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Convention against Corruption**

**Executive summary**

**Note by the Secretariat**

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## I. Introduction

1. The present document of the Implementation Review Group is made available in accordance with paragraph 36 of the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption (Conference of the States Parties resolution 3/1, annex).
2. The executive summary contained herein corresponds to a country review conducted in the second year of the second review cycle. Other executive summaries pertaining to the same year of the same cycle will be issued as addenda to the present note.

## II. Executive summary

### Portugal

#### 1. Introduction: overview of the legal and institutional framework of Portugal in the context of implementation of the United Nations Convention against Corruption

Portugal ratified the United Nations Convention against Corruption on 21 September 2007 and deposited the instrument of ratification on 28 September 2007. Pursuant to article 8 of the Constitution of the Portuguese Republic (CRP), ratified treaties are enforceable in the same manner as all other laws from the moment they are published in the Official Gazette.

Portugal is a member of the European Union, the Organization for Economic Cooperation and Development, the Organization for Security and Cooperation in Europe and the Council of Europe, among others. The anti-money-laundering regime is based on a legal framework defined at both the European Union and national levels.

The implementation by Portugal of chapters III and IV of the Convention against Corruption was reviewed in the second year of the first review cycle, and the executive summary of that review was published on 7 August 2013 (CAC/COSP/IRG/I/2/1/Add.18).

The main legislation for preventing and combating corruption in Portugal includes, notably, the CRP, the Criminal Code, the General Law on Civil Service Employment (Law 35/2014), the Law on Public Control of the Wealth of Public Office Holders (Law 4/83), the Law on Funding of Political Parties and Election Campaigns (Law 19/2003), the Public Procurement Code (Decree-Law 18/2008), the Code of Criminal Procedure (CPC), the Anti-Money-Laundering Law (Law 83/2017) and the Law establishing a special regime for the collection of evidence and confiscation of assets to the State (Law 5/2002).

The main entities in preventing corruption include, notably, the Council for Corruption Prevention (CCP), the Public Prosecution Service (PPS) and the Directorate-General for Justice Policy, within the Ministry of Justice (DGPJ), as well as the Inspectorate-General of Finance (IGF) and the Directorate-General for Administration and Public Employment, both within the Ministry of Finance and Public Administration (MFPA). Regarding the recovery of assets, the main entities are the Public Prosecution Office, particularly its Central Department for Criminal Investigation and Prosecution (DCIAP), the Asset Recovery Office (GRA), the National Unit against Corruption within the Criminal Police, the Office for the Management of Assets (GAB) and the Financial Intelligence Unit (FIU).

## 2. Chapter II: preventive measures

### 2.1. Observations on the implementation of the articles under review

*Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)*

Portugal has no stand-alone national anti-corruption strategy but relies on the existing legal and administrative framework to ensure integrity, transparency and accountability in the public sector and to prevent corruption.

CCP is an independent administrative institution with a mandate to conduct research on the occurrence of corruption, monitor the implementation of relevant legal and administrative measures and evaluate their effectiveness (Law 54/2008). It issues recommendations to public entities, including State-owned companies, to develop, implement and periodically review their prevention plans, provides legal opinions, drafts codes of ethics and provides training on ethics and transparency if requested.

PPS is responsible for the prevention, investigation and prosecution of crimes, including corruption. Both PPS and CCP report that they have sufficient resources and specialized staff.

In addition, General Inspectorates in all Ministries monitor compliance with the legislation, the execution of the Prevention Plans for Risks of Corruption as recommended by CCP, as well as the occurrence of corruption. They conduct administrative inquiries and inspections and report to PPS if a crime is suspected. Notably, IGF, as an internal audit authority, plays an active role in promoting ethics and preventing fraud and corruption in the public sector.

CCP, the Centre for Judicial Studies (CEJ), the Criminal Police School and other public bodies conduct various awareness-raising activities on corruption prevention, including among the general public.

*Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)*

The law governing civil service is Law 35/2014. Recruitment to public sector posts is conducted through open competitions that are based on merit, equity and aptitude. There are separate procedures for recruitment to management (Law 2/2004) and special regime career positions (Law 35/2004). Rotations are available when required by public interest considerations, but they are limited in duration and may require agreement of the public official in question. There is a comprehensive legal framework addressing the promotion, pay and retirement of public officials. Training in relevant fields is provided by the Directorate-General for Qualification of Public Employees and CCP.

Criteria concerning candidature for and election to public office are prescribed in the Constitution and in Law 2/2004, which approves the Statute of the management personnel of central, regional and local administration bodies, Decree-Law 71/2007, which approves the Statute of the public managers, and article 13 of Law 27/1996 on administrative tutelage.

Regulations on electoral funding are provided under Law 19/2003. Anonymous donations, gifts or loans of a monetary nature or in kind from national or foreign legal persons to political parties, with some exceptions, are prohibited (art. 8 of Law 19/2003). Article 20 of the same Law defines the limits on election campaign expenses, and article 23 requires that the annual accounts of political parties and accounts of electoral campaigns be examined by the Constitutional Court.

Law 4/83 requires specified public officials to declare their income and assets to the Constitutional Court. Although the Law contains a list of officials who should submit the declarations, in practice there is some ambiguity as to who exactly should declare. The declarations are paper-based and must be submitted when public officials assume

their office, when there is a change in their assets beyond a certain threshold, and when they leave office.

Law 64/93 creates a public register of interests at Parliament that contains all public and private activities of members of Parliament and Government that may lead to conflicts of interest (impediments and incompatibilities). In addition, the Law introduces a three-year “cooling-off” period for designated officials, unless they return to the business they held prior to assuming the public office. Other guarantees of impartiality are provided under the Code of Administrative Procedure (arts. 69–76).

Many public entities have adopted codes of conduct or codes of ethics. The codes vary and do not always provide for detailed and effective systems of disclosure and management of, inter alia, conflicts of interest and gifts. In addition, all public servants remain bound by the general duties of public officials listed in article 3 of the Disciplinary Statute (Law 58/2008) and in the Ethical Chart of Public Administration — Ten Ethical Principles of Public Administration, and the Government’s Code of Conduct. Portugal is also considering the adoption of a Code for Public Transparency specifically for political office holders and managers of State-owned companies, among others.

Violations of the codes and general duties of public officials may result in disciplinary action (arts. 176–240 of Law 35/2014 (General labour law in public functions)).

Reports on suspected acts of corruption may be submitted to law enforcement authorities, PPS, CCP, and internally to the General Inspectorates. Public officials must report any crime they become aware of (art. 242 of CPC). The general principle on whistle-blower protection in both public and State-owned companies, as well as in the private sector, is provided under Law 19/2008 (art. 4). However, the Law is too general and does not establish any system of reporting and protection.

An ad-hoc committee for the enhancement of transparency in the exercise of public functions has been created in the Parliament to improve the legislation applicable to public officials. Currently, several draft laws on, inter alia, conflicts of interest and lobbying are under analysis and debate by the Committee.

CRP, CPC, the Code of Civil Procedure (CPCiv), the Statute of Judicial Magistrates (Law 21/85), the Law on Organization of the Judicial System (Law 62/2013) and other legislation provide for the independence, ethical principles and core values of the judicial system and regulate recruitment, pay, disciplinary measures and conflicts of interest. CEJ manages the initial and ongoing training of judges and prosecutors, which includes topics on professional ethics and deontology. There is no code of conduct applicable to the Portuguese judiciary, and its members are exempted from filing asset declarations.

CRP, the Statute of PPS (Law 60/98), CPC, CPCiv and other laws and regulations contain ethical principles and core values and measures for ensuring integrity and preventing conflicts of interest among PPS staff. They must disclose impediments and incompatibilities in any civil or criminal case where they intervene. Violations of this duty lead to disciplinary actions. There are neither express rules on the acceptance of gifts nor a code of conduct applicable to PPS.

