

# **Steps taken to implement and enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**

## **PORTUGAL**

*(Information as of 30 April 2009)*

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

Portugal ratified the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions on 31 March, 2000 and deposited its instrument of ratification on 21 November, 2000.

### ***Implementing legislation***

#### *Identification of the law*

*Law n° 13/2001*- Implementing Law; transposes the wording of the Convention into domestic law. Prior to the signing of the Convention, the Portuguese Criminal Code, as well as the Law n° 34/87 of 16 July, already criminalized offences of active and passive bribery of domestic public officials. However it was necessary to create a specific offence in order to criminalize the active bribery of a foreign public official.

The Law n° 13/2001, of 4 July, establishes the offence of active corruption against international business and this implementing legislation also makes necessary amendments regarding money laundering and jurisdiction.

Following the above-mentioned law, in November 2001, the Criminal Code was amended and the crimes of active bribery, of passive bribery for the commission of an unlawful act and of passive bribery for the commission of a lawful act are punished in equal terms, either when the crime is committed by a domestic public official or when it is committed by a foreign public official.

#### *Date of adoption and date of entry into force*

04-06-2001.

### ***Other relevant Laws, regulations or decrees that have an impact on a country's implementation of the OCDE Convention or the Recommendations***

*Law N° 108/2001*, 28 November, 11<sup>th</sup> amendment to the Criminal Code and to Law N° 34/87: this law introduces, among others, some modifications to the legal regime applicable to crimes of corruption and traffic in influence and extending the scope of domestic public officials to include certain foreign public officials.

*Law on the organization and functioning of the political parties n° 1/2001*, August 14<sup>th</sup>, modifies the financing regime of the political parties and elections campaigns.

*Decree of the President of the Republic n° 58/2001*, November 15<sup>th</sup>, ratifying the Convention on the Fight against Corruption in which officials of the European Communities or of the Member States of the European Union are implied.

*Law n° 10/2002*, February 11<sup>th</sup>, improves legal provisions destined to prevent and to punish money laundering as a result of criminal activities.

*Law n° 5/2002* establishes measures to fight against organized and economic- finance crime.

*Law n° 52/2003*, on measures to fight against terrorism.

*Signature/ratification of other relevant international documents*

*Notice n° 60/2002*, made public that the Portuguese Government deposited the ratification instrument of the European Council Criminal Convention on Corruption on 7 May, signed in Strasbourg on 30 April 1999.

In December 2003, Portugal signed the *UN Convention against Corruption*.

Portugal has ratified the *UN Convention against Transnational Organized Crime* and deposited the ratification instrument on 10 May 2004.

Portugal ratified the UN Convention Against Corruption, approved by the Parliament's Resolution 47/2007, of 21 September and ratified by the President's Decree no 97/2007, of 21 September.

*Law n° 50/2007*, of 31 August, establishing a new legal framework concerning criminal liability for corruption in the field of sports (includes corporate criminal liability in this regard);

*Law no. 51/2007*, of 31<sup>st</sup> August – Establishing the objectives, priorities and orientations for the criminal policy, for the period 2007-2009, in compliance with Law no 17/2006, of 23<sup>rd</sup> March, approving the Framework Law on criminal policy

*Law n° 59/2007*, of 4 September – amending the Portuguese Penal Code – includes specific provisions on corporate criminal liability, namely for crimes of corruption and extends the criminal record to legal persons; furthermore, the definition of “public official” for the purpose of criminal responsibility for crimes of corruption, as amended, includes all those who intervene in alternative dispute resolution mechanisms (such as arbitrators);

*Law no. 60/2007*, of 31<sup>st</sup> December – Legal framework of civil (non contractual) liability of the State and public entities;

*Law n° 67/2007*, of 31 December – legal framework of civil (non contractual) liability of the State and public entities;

*Decree-Law 18/2008*, of 29 January, which approves the Code on Public Contracts, establishing the procedural and substantive framework for the public contracts with the nature of an administrative contract. This Decree-Law establishes, among other, that entities that have been convicted, by a final decision, of crimes of corruption or money laundering cannot apply in a competition for a public contract;

*Law 19/2008*, of 21 April, which approves several measures related to the combat against corruption, namely pertaining to *whistleblowers*;

