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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

Implementing the OECD Anti-Bribery Convention in Portugal: Phase 4 Report

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Executive Summary

This Phase 4 report by the OECD Working Group on Bribery evaluates and makes recommendations on Portugal's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The report tracks progress made by Portugal since the Phase 3 evaluation in 2013. It details Portugal's achievements and challenges, including on detection of foreign bribery, enforcement of its foreign bribery laws and corporate liability.

The Working Group welcomes the measures to improve detection in the 2020-2024 National Anti-Corruption Strategy. However, several areas require improvements and the number of foreign bribery allegations detected since Phase 3 remains low. Portugal has never detected a foreign bribery case through reporting of public officials or auditors' reports, and detection through suspicious transaction reports and tax authorities is low. The Working Group commends Portugal for the adoption of comprehensive legislation on whistleblower protection, however some elements need further clarification.

The Working Group welcomes Portugal's efforts to clarify concerns regarding the interpretation of the foreign bribery offence, addressing several outstanding Phase 3 recommendations, and will follow up its application in practice. Concerns persist regarding the new defence of effective regret, which Portugal should amend, and the Working Group notes that a longstanding recommendation on the absence of monetary sanctions against natural persons, except in limited cases of conversions of prison sentences, remains not implemented.

Despite the fact that the Portuguese authorities have increased their investigative efforts, the Working Group is seriously concerned about the level of foreign bribery enforcement in Portugal. It notes that since the Convention entered into force in Portugal over 20 years ago, there are still no convictions or sanctions imposed for foreign bribery. The Portuguese authorities have prematurely closed foreign bribery cases without investigating relevant allegations thoroughly and proactively, with the number of cases terminated having increased significantly compared to Phase 3. The Working Group notes that many of Portugal's foreign bribery allegations involve high-level foreign public officials and/or major Portuguese companies, and that only two of these cases has resulted in prosecution.

The Working Group welcomes Portugal's efforts to clarify that the exclusion of liability in article 11(2) of the Criminal Code does not apply to legal persons acting in business transactions. However, some Phase 3 concerns remain. Despite recent reforms to the Criminal Code, Portugal has not repealed the defence of acting against express orders or instructions in article 11(6). Portugal also needs to ensure that the liability of legal persons for foreign bribery is not restricted in practice to the cases where a natural person is prosecuted or convicted, and that statutory fines for foreign bribery against legal persons are effective, proportionate, and dissuasive in practice.

The report also highlights good practices and positive achievements that have the potential to enhance Portugal's implementation of the Convention. The enactment of the General Regime for the Prevention of Corruption and the establishment of the National Mechanism Against Corruption can foster a culture of compliance in the country's business sector and Portugal must now use the momentum to increase the awareness of and support proper implementation of the new regime. The Working Group commends Portugal for enacting legislation on whistleblower protection and non-trial resolutions, as well as its efforts in terms of awareness-raising and training in the public and private sectors. The Working Group also welcomes the development of awareness raising activities to local judicial and law enforcement authorities in demand side countries with which Portugal has strong cultural and economic ties. Additionally, the

Working Group welcomes Portugal's recent ambitious recruitment programme for careers in criminal investigation, forensic analysis, and security in the Criminal Police.

The report and its recommendations reflect the findings of experts from Bulgaria and Costa Rica and were adopted by the Working Group on 13 October 2022. It is based on legislation, data and other materials provided by Portugal, as well as research conducted by the evaluation team. Information was also obtained during the on-site visit in May 2022, during which the evaluation team met representatives of Portugal's public and private sectors, law enforcement, media, and civil society. The Working Group invites Portugal to submit an oral report in one year on its implementation of selected recommendations, and a written report in two years on the implementation of all recommendations and its enforcement efforts.

Introduction

1. In October 2022, the Working Group on Bribery in International Business Transactions (Working Group or WGB) completed its fourth evaluation of Portugal's implementation of the OECD Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions (Convention), the 2021 Recommendation of Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Recommendation), and related anti-bribery instruments.¹

1. Previous evaluations of Portugal by the Working Group on Bribery

2. Monitoring implementation of the Convention, the 2021 Recommendation and related instruments is conducted through successive phases, according to agreed-upon principles and through a rigorous peer-review system. The monitoring process is compulsory for all Parties to the Convention, and on-site visits are mandatory in Phases 2, 3 and 4. The monitoring reports, which are systematically published on the OECD website, include recommendations to the evaluated country. These reports are adopted on a 'consensus minus one' basis, which means that the evaluated Party may voice its views and opinions but cannot block the adoption of the final report and recommendations.

3. The Phase 3 evaluation of Portugal took place in June 2013. By the time of the two-year written follow-up in 2015, Portugal had fully implemented 7 recommendations, partially implemented 19, and 7 were not implemented (Figure 1. Portugal's Implementation of its Phase 3 recommendations and Annex 1). The Working Group decided to revisit the outstanding recommendations and follow-up issues in Portugal's Phase 4 evaluation.

Box 1. Previous Working Group on Bribery Evaluations of Portugal

2015 [Phase 3 Follow-up Report](#)

2013 [Phase 3 Report](#)

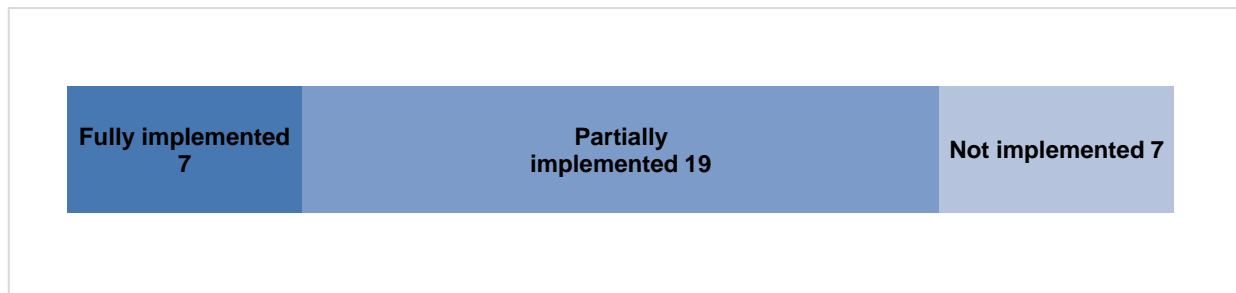
2009 [Phase 2 Follow-up Report](#)

2007 [Phase 2 Report](#)

2002 [Phase 1 Report](#)

¹ On 26 November 2021, the OECD Council adopted the Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions (the Anti-Bribery Recommendation), in order to strengthen the implementation of the OECD Anti-Bribery Convention and further enhance the fight against foreign bribery. The Anti-Bribery Recommendation updates and expands upon the original 2009 Recommendation. As a result, this Report refers to the Anti-Bribery Recommendation and some paragraphs reflect 'new' aspects of the Anti-Bribery Recommendation.

Figure 1. Portugal's Implementation of its Phase 3 recommendations



2. Phase 4 process and on-site visit

4. Phase 4 focuses on three crosscutting themes – detection; enforcement of the evaluated Party's foreign bribery offence; and corporate liability for the offence (liability of legal persons). Additionally, it addresses the Party's progress on previously unimplemented Phase 3 recommendations, issues raised by changes to the Party's legal and institutional frameworks for combating foreign bribery, as well as any new issues that come to the Working Group's attention. Phase 4 considers each Party's unique situation, resulting in a report and recommendations that address the specific challenges and achievements of each Party in a more targeted manner than previous Phases. This result is largely achieved by focusing first and foremost on the recommendations from Phase 3 that were not fully implemented by the end of that cycle. This means that issues that were not problematic or were resolved by the end of Phase 3 may not be reflected in the Phase 4 Report, while wholly new issues that have arisen since that time may appear in this report for the first time.