*Public procurement and management of public finances (art. 9)*

Decree-Law 18/2008, approving the Public Procurement Code, is the main legal framework for public procurement. The conditions for participating in, selecting and awarding a contract are established and published sufficiently in advance. The only criterion for awarding a contract is the most economically advantageous offer.

Decree-Law 18/2008 also includes rules for BASE, an online platform that advertises all contracts resulting from all types of procurement procedures and publishes information on contract performance. The publication of contracts in both BASE and in the Official Gazette is mandatory for certain categories of contracts, such as direct

awards. Failure to publish direct award contracts renders them null and void. All information is accessible to the auditing authorities and PPS. Complaints may be raised at different stages of procurement directly with the contracting authority.

Stakeholders involved in procurement must declare the absence of conflicts of interest prior to participating. All individuals and legal entities previously convicted of money-laundering or corruption may not apply for public tenders.

The Ministry of Economy oversees the development and definition of procurement policy. The central purchasing body is ESPAP, which manages large framework contracts. Any public body may join the national system of public procurement in order to use ESPAP services. The Court of Auditors conducts external ex ante and ex post control. Internal controls are performed by the General Inspectorates.

The legal framework regulating the national budget process consists of CRP, the Public Accounting Principles Law (Law 8/90), the Budget Framework Law (Law 151/2015) and local and regional finance laws. The budget process and the accounting systems are based on the International Public Sector Accounting Standards.

CRP prescribes the procedures for the adoption of the national budget. The discussions on the draft budget and the draft budget execution law at the Budget and Finance Committee of the Parliament are open to the public. Information on the budget execution process is published in clear and accessible language through the “Knowing the Budget Process” project run by the Budget General Directorate.

IGF conducts internal audits and the Court of Audit conducts external audits. The Public Finance Council assesses fiscal projections and compliance with fiscal rules. Forgery of documents, including accounting books, records and financial statements, is a crime pursuant to article 256 of the Criminal Code.

#### *Public reporting; participation of society (arts. 10 and 13)*

CRP provides for the universal right of access to information (art. 37 (1)). According to article 268 (1), citizens also have the right to be informed by the administration of decisions that are taken in relation to them. Law 83/95 defines the terms of participation in administrative procedures and the right to popular action to prevent and repress offences caused by diffuse interests. Comprehensive laws establishing privacy exceptions also apply.

Law 26/2016 establishes the right and procedure to access administrative documents. Law 65/93 established the Committee for Access to Administrative Documents, which monitors compliance with Law 26/2016 and can issue non-binding recommendations if requested. Individuals and legal entities also have the right to seek redress in the administrative courts (Code of Administrative Procedure, approved by Law 15/2002).

Information technologies are widely used to simplify administrative procedures. Examples include the BASE portal, CITIUS (a public platform for, inter alia, submitting documents to courts and keeping track of cases), E-invoice (an electronic invoicing system within public administration), et cetera.

The reporting of alleged corruption crimes, including anonymously, is possible via, inter alia, the website of PPS.

Many public bodies publish their corruption prevention plans on their websites. CCP publishes reports that identify and evaluate corruption risks.

Interested parties may participate in the parliamentary legislative procedure (art. 167 of CRP). Parliament may also solicit public input. Decree-Law 274/2009 regulates the Government’s public consultation procedure.

#### *Private sector (art. 12)*

The Criminal Police, PPS and DGPIJ organize workshops for private sector representatives to raise awareness, share experiences, promote good practices and

strengthen cooperation. FIU regularly organizes workshops for reporting entities to discuss the issues of, inter alia, beneficial ownership and reporting obligations under the regime on anti-money-laundering and countering the financing of terrorism (AML/CFT).

The Ministry of Economy has developed a National Action Plan for Responsible Business Conduct and Human Rights 2017–2020 to promote socially responsible behaviour. Relevant measures in contractual relations between businesses and the State in procurement procedures are addressed in the Code of Public Procurement.