*Law 20/2008*, of 21 April, which creates a new criminal legal framework for corruption in international trade and private sector, implementing the EU Framework Decision no 2003/568/JHA, of the Council, of 22 July: this law establishes the criminal responsibility framework for crimes of corruption perpetrated in the specific context of international trade and private activity;

*Law no. 25/2008*, of 5th June – Establishing the preventive and repressive measures for the combat against the laundering of benefits of illicit origin and terrorism financing, transposing into the domestic legal system Directive 2005/60/EC of the European Parliament and Council, of 26 October 2005, and Directive 2006/70/EC, of the Commission, of 01 August 2006, relating to the prevention of the use of the financial system and of the specially designated activities and professions for purposes of money laundering and terrorism financing;

*Law n° 29/2008*, of 4 July, amending Law n° 93/99, of 14 July, concerning implementing measures aimed at witness protection in criminal procedure;

*Law 31/2008*, of 6 August, that approves the institutional organization of the Criminal Police, and in which it is established the National Unity on Combat of Corruption;

*Law no. 49/2008*, of 27<sup>th</sup> August – Approving the organization of the criminal investigations

*Law 54/2008*, of 4 September, which created the Council for the Prevention of Corruption: an administrative independent entity, with competence, namely to follow the implementation of legal instruments and provide with options on the adoption of legal instruments (internal or international), to elaborate best practices guides and cooperating with international organisms. The Council for the Prevention of Corruption has the duty to present yearly reports to the Parliament on its activities, and present recommendations, as well as intercalary reports.

### ***Other information***

#### *Relevant authorities*

Information on bribery offences must be reported to the Public Prosecutors Office. They can also be reported to the Criminal Police.

#### *Relevant Internet links to national implementation legislation*

[www.digesto.pt](http://www.digesto.pt)

[www.infocid.pt](http://www.infocid.pt)

[www.eusoujurista.pt](http://www.eusoujurista.pt)

### ***Working Group on Bribery Monitoring Reports***

#### **Phase 1:** Review of Implementation of the Convention and 1997 Recommendation

<http://www.oecd.org/dataoecd/51/59/2088284.pdf>

The recently approved *Law N° 11/2004* of March 27 contains the relevant provisions on money laundering and amends the Criminal Code by adding a new article that includes the definition and punishment of the crime, which was already incorporated in a special criminal law. Prior to this amendment, the Decree Law n° 325/95 already contained the definition of the offence as well as the penalties, however this new law adds some predicate offences to the list of predicate offences to money laundering, as well as defines the entire money laundering criminal regime.

Thus, article 368-A of the Criminal Code, which penalises acts of money laundering, enumerates a number of predicate offences including corruption, drug and human beings trafficking and sexual abuse of children or minors.

Any person who, knowing that certain goods and products proceed from criminal offences amounting to qualified procuring, sexual abuse of children and dependant minors, extortion, drug trafficking, firearms trafficking, trafficking in organs or in human tissues, trafficking in protected species, tax fraud, trafficking in influence, corruption or any other offence mentioned in paragraph 1 of Article 1° of Law N° 36/94 of 29 September and all the illicit and typical facts punished with minimum term imprisonment superior to 6 months or maximum term imprisonment of more than 5 years, directly or indirectly converts, transfers, assists in or facilitates any conversion or transfer of all or part of such goods or products in order, either to conceal or dissimulate its illegal origin, or to assist any person involved in committing any such offences to avoid legal consequences of his or her behaviour, conceals or dissimulates the true nature, origin, whereabouts, layout, movement or ownership of such goods or products or rights pertaining thereto, shall be liable to imprisonment for a term of 2 to 12 years.

Under the Law N°11/2004, certain financial institutions (including banking and non banking institutions) and certain non-financial institutions performing activities linked to gambling or to the trade of goods of high value or immovable property (e.g. casinos, real estate agents) are submitted to a determined number of administrative obligations, such as to identify the person involved in transactions exceeding a certain amount, retain the evidence for identification and report suspected money laundering transactions to the competent judicial authority, among others.

There were similar obligations present in the previous law- n° 36/94 of 29 September, however the new law n° 11/2004 has widened the scope of the entities that are subject to these report and identification obligations and has clarify these obligation.

**Phase 2:** Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions

<http://www.oecd.org/dataoecd/28/24/38320110.pdf>