5. The team for this Phase 4 evaluation of Portugal was composed of lead examiners from Bulgaria and Costa Rica, as well as members of the OECD Anti-Corruption Division.² After receiving Portugal's responses to the Phase 4 questionnaire and supplementary questions, the evaluation team conducted an on-site visit to Lisbon from 23 to 27 May 2022. The team met with representatives of Portugal's government, law enforcement authorities, the judiciary, the private sector (business associations, companies, financial institutions, lawyers and external auditors), as well as civil society (non-governmental organisations, academia and the media).³ The evaluation team expresses its appreciation to all the participants for their contributions to the open and constructive discussions. The evaluation team is also grateful to Portugal for the co-operation throughout the evaluation, the organisation of a well-attended on-site visit, and the provision of additional information following the visit. However, while representatives of business associations and regulatory authorities covering small and medium enterprises (SMEs) were present at the on-site visit, the lead examiners were disappointed by the lack of participation of

² Bulgaria was represented by Ms. **Lilia Boyanova Penkova-Stankova**, Senior expert, Prevention of Corruption Directorate, Commission for Combating Corruption and Confiscation of Illegally Acquired Property (CCCIAP) and Mr. **Lachezar Zlatkov**, Investigator, Corruption and Money Laundering Department, General Directorate for Combating Organized Crime, Ministry of Interior. Costa Rica was represented by Ms. **Amy Román Bryan**, Public Ethics Prosecutor, Attorney General's Office of the Republic and Ms **Diana Hernández Gamboa**, Coordinating Prosecutor, Deputy Prosecutor for Probity, Transparency and Anti-Corruption, Public Prosecutor's Office. The OECD was represented by Ms. **Elsa Gopala Krishnan**, Senior Legal Analyst; Mr. **Apostolos Zampounidis**, Legal Analyst, Mr. **Vitor Geromel**, Legal Analyst, and Ms. **Anaïs Michel**, Legal Analyst, all from the Anti-Corruption Division, Directorate for Financial and Enterprise Affairs.

³ See Annex 2 for the list of participants in the on-site visit discussions.

representatives from actual SMEs in panels with the private sector, given their importance in the Portuguese economy.

3. Portugal's foreign bribery risk in light of its economic situation and trade profile

(a) Economic background

General

6. Portugal is a relatively small economy in the context of the Working Group, with just over 10 million people and Gross Domestic Product (GDP) amounting to EUR 211 278 million in 2021.⁴ Portugal ranked 31st among WGB members in terms of GDP, 31st for exports of goods and services, and 28th for outward FDI stocks.⁵ The Portuguese economy had expanded significantly, following the global financial crisis and the European sovereign debt crisis, before the COVID-19 outbreak. The COVID-19 pandemic was a severe blow to the Portuguese economy as GDP in real terms declined 8.4% in 2020, reflecting its relative exposure in pandemic affected industries such as tourism.⁶ Following a strong rebound by 4.9% in 2021, the Portuguese economy continues its recovery robustly, with GDP and exports having surpassed pre-crisis levels in early 2022. Portugal's FDI financial flows fell (outward by 36% and inward by 38%) in 2020.⁷ Inward financial flows recovered slightly by 5% while outward flows turned negative in net terms (i.e. reverse investments by foreign affiliates in their resident parents in Portugal outweighed investments by resident parents in Portugal in their affiliates abroad) in 2021, but a fast recovery thereafter is expected according to the OECD.⁸

International trade

7. As of 2020, goods exports (USD 61.5 billion, (Figure 2. Composition of Portuguese Exports(A)) are 2.5 times as large as service exports (USD 25.5 billion). Portugal's major trading partners are EU member states (in particular Spain, France and Germany), the United Kingdom and the United States, accounting for 73.2% of goods exports and 75.4% of service exports.⁹ Transport equipment such as vehicles as well as electrical machinery and equipment (together accounting for 22.1% of total goods exports for all export destinations) are among major products of goods exports (Figure 2. Composition of Portuguese Exports(A)). Tourism and transport services account for more than half of total services exports (Figure 2. Composition of Portuguese Exports(B)). Angola and Brazil are also important trade partners (9th and 11th, respectively, for goods exports). The share of transport equipment and electrical machinery/equipment is relatively high for Angola (26.7% of total goods exports to Angola) and that of aircraft is substantial for Brazil (15.1% of total goods exports to Brazil, while aircraft accounts for only 0.8%

⁴ OECD, National Accounts database.

⁵ UNCTAD, Output and Income, Gross Domestic Product; Balance of Payments, Goods and Services; Balance of Payments, Foreign Direct investment Inward and Outward Flows and Stock. US dollars at current prices, 2020.

⁶ OECD (2021), [OECD Economic Outlook, Interim Report March 2021](#).

⁷ OECD, FDI Statistics according to Benchmark Definition 4th Edition (BMD4) database.

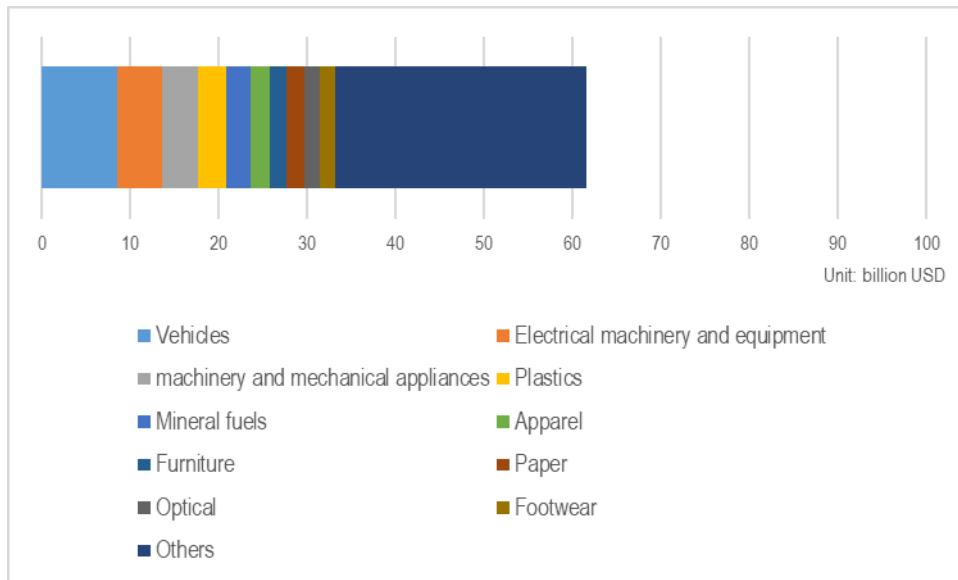
⁸ OECD (2022), [Strengthening FDI and SME Linkages in Portugal](#).

⁹ OECD, International Trade by Commodity Statistics database.