All legal persons must be registered in the National Registry for Legal Persons and in the Commercial Registry and shall disclose the names of the management board and shareholders. Parliament has passed legislation that creates a central register of beneficial owners and abolishes bearer shares (Law 89/2017).

All companies are required to follow appropriate accounting and auditing standards and to maintain books and records. Companies falling under the General Regime of the Accounting Normalization System must have a chartered accountant who ensures compliance with these obligations and tax obligations and signs all company tax returns.

Decree-Law 224/2008 approves the Statute of the Portuguese Order of Statutory Auditors (OROC) and requires all statutory auditors to report corruption offences to PPS through OROC. False accounting offences are foreseen in articles 103 and 104 of the Legal Regime on Tax Offences.

The tax deduction of illicit expenditures is expressly prohibited, even when the expenditure occurs outside Portugal.

#### *Measures to prevent money-laundering (art. 14)*

Law 83/2017 (“the AML/CFT Law”) establishes a list of financial institutions and non-financial businesses and professions subjected to the AML/CFT regime (arts. 3–5). Supervisory and oversight authorities of those institutions, businesses and professions are categorized by sector and are listed under articles 84–91 of the AML/CFT Law. Article 14 of the AML/CFT Law provides details on risk management by obliged entities.

In 2015, Portugal underwent a national risk assessment that was designed to identify, assess and understand the risks of money-laundering and the financing of terrorism. Based on this assessment, it is taking action to manage the risks, applying a risk-based approach. Portugal established its Financial Intelligence Unit (FIU) in 2003 and has domestic coordination meetings and platforms such as the Commission for the Coordination of Policies for the Prevention of and Fight against Money-laundering and the Financing of Terrorism and its Executive Committee and the Technical Permanent Secretariat. All supervisory authorities from the financial and non-financial sectors, FIU, PPS, law enforcement and other authorities are represented on the Commission and the Executive Committee and meet periodically to address relevant issues.

Article 3 (1) of Decree-Law 61/2007 requires all persons entering or leaving European Union territory to declare amounts of cash and bearer negotiable instruments equal to or exceeding 10,000 euros. According to the Circular of the Tax Authority 9630/411, this entity is responsible for centralizing, collecting, registering and processing the information contained in the declarations. Information gathered in the declaration/disclosure process is sent to FIU, which forwards the information to the Criminal Police when a crime is suspected. Various provisions to regulate electronic transfers and money remitters exist. These include European Union Regulation 2015/847, on information accompanying transfers of funds, European Union Regulation 260/2012, establishing technical and business requirements for credit transfers and direct debits in euros, Law 125/2008 and the Single Euro Payments Area Regulation.

## 2.2. Successes and good practices

- Anonymous donations, gifts or loans of a monetary nature or in kind from national or foreign legal persons to political parties are prohibited (art. 7, para. 3).
- The creation of the BASE portal (public procurements exclusively done through an electronic platform), which is a tool allowing for transparency and prevention of corruption (art. 9, para. 1).
- Portugal has established domestic coordination meetings and platforms within the AML/CFT sector that meet periodically, with the attendance of all supervisory and oversight authorities, as well as, among others, PPS and FIU (art. 14, para. 1 (b)).
- Portuguese anti-money-laundering supervisors systematically use relevant initiatives of various international bodies, as well as best-practice papers and guidance papers from the Financial Action Task Force and the European Banking Authority, in their work on supervision and guidance to the private sector (art. 14, para. 4).
- The Portuguese authorities provide training, particularly to countries in South America and Portuguese-speaking countries, which represents additional efforts in promoting global, regional and subregional cooperation (art. 14, para. 5).

