adequately implemented and fully effective
Other designated non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> • No recommended action.
5. Legal Persons and Arrangements & Non-Profit Organisations	
Legal Persons – Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> • Portugal should ensure information on the beneficial ownership and the persons who control a legal person and there is full transparency of the shareholders of companies that have issued bearer shares.
Legal Arrangements – Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> • Portugal should ensure that competent authorities have adequate powers to have timely access to information on the beneficial ownership and control of trusts.
Non-profit organisations (SR.VIII)	<ul style="list-style-type: none"> • Portugal should ensure that the measures in place are adequately implemented and fully effective. • Portugal should adopt new mechanisms to properly and fully implement the requirements under SR VIII as identified in its Interpretative Note. • Portugal should give further consideration to implementing other specific measures from the Best Practices Paper to SR VIII or other

	measures to ensure that funds or other assets collected by or transferred through non-profit organisations are not diverted to support the activities of terrorist organisations.
6. National and International Co-operation	
National co-operation and co-ordination (R.31)	<ul style="list-style-type: none"> • Portugal should ensure that all existing co-operation mechanisms are functioning effectively. • Portugal should ensure that more formal increased interagency co-operation particularly between supervisory authorities, the FIU and prosecutors.
The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> • Ensure that DNFBP's are advised of their obligations under S/RES/1267 (1999) and S/RES/1373 (2001).
Mutual Legal Assistance (R.32, 36-38, SR.V)	<ul style="list-style-type: none"> • Specifically criminalise the provision / collection of funds involving a single terrorist, to ensure that the discretionary grounds of dual criminality are not used in the future to refuse legal assistance requests.
Extradition (R.32, 37 & 39, & SR.V)	<ul style="list-style-type: none"> • Specifically criminalise the provision / collection of funds to be used by a single terrorist, to ensure that no doubt exists on the provision of extradition in such cases.
Other Forms of Co-operation (R.32 & 40, & SR.V)	<ul style="list-style-type: none"> • Portugal should continue to pro-actively seen co-operation arrangements for ML and TF exchanges of information.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	<ul style="list-style-type: none"> • Ensure that comprehensive statistics on ML prosecutions and convictions are kept. • Portugal should also maintain more statistics in the following areas: (1) data on the amounts of property frozen, seized and confiscated relating to money laundering, terrorist financing and criminal proceeds; (2) statistics cross-border transportation of currency and bearer negotiable instruments; (3) statistics on whether the request for mutual legal assistance was granted or refused and on how much time was required to respond; (4) number of requests for extradition for ML/TF cases and figures on whether the request was granted or refused and how much time was required to respond.