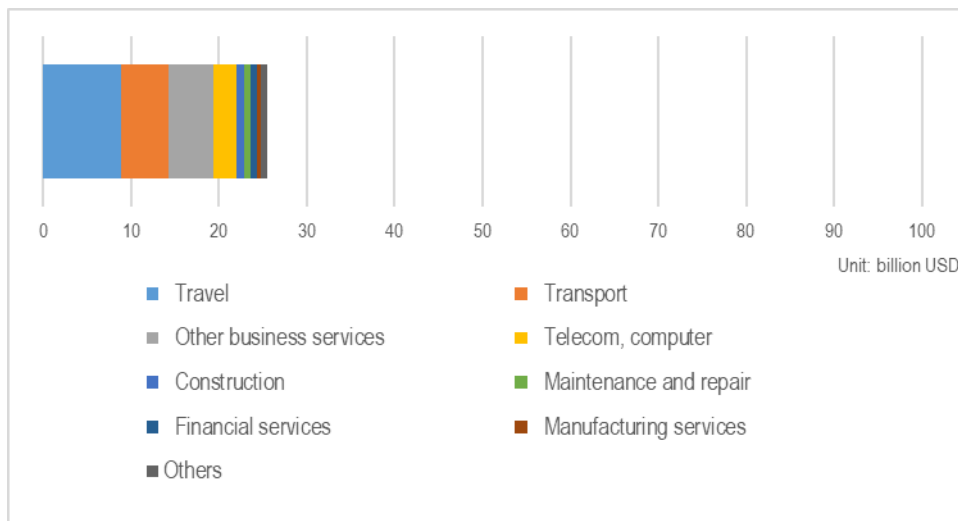
of total goods exports for all export destinations).¹⁰ For service exports to Brazil, the share of transport services is markedly high (47.2% of total services exports to Brazil).¹¹

Figure 2. Composition of Portuguese Exports

A. Total Goods Exports: 61.5 billion USD in 2020



B. Total Service Exports: 25.5 billion USD in 2020



Source: OECD International Trade by Commodity Statistics (ITCS); OECD International Trade in Services Statistics (ITSS).

¹⁰ OECD, International Trade by Commodity Statistics database.

¹¹ OECD, International Trade in Services Statistics database.

Foreign direct investment

8. Portugal's outward FDI stocks (USD 57.3 billion) are considerably smaller than its inward stocks (USD 171.3 billion).¹² More than half of inward stocks immediately originate from the Netherlands, Spain and Luxembourg, and the vast majority of all inward stocks (87.4%) have their origins in Europe. 65.7% of FDI inward stocks are classified in the services sector, of which finance and insurance activities account for 22.2 points.¹³ Outward stocks are similarly constituted, as 75.3% of total outward stocks are classified in the services sector, mainly explained by finance and insurance activities as well as professional services (Table 1. Composition of Portuguese Outward Foreign Direct Investment). In terms of the destinations of outward FDI, Spain and the Netherlands stand out particularly, followed by Angola, Brazil, and Mozambique with these three countries together accounting for 12.4% of total outward FDI stocks (Table 1. Composition of Portuguese Outward Foreign Direct Investment). In terms of activities of the beneficiaries of Portuguese outward FDI, the share of construction is substantially high in Africa (30.4%, which compares with 5.4% out of total Portuguese outward FDI stocks all over the world), which is explained essentially by Angola and Mozambique.¹⁴

Table 1. Composition of Portuguese Outward Foreign Direct Investment

Total outward stocks: 57.3 billion USD in 2020	
<i>by destination</i>	
Spain	35.0%
Netherlands	25.4%
Brazil	5.0%
Angola	4.6%
Mozambique	2.8%
France	2.3%
United Kingdom	2.2%
United States	2.0%
Luxembourg	1.9%
Poland	1.7%
Others	17.2%
<i>by activity</i>	
Mining and quarrying	0.0%

¹² OECD, FDI Statistics according to Benchmark Definition 4th Edition (BMD4) database.

¹³ OECD, FDI Statistics according to Benchmark Definition 4th Edition (BMD4) database. As noted in OECD (2022) "[Strengthening FDI and SME Linkages in Portugal](#)" some FDI in Portugal may however originate from immediate investing countries through which investments have been channelled. According to the OECD, although Portugal does not yet publish FDI data in terms of ultimate investing country, it would be likely that the 20% FDI share of Luxembourg points to this problem, for example.

¹⁴ OECD, FDI Statistics according to Benchmark Definition 4th Edition (BMD4) database.

Manufacturing	7.6%
Construction	5.4%
Wholesale and retail trade	0.6%
Transportation	N.A.
Information and communication	-0.7%
Financial and insurance activities	35.6%
Real estate activities	8.4%
Professional, scientific and technical activities	30.2%
Others	12.7%

Note: Information and communication has a negative contribution, since investments made by foreign affiliates in their resident parents in Portugal are larger than investments by resident parents in Portugal in their affiliates abroad. The shaded areas stand for: (by destination) the countries considered as a high risk jurisdiction (for which the “Control of Corruption” indicator by the World Bank Worldwide Governance Indicators, which ranges between around -2.5 and 2.5, is below the average (=0); and (by activity) the industries identified as particularly sensitive in OECD (2014) “OECD Foreign Bribery Report”.

Source: OECD FDI statistics according to Benchmark Definition 4th Edition.

Corporate structure

9. Micro, small and medium-sized enterprises account for 99.9% of all companies registered in Portugal in 2019 as well as in 2020.¹⁵ In 2019, SMEs accounted for 77.4% of employment.¹⁶ SMEs in Portugal – in line with other OECD countries – are most present in services but also account for an important share in manufacturing. SMEs in Portugal are concentrated in domestically-oriented services such as advertising, legal, accounting, management, scientific and technical services but also in larger service sectors such as logistics and transport.¹⁷

10. Regarding state-owned enterprises (SOEs), they currently operate in Portugal in the banking, health care, transportation, water, and agriculture sectors. In Portugal, sectorial ministries set policies for sectors in which SOEs operate. In addition, representatives of the Ministry of Finance met at the on-site visit indicated that SOEs need to seek authorisation for a “number of financial transactions”. Frameworks for state ownership are reviewed on an as-needed basis.¹⁸

11. For three decades, Portugal has gone through important privatisation programmes, among which an important privatisation programme in 2011 as part of its EU-IMF bailout. In July 2020, however, the Portuguese government took back a controlling stake in an energy company, that had been controlled by a daughter of Angola’s previous President, in a move aimed at ending legal uncertainty and facilitating the sale of her shares in the context of the criminal cases involving her.¹⁹

¹⁵ INE, PORDATA, [Enterprises, Total and Total SMEs](#) (Accessed on 10-02-2022).

¹⁶ Representing 10 percentage points higher than the respective EU average for SMEs. [2019 SBA Fact Sheet PORTUGAL](#).

¹⁷ OECD (2022), [Strengthening FDI and SME Linkages in Portugal](#).

¹⁸ OECD (2018), [Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices](#) (pp. 19-20).

¹⁹ <https://www.reuters.com/article/us-angola-dossantos-efacec-idUSKBN24331V>

Situation of the autonomous regions of Madeira and the Azores

12. Portugal is a unitary state, with two autonomous regions. Their autonomy does not cover areas which are central for this evaluation, such as criminal law, international co-operation in criminal matters, tax or financial supervision. The Convention, all laws enacted by Parliament, including laws implementing the Convention, also apply to both territories.