## 2.3. Challenges in implementation

It is recommended that Portugal:

- Develop a nationwide, effective and coordinated anti-corruption strategy (art. 5, para. 1).
- Establish a body or bodies with the necessary independence and sufficient resources or entrust an existing body or bodies with the necessary mandate to oversee or coordinate the implementation of the nationwide anti-corruption strategy and provide such a body with the necessary independence and sufficient resources (art. 6, paras. 1 and 2).
- Consider developing procedures to determine positions vulnerable to corruption and establish appropriate systems to periodically rotate staff on such positions (art. 7, para. 1).
- Endeavour to adopt codes of conduct and other appropriate measures, including training, to provide ethical guidance to all categories of public officials (art. 8, paras. 1–3).
- Endeavour to develop Comprehensive regulations applicable to all public officials on disclosure and management of conflicts of interest and acceptance of gifts, in particular to those in top executive positions, members of Parliament and the judiciary and PPS (arts. 8, para. 5, and 11).
- Continue efforts to revise, adopt and implement the amendments to the legislation currently under consideration before the parliamentary ad hoc committee and ensure that they are in line with the requirements of the Convention (arts. 7 and 8).
- Consider adopting comprehensive legislation establishing measures and systems to facilitate the reporting of acts of corruption to appropriate authorities by public officials, including by strengthening measures to protect reporting persons (art. 8, para. 4).
- Consider strengthening the systems for declaring assets and conflicts of interest by, inter alia, merging the existing registers and improving the review and verification systems, clarifying which public officials should file declarations and including the judiciary and PPS staff as declarants (art. 8, para. 5).

- Strengthen the existing measures on access to information, including by establishing effective internal appeal mechanisms and clear timelines (art. 10 (a)).

### 3. Chapter V: asset recovery

#### 3.1. Observations on the implementation of the articles under review

*General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)*

The asset recovery legal framework in Portugal consists mainly of the Criminal Code, CPC, the AML/CFT Law, Law 144/99 on international judicial cooperation in criminal matters and Law 88/2009 on approving the legal regime for issuing and executing decisions of confiscation of instruments, proceeds and advantages of crime. In addition, the self-executing provisions of the Convention are directly applicable in Portugal in accordance with article 8 of CRP.

The competent authority for receiving, considering and implementing requests for asset recovery in Portugal is the Public Prosecution Service (PPS). The Criminal Police supports public prosecutors in identifying, tracing and seizing assets for confiscation and/or return to the requesting States. GRA, which is set up under the remit of the Criminal Police, is the Portuguese Asset Recovery Office. The mandate of GRA is to identify and trace criminal proceeds or instrumentalities and cooperate with the asset recovery offices of other States. The management of seized and confiscated property is carried out by GAB.

Portuguese legislation provides for the spontaneous transmission of information domestically or internationally (art. 129 of the AML/CFT Law). Furthermore, information may be shared with relevant authorities of other States through the Egmont Group, the European platform of asset recovery offices, the Camden Asset Recovery Inter-Agency Network (CARIN), the International Criminal Police Organization and the European Union Agency for Law Enforcement Cooperation.

Portugal has concluded one bilateral agreement with Switzerland on the recovery of assets.

*Prevention and detection of transfers of proceeds and crime; financial intelligence unit (arts. 52 and 58)*

Obligated entities are required to identify their clients, including occasional clients and all representatives and beneficial owners (arts. 23 and 24 of the AML/CFT Law). They are also required to verify the identities of their clients, to set up their risk profiles and implement an appropriate risk management system (art. 14 of the AML/CFT Law). The obligation to identify beneficial owners is defined in articles 29 to 34 of the AML/CFT Law. Beneficial owners are defined under article 30 of the AML/CFT Law and in Bank of Portugal Notice 2/2018 (former Notice 5/2013). A new law creates a central register of beneficial owners and abolishes bearer shares (Law 89/2017). The AML/CFT Law defines politically exposed persons (PEPs) in article 2 (1) (cc), and persons known to be close associates in article 2 (1) (dd). Obligated entities are required to have risk-based procedures to determine if the customer is a PEP, a close family member of a PEP, or a person known to be closely associated with a PEP (art. 19 (1) and (3) of the AML/CFT Law). Portuguese authorities provide further guidance on how to detect the criminal activity of former PEPs. This includes a set of indicators on how to identify former PEPs (arts. 19, 39 and 52 (2) of the AML/CFT Law).