13. Madeira hosts a Free Trade Zone (FTZ) with preferential tax regimes and benefits from a specific legal provision allowing the recognition of foreign trusts in the Madeira FTZ if the settlor, beneficiary and immovable property of the trust are not situated in Portugal. Portugal qualified the specific tax regime applicable in Madeira as a “state aid in the form of tax having a regional purpose, for the purpose of the regional development of an outermost island”. According to the International Business Centre of Madeira (*Centro Internacional de Negócios da Madeira* - CINM), the European Commission extended Madeira’s special regime until 2023.²⁰ At the time of the discussion of this report, Portugal further noted that the Tax Authority of the Madeira Autonomous Region (Autoridade Tributária e Assuntos Fiscais da Região Autónoma da Madeira - AT-RAM) reports suspicions of crime to the PPS. Several foreign bribery allegations involving Portuguese companies involved Madeira FTZ.

(b) Portugal’s exposure to foreign bribery risks

14. In terms of foreign bribery risks, Portugal’s main export products, notably vehicles and other transport equipment as well as transportation services, are related to some specific sectors that are susceptible to corruption.²¹ The exposure of the beneficiaries of Portuguese outward FDI who are engaged in high risk activities, such as construction, in high risk jurisdictions, can be a significant risk.

15. In 2020, Transparency International pointed out the risk of exposure to foreign bribery induced by the deep historical ties between Portugal and Angola,²² as well as the “shady dealings” of the family of a former Angolan president.²³ High-profile corruption cases have already affected this relationship, raising suspicions of political interference. At the time of writing, approximately one third of the foreign bribery allegations involving Portuguese companies that have surfaced involved Angola.

16. More generally, Portugal plays an important role in the eight other countries constituting the Community of Portuguese Speaking Countries.²⁴ Several of these countries are active in sectors exposed to foreign bribery, such as extractive industries, hence exposing Portugal to foreign bribery risks. These links may consequently create risks for illicit proceeds to be channelled into the formal Portuguese economy.²⁵

²⁰IBC Madeira, News. Source: <https://www.abc-madeira.com/fr/actualites/news/591-european-commission-prolongs-madeira-s-abc-regime-until-2023.html> (Accessed on 11-01-2022).

²¹OECD (2014), [OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials](#), p.22.

²²Portugal being one of Angola’s main source of imports, Portuguese companies being very active in banking and construction in Angola, and Angolan elites having significant investments in the Portuguese industries, thanks to Angola’s oil boom as well as Portuguese investment policies.

²³Transparency International Portugal (December 2021), [Corrupção e Direitos Humanos](#) (Accessed on 11-01-2022).

²⁴The *Comunidade dos Países de Língua Portuguesa* (Community of Portuguese Language Countries – CPLP) is an international organization founded in 1996, and gathering the following nine countries: Angola, Brasil, Cape Verde, Guinea-Bissau, Equatorial Guinea, Mozambique, Portugal, São Tomé and Príncipe and Timor-Leste.

²⁵ FATF (2017), [Mutual Evaluation Report of Portugal](#), p.18.

4. Cases involving bribery of foreign public officials

17. The case information contained in annex of this report is based on the evaluation team's analysis of Portugal's responses to the Phase 4 questionnaire, discussion with prosecutors of the Central Department for Criminal Investigation and Prosecution (DCIAP) and investigators of the National Anti-Corruption Unit (UNCC) during the on-site visit, and independent research. The case information has been anonymised at the request of Portugal.

Figure 3. Portugal's foreign bribery cases as of June 2022



18. In Phase 3, the Working Group was seriously concerned about the low level of foreign bribery enforcement in Portugal. Of the 15 foreign bribery allegations that had surfaced at the time, none had resulted in prosecution and several cases had been terminated prematurely.

19. The situation in Phase 4 remains equally worrying. The evaluation team is aware of 29 foreign bribery allegations involving Portuguese natural or legal persons that have surfaced in the over 20 years since the Convention entered into force in Portugal (1 allegation in Phase 2, 15 allegations in Phase 3, and 13 new allegations in Phase 4). Of these 29 allegations, only 2 cases (7%) have been prosecuted after Phase 3. Based on available information, Portugal has, as of June 2022, five ongoing foreign bribery cases; three are at the formal investigation stage and two at the prosecution stage pending trial.

20. Portugal has terminated 22 foreign bribery cases without prosecution (1 case in Phase 2, 8 cases in Phase 3, and 13 cases in Phase 4, or 80% of all allegations). The number of cases that Portugal terminated in Phase 4 without prosecution has increased significantly compared to Phase 3. Foreign bribery allegations in two cases have been investigated as other offences. Additionally, Portugal seems to prioritise in practice investigations of domestic bribery, money laundering and tax fraud over foreign bribery. More importantly, Portugal has yet to successfully conclude a foreign bribery case.

Commentary

The lead examiners remain seriously concerned about the low level of foreign bribery enforcement in Portugal. While they welcome the prosecution of two foreign bribery cases, the lead examiners reiterate concerns already expressed in Phase 3 with regard to the low level of detection, the lack of proactive investigation of foreign bribery allegations, and the large number of terminated cases.

In particular, Portugal has not increased detection of foreign bribery cases since Phase 3, and the lead examiners consider that detection is low, given Portugal's strong economic links to countries plagued by severe corruption. Portuguese authorities also continue not to investigate sufficiently

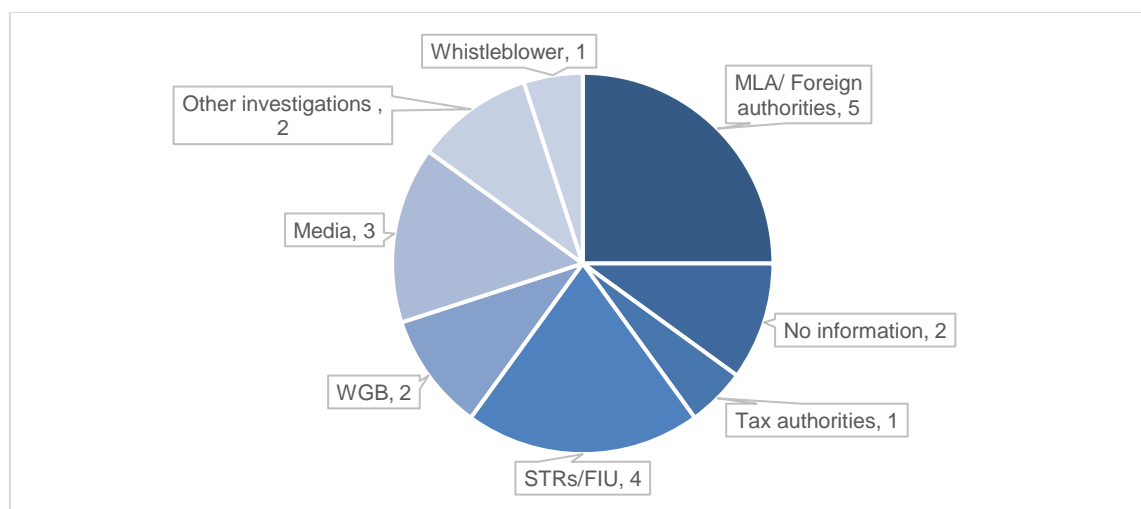
foreign bribery allegations before they decide to discontinue investigations, with the number of cases terminated having increased significantly compared to Phase 3. Finally, the lead examiners note with concern that Portuguese authorities seem to prioritise, in practice, investigations of domestic bribery, money laundering and tax fraud over foreign bribery.

A. Detection of foreign bribery

1. Sources of foreign bribery allegations

21. Portugal provided information on the sources of the allegations that led to 18 of the 20 cases described in this report. The data shows a diverse range of sources. Foreign authorities and incoming MLA requests as well as STRs/FIU reports account for around 50% of all allegations described in this report. Media (15%), the Working Group on Bribery (10%), and other investigations (10%) follow. One allegation originated from the report of an ex-employee of the involved company to law enforcement authorities and another from tax authorities. External auditing has not directly yielded any allegations. Companies have not disclosed potential foreign bribery to the authorities.

Figure 4. Sources of foreign bribery allegations



2. The 2020-2024 National Anti-Corruption Strategy

22. On 6 April 2021, the Council of Ministers of Portugal approved the 2020-2024 National Anti-Corruption Strategy (NACS). The NACS identifies priorities and proposes a series of actions specially dedicated to the prevention of corruption, including foreign bribery. Some of these actions and priorities are relevant to the detection and reporting of foreign bribery allegations:

- Prevent and detect risks of corruption in public action, including with the creation of new reporting channels, the adoption of the General Regime for the Prevention of Corruption (RGPC), and the creation of a National Anti-Corruption Mechanism (MENAC).
- Engage the private sector in the prevention, detection and prosecution of corruption, including by creating legal incentives to compliance.

- Strengthen the articulation between public and private institutions.
- Produce and periodically disseminate reliable information on the phenomenon of corruption.
- Cooperate at international level to fight corruption.

23. On 9 December 2021, the Council of Ministers, through the Decree-Law 109-E/2021, adopted the RGPC and created the MENAC. The RGPC establishes the obligation to public and private sector entities with headquarters in Portugal and 50 or more employees to adopt mechanisms and measures to prevent corruption, including foreign bribery. It also provides for administrative sanctions against the entities that fail to implement these obligations or do not do it adequately. The MENAC is an independent administrative authority that will monitor the implementation of the RGPC including by sanctioning public and private entities (see also Part C.5(a)). It is important to note, however, that the RGPC will enter into force gradually starting in June 2022 (articles 26-29 of Decree-Law 109-E/2021) (see Part C. Responsibility of legal persons).

24. Finally, also in December 2021, Portugal enacted two laws implementing important aspects of the NACS. Law 93/2021 transposes the EU Directive 2019/1937 on whistleblower protection and Law 94/2021 implements a series of legislative reforms foreseen in the NACS. These laws and the reforms they promote will be discussed under the relevant sections below.

3. Reporting by public officials

25. Portugal has never detected a foreign bribery case through the reporting of public officials. Any Portuguese citizen can report a crime to the PPS or other authorities (article 244 Criminal Code of Procedure (CCP)). Portuguese public officials have the obligation to report crimes of which they become aware “in the performance of their duties and in relation to them” (article 242(1)(b) CCP). The breach of the duty to report is punishable with dismissal of the public service.

26. Under Recommendation 1/2009 of the Council for the Prevention of Corruption (CPC) of 1 July 2009 on Corruption and Related Offences Risk Management Plans, public sector entities, regardless of the functional area or territory where they operate, are due to adopt corruption and risk management plans. These plans must cover fraud and corruption risks and the corresponding prevention and control measures. They normally comprise awareness raising and training, including on available reporting channels. The CPC, however, is concerned with corruption of Portuguese public officials only, not foreign bribery (Phase 3, para. 162).

27. Portugal also indicates the existence of several available reporting channels. Reports of crimes or suspicions of crimes can be presented in person to the PPS and/or police authorities, or through electronic channels (websites or e-mail), or by phone. DCIAP has an electronic reporting channel in its [website](#) exclusively dedicated to reports of corruption, including foreign bribery, and related offences. Statistics show that in 2019 this channel received 1 966 reports, of which approximately 15% resulted in pre-inquiries and investigations, 40% were referred to other entities, and 45% were filed. DCIAP also has a unit devoted to hearing whistleblowers who wish to make anonymous statements in person. The Criminal Police has an online reporting channel for anonymous reports only. Other institutions such as the CPC and the Camões Institute for Cooperation and Language (CICL), also offer channels for reporting of offences and other wrongdoings. Finally, the RGPC requires that public and private entities with more than 50 employees adopt internal reporting channels in accordance with Law 93/2021.

Commentary

The lead examiners recommend that Portugal (a) remind public officials of their duty to report foreign bribery, and (b) raise awareness of foreign bribery and the Convention among Portuguese public officials.

4. Reporting by foreign diplomatic missions

28. The Ministry of Foreign Affairs (MFA) officials are subject to the same duty to report that applies to all public officials. The MFA circulates every 18 months guidance to all Portuguese diplomatic missions requesting officials posted abroad to report any bribery related cases they become aware of, including through their media monitoring. The MFA reports allegations of foreign bribery to DCIAP. Portugal noted, after reviewing a draft of this report, that between 2013 and June 2022, DCIAP has received information collected by the MFA concerning foreign bribery allegations. However, it has not yielded any investigations regarding foreign bribery.

29. The MFA also reports that training to new diplomatic officials includes the detection of corruption schemes, including foreign bribery. The training also covers the identification of corruption based on case studies and awareness on the appropriate reporting channels. Portugal has not provided information on trainings or awareness raising on bribe solicitation to the private sector, or on its engagement in anti-bribery collective action initiatives. Portugal indicates, however, that it has promoted, through the CICL, a series of initiatives to prevent foreign bribery in co-operation with demand side countries, mainly Portuguese speaking countries in Africa. These initiatives include training to local judicial and law enforcement authorities.

Commentary

The lead examiners recommend that Portugal continue to provide training and raising awareness of foreign bribery to Portuguese public officials posted abroad.

The lead examiners welcome, as a good practice, the awareness raising activities to local judicial and law enforcement authorities in demand side countries with which Portugal has strong cultural and economic ties.

5. Media and investigative journalists

30. Media reports were the source of 3 of the 20 foreign bribery cases described in this report. This number could be higher considering the monitoring mechanisms in place. Portugal indicates that media reports can be used in pre-inquiries once they are validated by other credible sources. It also stresses that media sources are monitored daily by the Criminal Police that collects and disseminates relevant criminal information to all its departments. The Prosecutor General's Office also has a department that refers all media reports potentially revealing criminally relevant allegations to prosecutors. As noted above, Portugal's representations abroad monitor local media. Portugal further mentions that media articles published by a media consortium revealing information on money laundering schemes in Africa resulted in several pre-inquiries and investigations. Regarding the WGB, Portugal reports that it has designated contact points from DCIAP to directly receive allegations from it. DCIAP will then assess the information and decide whether or not to launch procedures against the individuals and companies reported.

Commentary

The lead examiners are encouraged that Portuguese authorities have initiated some foreign bribery investigations based on media information. However, the number of cases detected through this source could be higher considering the monitoring mechanisms in place. The lead examiners, therefore, reiterate the recommendation above regarding awareness raising of foreign bribery to public officials, including those monitoring foreign media.