Article 36 of the AML/CFT Law requires financial institutions to apply enhanced due diligence measures to situations identified as high-risk. To this end, its annex III provides for an indicative list of potentially higher-risk factors, to which financial institutions must pay particular attention. Competent authorities, including the Bank of Portugal, may define other situations of potentially higher risk (art. 36 (1) and (3) (b) of the AML/CFT Law). Article 52 of the AML/CFT Law defines the “obligation of scrutiny”, and according to article 41 (2) of Bank of Portugal



Notice 2/2018, the Bank of Portugal shall disseminate and update a list of examples of potentially suspicious indicators, listing conduct, activities or operations that may be related to funds or other assets that originate from criminal activities or that are related to the financing of terrorism.

PEPs and United Nations Security Council resolutions are included in the screening tools pursuant to articles 2 (1) and 18 (2) of the AML/CFT Law.

Article 51 of the AML/CFT Law provides that records and files should be kept for at least seven years in a durable medium, preferably electronic. Furthermore, obliged entities shall carry out proper ongoing monitoring of business relationships, including monitoring of clients, their risk profiles, transactions and other relevant activities, and update regularly the information received for customer due diligence purposes (arts. 18 (2), 27 (3) (c) and 40 of the AML/CFT Law).

The establishment of “shell banks” is prohibited (art. 66 of the AML/CFT Law). Financial institutions are prohibited from establishing or maintaining correspondent banking relationships with any fictitious financial institution and must verify that their correspondents abroad are subject to the same obligation.

The asset declaration system for selected officials includes sanctions for non-compliance. Declarations are not available online but may be consulted in the Constitutional Court by anyone. The declarations may be shared with foreign States upon a request received through mutual legal assistance procedures. Article 1 of Law 4/83 requires public officials to declare assets and liabilities “in Portugal and abroad”, such as securities portfolios, term bank accounts, equivalent financial investments and, if their amount is greater than 50 minimum wages, current bank accounts and credit rights.

Obliged entities are required to submit suspicious transaction reports (STRs) to FIU and DCIAP (art. 43 of the AML/CFT Law). In case of non-compliance, financial penalties may be imposed by supervisory or oversight entities (art. 169 (cc) of the AML/CFT Law). FIU does not have investigative powers. As a result, it receives and analyses STRs and forwards them to the law enforcement authorities where a crime involving money-laundering or the financing of terrorism or any predicate offence is suspected. FIU disseminates information to financial and non-financial entities, assesses systemic risks and regularly hosts discussions with financial and non-financial entities and supervisory, oversight and other public authorities. FIU cannot freeze accounts but may temporarily suspend transactions. FIU is composed of members from the police service who are experts in anti-money-laundering and countering terrorist financing, as well as three experts seconded from the tax authorities. It cooperates with other FIUs pursuant to memorandums of understanding and via the EGMONT Group, as well as to article 137 of the AML/CFT Law, which allows for the exchange of information between FIUs.

*Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)*

Foreign States may initiate civil action, sue for compensation and be recognized as legitimate owners of property acquired through the commission of offences under the Convention in accordance with article 2 (Guarantee of access to the court system) and article 30 (Definition of lawful parties) of the CPCiv. However, Portugal has never had a corruption case involving a foreign State as a civil party.

Portugal does not require a treaty to render international cooperation. Portuguese legislation allows for the direct enforcement of foreign judgments and orders for confiscation (art. 160 of Law 144/99 and, within the European Union area, Law 25/2009), as well as the transfer of confiscated property. In legislation applicable to European Union members (Law 25/2009), Portugal establishes a legal regime that simplifies the procedures further. However, Portugal has not been requested to provide such assistance in a corruption case.