6. Whistleblower reporting and protection

31. In Phase 3, the Working Group considered Portugal's legal framework for the protection of whistleblowers (article 4 of Law 19/2008) inadequate and recommended that Portugal enact appropriate measures to protect from discriminatory or disciplinary action employees who report to competent authorities suspected acts of foreign bribery (recommendation 11(c)). The Written Follow-Up report found that Portugal had partially implemented this recommendation by extending article 4 of Law 19/2008, which was previously applicable only to public sector employees, also to the private sector.

32. In December 2021, Portugal enacted Law 93/2021 to transpose the Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law (EU Directive). This Phase 4 evaluation is the Working Group's first opportunity to examine Law 93/2021 taking also into account the new standard on the protection of whistleblowers as provided by the Anti-Bribery Recommendation. One foreign bribery case to date has originated from a whistleblower report.

(a) Elements of the law that constitute good practice

33. Law 93/2021 contains important elements for the protection of whistleblowers (e.g. broad personal scope, confidentiality and anonymity, sanctions for those who retaliate, and shift of the burden of proof) that could arguably constitute good practice.

34. The law covers employees in the public and private sectors, including former employees, service providers, contractors and subcontractors, suppliers, shareholders, interns and volunteers. Protections are also available to whistleblowers during the recruitment process or another phase of pre-contractual negotiations (article 5). The law further covers third persons who assist the whistleblower in reporting, and those connected to the whistleblower, such as work colleagues or family members who may be the target of retaliation in a professional context (article 6(4)).

35. The law further guarantees the confidentiality of the identity of the whistleblower and the information that directly or indirectly allows for the identity of the whistleblower to be deduced. The identity of the whistleblower can be disclosed because of a "legal obligation" or court decision (article 18(3)), and the whistleblower shall be informed in advance in written (article 18(4)). Panellists were unsure of what "legal obligation" means in practice, but after reviewing a draft of this report Portugal argued that any "legal obligation" would require a necessity and proportionality assessment in line with the EU Directive and general principles of law.

36. Anonymous reports are also permissible, notwithstanding, article 6(2) clarifies that anonymous whistleblowers will benefit from protection once they are identified. Anonymous reports continue to be an important detection source for corruption offences in Portugal (article 246(6) CCP). According to the Council for the Prevention of Corruption (CPC), 45% of all criminal investigations in 2019-2022 involving corruption and related offences were triggered by anonymous reports.

37. Retaliation against whistleblowers is an administrative offence punishable by a fine of EUR 1 000 - 25 000, if the perpetrator is a natural person, and EUR 10 000 - 250 000, if the perpetrator is a legal person (article 27). The retaliating natural or legal person is also liable for any damage caused to the whistleblower and has an obligation for compensation (article 21(4)). Article 21(6) of Law 93/2021 shifts the burden of proof on the retaliating natural or legal person for adverse acts or omissions that take place in professional context within two years after the report, and article 21(7) presumes any disciplinary action taken against the whistleblower within the same period to be abusive. Moreover, whistleblowers are exempt from any disciplinary, civil, or criminal liability for reports made in accordance with the law (article 24(1)). The law also prohibits, and renders invalid any contractual provision designed or intended to hinder reporting or waive or limit the rights and guarantees provided for in the law (article 26).

38. Law 93/2021 requires legal persons, including the State and other legal persons governed by public law, with 50 or more employees to create internal reporting channels (article 8), and implement rules and procedures, including the designation of an independent function, for the receipt and follow-up on reports (articles 9-11). The law also provides for the establishment of external channels to report wrongdoing to competent authorities, including the PPS, the Criminal Police, inspectorates-general, local authorities and the MENAC (article 12). While the law does prioritise internal over external reporting (article 7(2)), it does also clarify that reports of criminal offence, including foreign bribery, or an administrative offence punishable by a fine of more than EUR 50 000 can be submitted directly to the PPS or the Criminal Police.

39. MOJ representatives at the on-site visit seemed confident that the public authorities would be able to comply with their obligation under the law to establish internal reporting channels. Nevertheless, private sector representatives expressed serious doubts about their capacity to do the same, noting the lack of guidance by the government to implement Law 93/2021, and more generally the RGPC. After the on-site visit, Portugal issued the Information Guide of the Presidency of the Council of Ministers on Law 93/2021 (Information Guide). However, the Information Guide merely repeats the requirements of the law and does not provide additional guidance on how to establish internal reporting channels. Portugal adds that the sanctions from non-compliance could raise awareness and encourage compliance among the private sector with this obligation.

(b) Elements of the law that require clarification

40. Despite these positive elements, some other elements (e.g. good faith requirement, narrower definition of retaliation, and absence of appropriate remedies) of the law require clarification or follow-up.

41. The Anti-Bribery Recommendation applies to reports made on reasonable grounds, and the same can be said about the EU Directive.²⁶ The motive of the whistleblower is thus immaterial for the purpose of protection. Article 6(1) of Law 93/2021 conditions protection to both good faith and reasonable grounds and the same approach is taken by the Information Guide. MOJ representatives at the on-site visit could not clarify the concept of good faith and expressed serious doubts over whether protection would be provided to a whistleblower who reports a genuine act of foreign bribery solely out of spite or with the predominant motivation to harm their employer. This may fall short of the Anti-Bribery Recommendation. Additional clarifications by Portugal that including the good faith requirement in the law was essential to protect against frivolous or abusive reporting do not alleviate these concerns.

42. Moreover, article 21(2) of Law 93/2021 limits retaliation to acts or omissions occurring in a professional context. The Anti-Bribery Recommendation calls member countries to provide a broad definition of retaliation that is not limited to workplace retaliation and can also include acts or omissions that can result in reputational, financial, social, psychological, and physical harm. Even though the law does cover threats of retaliation (article 21(3)), which may cause psychological harm, as well as negative references for employment purposes (article 21(6)(c)), which may cause reputational harm, these provisions would still only cover workplace retaliation. Actions of an individual to coerce, intimidate or harass a whistleblower which do not amount to workplace retaliation will not be covered by Law 93/2021 but Portugal explains that they would be covered by the CC and other relevant laws.

43. The remedies against retaliation are also limited. Law 93/2021 foresees only access to “legal protection”, and witness protection in criminal proceedings (article 22), contrary to the Anti-Bribery Recommendation calls member countries to provide whistleblowers with appropriate remedies to compensate direct and indirect consequences of retaliation. MOJ representatives at the on-site visit stated

²⁶ Article 6 of the EU Directive provides that: “Reporting persons shall qualify for protection under this Directive provided that: (a) they had reasonable grounds to believe that the information on breaches reported was true at the time of reporting and that such information fell within the scope of this Directive.”

that “legal protection” would not entail the coverage of fees or costs of legal representation by the State i.e., it would not equate to legal aid, which may, however, be provided under Law 34/2004 to certain persons, including those of insufficient economic means. The law does also not provide for interim relief pending the resolution of legal proceedings, nor does it foresee other support measures such as psychological support. Nevertheless, the whistleblower can request from the authorities to take measures to prevent the occurrence or the expansion of the damage caused (article 21(5)), and as discussed above, demand compensation from the retaliating natural or legal person (article 21(4)). However, the whistleblower would likely need to resort to the courts to obtain compensation, which could be pointless after years of litigation.