Articles 109 to 111 of the Criminal Code foresee the general rule for confiscation, including extended confiscation. Confiscation of proceeds and instrumentalities of money-laundering, corruption and other crimes is provided for in articles 1, 7 and 12 of Law 5/2002, including when the crime is committed outside Portugal or if the funds are of foreign origin. The provisions protect bona fide owners (art. 111 (2) of the Criminal Code and article 28 of Law 144/99). Article 178 of CPC allows for the Public Prosecutor and Criminal Police to temporarily seize and freeze assets until a court order is issued. Articles 111 (4) and 228 of CPC and article 10 (2) of Law 5/2002 provide that goods may be seized equal to the value of the unexplained wealth.

Portugal provides for the possibility of civil or non-conviction-based confiscation (in accordance with Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union). Portugal has never had a corruption case involving civil recovery.

A foreign State party may request enforcement of interim measures in Portugal. Such requests do not require a court order but should take the form of letters rogatory transmitted directly between the competent judicial authorities (art. 152 of Law 144/99). With respect to European Union member States, Portugal applies the provisions of Law 25/2009, which provides detailed guidance on the recognition and execution of freezing orders in Portugal, issued by a judicial authority of another European Union member State, in criminal proceedings, in order to collect evidence or confiscate property. It is not clear whether it is possible to enforce foreign judgments or orders for freezing, seizing or confiscating assets in Portugal that do not relate to criminal proceedings. Nevertheless, Portugal does not have other mechanisms to proactively preserve property for confiscation. Because Portugal has not yet had a case involving enforcement of interim or confiscation orders related to corruption, implementation of article 55, paragraphs 1 and 2, cannot yet be assessed.

Portuguese legislation and procedures do not give the requesting State party the opportunity to present its reasons in favour of continuing the measures before lifting any provisional measures taken in relation to assets. Portugal submitted copies of its pertinent laws at the time of the review.

#### *Return and disposal of assets (art. 57)*

Law 144/99 (art. 160) mentions and provides for the disposal of property to its prior legitimate owners. In addition, the Convention could be used as the legal basis, and reciprocity can be used. Portugal provides for the return of assets minus expenses, but the return is conditional upon the requesting State having obtained a sentence, demonstrating a special interest and reciprocity being assured (arts. 26 and 110 (4) of Law 144/99). Furthermore, where requesting States are European Union member States, confiscated property in excess of €10,000 is shared on a 50 per cent basis, although non-cash assets may be returned in full to the requesting States (art. 18 of Law 88/2009). Portugal has concluded an agreement on the final disposal of confiscated assets with Switzerland. Portugal has not yet received any request for the return of assets from any foreign State.

### **3.2. Successes and good practices**

- Portuguese authorities go beyond the minimum and provide guidance on how to detect the criminal activity of PEPs. This includes a set of indicators on how to identify PEPs after they are no longer politically exposed (art. 52, para. 2).
- The practice of spontaneously sharing information, with a wide number of counterparts, which has led to the successful freezing of assets in concrete cases (art. 56).
- The creation of a Central Register for Beneficial Owners (arts. 12 and 52).

### 3.3. Challenges in implementation

It is recommended that Portugal:

- Monitor the implementation of the legislation in order to ensure that another State party is allowed to initiate civil action, sue for compensation and be recognized as the legitimate owner of property acquired through the commission of an offence established in accordance with the Convention. Should the judiciary not interpret the law in this way, legislative reform will be necessary (art. 53).
  - Take measures to clarify that, before the lifting of any provisional measure, the requesting State party should be given an opportunity to present its reasons in favour of continuing the measure (art. 55, para. 8).
  - Adopt such legislative and other measures as may be necessary to give effect to a request made by another State party for the return and disposal of assets referred to in the Convention (art. 57, para. 3 (a) and (b)).
  - Consider concluding further bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to the Convention (art. 59).
-