44. Further, and as discussed above, article 12 of Law 93/2021 designates multiple authorities as competent to receive reports of wrongdoing. In response to the Phase 4 questionnaire, Portugal submitted that the same authorities would be also competent to receive, investigate and process complaints of retaliation, and the same position was taken by MOJ representatives at the on-site visit because “retaliation is itself a wrongdoing”. Although the law does not explicitly stipulate such competence, Portugal states that MENAC would be in charge of the oversight because MENAC oversees the broader framework of the RGPC (article 2 of Decree Law 109-E/2021) and the implementation of Law 93/2021.

45. Finally, Law 93/2021 provides that the competent authorities shall submit to the Parliament an annual report on effectiveness of their reporting channels (article 17) and shall review every three years the procedures for receiving and following up on reports, taking into account their experience as well as that of other competent authorities (article 13). The focus of these exercises is on the effectiveness of the reporting channels and does not necessarily cover the effectiveness of the legal and institutional framework for protecting whistleblowers (number of persons who requested and received protection, the protective measures provided, or if any sanctions were imposed for retaliation against whistleblowers etc). There is also no information on whether the results of these exercises become publicly available.

(c) Efforts to raise awareness of the law

46. Portugal refers to some initiatives to raise awareness of the law through the Institute of Management and Public Administration (IGAP) and the CPC, which have developed, or are in the course of developing, trainings for Portuguese public officials on reporting channels. Article 16 of Law 93/2021 further calls on the competent authorities to publish on their websites, in a separate and easily accessible section, information about access to reporting channels, procedures for reporting as well as available protections and remedies, and this would likely increase the awareness of the law in Portugal. Most panellists at the on-site visit were aware of Law 93/2021. Panellists also noted that the law introduces far-reaching changes in Portugal’s legal framework and that it would be essential that Portugal undertake considerable efforts to raise further awareness to ensure proper implementation of the law.

Commentary

The lead examiners commend Portugal for enacting comprehensive legislation on whistleblower protection, which partially implements Phase 3 recommendation 11(c). The legislation includes elements that constitute good practice for the protection of whistleblowers.

Nevertheless, the lead examiners consider that some other elements of the law require clarification. In particular, the lead examiners recommend that Portugal:

- (a) Clarify that the motive of the whistleblower is immaterial for the purpose of protection of whistleblowers under the law;***
- (b) Consider broadening the definition of retaliation to clarify that it is not limited to workplace retaliation within Law 93/2021;***

- (c) **Ensure that appropriate remedies are in place to compensate direct and indirect consequences of retaliation, and provide for interim relief pending the resolution of legal proceedings;**
- (d) **Cover as part of the annual reports and periodic reviews the effectiveness of the legal and institutional framework for the protection of whistleblowers; and consider making publicly available the results of these reports and reviews.**

The new law could also create a paradigm shift in the way whistleblowers report and are protected in Portugal, if accompanied by efforts to support implementation and raise awareness. The lead examiners thus recommend that Portugal continue to raise awareness of the law and provide guidance on the establishment and operation of reporting channels and protective frameworks for whistleblowers both in the public and private sectors.

The lead examiners recommend that the Working Group follow up on MENAC's competence to oversee the overall implementation of Law 93/2021.

7. Anti-money laundering

47. The *Unidade de Informação Financeira* (UIF or FIU) is Portugal's financial intelligence unit since 2003, under the Criminal Police. Suspicious Transaction Reports (STRs) are received both by the FIU and the DCIAP. Information referred by the FIU to law enforcement authorities consists of STRs, spontaneous information, dissemination of information, and information received from other FIUs. Of the cases analysed in this report, four were detected by the FIU/STRs.

48. The Phase 3 Written Follow-Up report noted that Portugal had made some efforts to implement the three recommendations it received in Phase 3, having fully implemented recommendation 8(c) to ensure feedback from the FIU to reporting entities on STRs. However, recommendations 8(a) and 8(b) on enforcing the money-laundering offence and preparing guidelines and typologies referring specifically to foreign bribery for reporting entities, respectively, were only partially implemented.

49. Since Phase 3, Portugal adopted Law 54/2021, which transposes Directive (EU) 2019/1153 of the European Parliament and of the Council, containing rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences. The new law provides measures to facilitate access to and use of financial information and bank accounts information by competent authorities for the purpose of preventing, detecting, investigating or prosecuting serious criminal offences; access to information of a police nature by the FIU for the prevention and fight against money laundering, predicate offences and the financing of terrorism; and cooperation between FIUs.

(a) Money-laundering risks

50. Portugal is a member of the Financial Action Task Force (FATF) since 1990 and underwent its latest mutual evaluation in 2017 (Documents - Financial Action Task Force (FATF) (fatf-gafi.org)). Portugal completed its National Risk Assessment (NRA) in December 2019.²⁷ The NRA identified "corruption" among the predicate offences that present a significant risk of money laundering in Portugal.²⁸ The main predicate offences for money-laundering are tax crimes, drug trafficking and corruption and the 2019 NRA

²⁷ [Synthesis of the 2019 National Risk Assessment of Portugal](#) (in Portuguese only).

²⁸ Other offences include drug trafficking, tax offences, extortion, embezzlement, and crimes committed with the use of computer technology.

noted the overall money-laundering risk as medium-low. Foreign bribery was not included as such in the risk assessment.

51. In terms of sectoral risk, the highest risk areas are in the financial and banking sector, and in real estate, certain categories of obliged entities and tourism in the non-financial sector. The NRA flagged issues with regard to anonymity and the use of cash in transactions, although limits were adopted in Law 92/2017. In terms of geographical risk, the highest risks were flagged for countries with which Portugal has close commercial and financial ties and monitoring on transactions originating or going to certain jurisdictions has been strengthened. Additionally, some of the guidance issued by Banco de Portugal with regard to money laundering risks and money laundering suspicion indicators, can contribute to detection (e.g., suspicion indicators within the context of trade finance, certain operations involving persons or entities related to jurisdictions known to have high levels of corruption)²⁹.

(b) Suspicious transaction reporting

52. Law 83/2017 on AML/CFT requires a range of entities to report STRs both to the FIU and the DCIAP. During the on-site visit, stakeholders noted that there was no regular coordination to avoid duplication of work but following the on-site visit, DCIAP clarified that they did coordinate on specific allegations within each authorities' competence.

53. Since 2016, the Securities Market Commission (CMVM) oversees statutory auditors, audit firms, auditors and audit entities of EU Member-states and third countries, of their shareholders and members of the governing bodies. Moreover, CMVM's Regulation 2/2020, which implements Law 83/2017, applies to obliged entities of a financial nature subject to the supervision of the CMVM, but also to entities of a financial nature, whose supervision is shared with the Bank of Portugal and to auditors. The CMVM has specific forms available on its website for complaints and the communication of suspicious transactions.

54. The AML/CFT Coordination Commission, established in 2015, is responsible for the overall policy coordination and implementation of AML, CFT and counter proliferation financing (CPF) measures. It is meant to provide a relevant forum for efficient coordination between all bodies and entities with AML/CFT competences and its priority activities include improving the collection and maintenance of an adequate range of statistics. Further information on the Commission's composition and mandate was provided after the on-site visit.

55. In terms of co-operation with foreign FIUs, Portugal noted that as a result of the enhancement of detection capacities, several communications were sent concerning risky operations susceptible of being associated with cases of foreign bribery, namely related to the phenomenon of public companies in a country in Latin America. The FIU noted that the implementation of goAML was expected to enhance their co-operation with foreign counterparts.

(c) Politically exposed persons (PEPs)

56. Specific AML measures also contribute to fighting foreign bribery. In particular, customer due diligence (CDD) can be an effective measure to mitigate the risk of money laundering and related criminal offences by facilitating the detection of transactions related to the payment of the bribe - the PEP or related persons being the recipients or beneficiaries of the transaction - as well as the movement of the proceeds of bribery.

57. Obligated entities, such as financial entities and DNFBPs (Designated Non-Financial Businesses and Professions), are required by Law 83/2017 to identify PEPs concerning the business relationships and transactions maintained with customers, their representatives and beneficial owners, and these customers

²⁹ Cf. Banco de Portugal's Circular Letter n. CC/2020/00000003 and Banco de Portugal's Notice n. 1/2022, of 6 June.

are subject to Enhanced Due Diligence (EDD). Law 83/2017 on AML/CFT specifically requires customer due diligence for resident and non-resident PEPs and adopts a wide definition including family and close associates under article 2(1)(cc), 2(1)(w) and 2(1)(dd). Reporting entities noted during the on-site visit that they had received guidance on the identification of PEPs, including by the Bank of Portugal that had adopted specific measures following the Luanda Leaks to focus on PEPs.

58. In terms of beneficial ownership, information was provided on the Central Registry of Beneficial Owners (RCBE), approved by Law 89/2017, which is under the responsibility of the IRN (Institute for Registries and Notaries). Several stakeholders noted that they had uploaded information to it, and the Registry can be consulted by a number of competent authorities including judicial authorities, FIU, tax authorities and sectoral oversight bodies.

(d) Resources and training

59. Portugal also noted that the FIU is implementing the goAML software to enhance collection, analysis and reporting of financial information and statistics. The FIU reported that it would prepare manuals for reporting to facilitate the use of goAML by reporting entities.

60. While at the time of the Phase 3 Written Follow-Up report, Portugal had carried out training and awareness-raising activities, these did not refer specifically to foreign bribery. Portugal noted that the FIU provides yearly training based on its yearly assessments and on the NRA and also participates in foreign AML/CFT trainings and conferences.

Commentary

The lead examiners are concerned by the low level of detection of foreign bribery through suspicious transaction reporting. The lead examiners reiterate Phase 3 recommendations 8(a) and 8(b) on enforcing the money-laundering offence and preparing guidelines and typologies referring specifically to foreign bribery for reporting entities as well as additional training to the FIU, law enforcement authorities, reporting entities and oversight authorities on adequately detecting, preventing and prosecuting money-laundering by politically exposed persons, respectively. Furthermore, while recommendation 8(c) on ensuring better feedback by the FIU to reporting institutions regarding STRs was deemed fully implemented at the time of the Written Follow-Up report, this was raised as an issue during the on-site visit by the FIU as well as reporting entities and must therefore be reiterated. In addition, the lead examiners recommend that Portugal specifically consider money laundering predicated on foreign bribery in future national money laundering risk assessments. The lead examiners also recommend that Portugal ensure regular coordination between the FIU and DCIAP in the context of its dual reporting system for STRs. Finally, the lead examiners urge the FIU to expedite the implementation of the goAML software, develop manuals and provide training to reporting entities on its use.

8. Tax authorities

61. Portugal's tax authorities have detected and reported one case of possible indications of foreign bribery to the PPS. This area is discussed further under Part [D. Other issues](#).

9. ODA agency

62. The 2016 [Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption](#) (ODA Recommendation) calls on countries to encourage their international development agencies to ensure effective measures to manage risks of, and respond to, actual instances of corruption

in development co-operation. To date, no foreign bribery cases have been detected by Portuguese officials involved in ODA, notwithstanding its substantial ODA initiatives in corruption-prone countries. These issues are discussed further under Part D. [Other issues](#).

10. Accountants and auditors

(a) Auditing standards

63. In Phase 3 (paras. 125-126), Portugal asserted that external auditors applied the International Standard on Auditing (ISA) 250 (detection of non-compliance with certain laws and regulations), and a standard “very similar” to ISA 240 (detection of fraud). The Working Group considered Portugal’s auditing standards relevant to foreign bribery largely adequate, subject to auditors’ awareness of red-flag indicators of foreign bribery.

64. The transposition of Audit Directive and Regulation (EU) No 537/2014 led to the revocation of Decree Law 224/2008 and the publication of Law 140/2015, recently amended by Law 99-A/2021. Article 45(7) of Law 140/2015 confirms that statutory auditors and audit firms must carry out statutory or voluntary audits in accordance with ISA and related interpretations. The Securities Market Commission (CMVM) and the Order of Statutory Auditors (OROC), in charge of overseeing the audit profession, may also set and adapt auditing standards.³⁰

(b) Awareness, detection, and reporting of foreign bribery by external auditors

65. In Phase 3 (paras. 127-128), the Working Group noted OROC’s efforts to raise awareness of foreign bribery but was concerned that in practice external auditors were not fully aware of red flag indicators of foreign bribery nor on their potential, and duty, to detect foreign bribery. The Working Group recommended that Portugal train external auditors on how to detect foreign bribery, and further raise awareness among external auditors of their key role in detecting foreign bribery and their duty to report suspected foreign bribery (recommendation 9(a)). At the time of the Written Follow-Up report, the Working Group welcomed the positive efforts of OROC and Order of Chartered Accountants (OTOC) to train auditors and accountants on reporting foreign bribery; to disseminate Law 20/2008; and to add foreign bribery to training for new auditors and annual educational courses. Recommendation 9(a) was considered fully implemented.

66. During the on-site visit references were made to initiatives that would be relevant to raise awareness of auditors on foreign bribery and corruption, such as training, the dissemination of a set of indicators of suspicions of money laundering that would be applicable to foreign bribery, and the publication of annual reports and practical guidance. After the on-site visit, the CMVM sent information related to a Circular to auditors presenting indicators of suspicions of money laundering.³¹ Although situations that may configure corruption and/or bribery are described in the documentation provided or mentioned by CMVM, the terms “corruption” and “bribery” (“*corrupção*” and “*suborno*”) do not appear in the presentation of indicators of suspicions of money laundering, nor in the CMVM 2020 Annual Report,³² nor in the Report on the results of the quality control system on audit activity for 2019/2020.³³ The OROC continued to issue guidance and organise trainings. After the on-site visit, OROC shared (i) the Circular 142/19, which

³⁰ Article 6(r) of Law 140/2015, article 4(4)(c) of the Legal Framework on Audit Supervision, annexed to Law 148/2015.

³¹ Carta – Circular da CMVM, dated 6 November 2020 (SAI-EMAIL/2020/8767) – mentioned in a presentation of the CMVM Regulation 2/2020, dated 4 May 2021 and published by the CMVM ([link](#)).

³² CMVM [2020 Annual Report](#).

³³ CMVM [Report on the results of the quality control system on audit activity for 2019/2020](#).

presented a CPC Recommendation on the risks of corruption in public procurement and stressed the need for auditors to consider this recommendation in the course of their audits; and (ii) a draft Circular 07/2022 on reporting suspicions of crimes. Auditors met at the on-site visit seemed aware of the foreign bribery offence and could provide examples of red-flag indicators of foreign bribery.

67. On reporting, auditors used to report to the audited company and to the OROC, which would not filter reports but could advise auditors on how to proceed (Phase 3, paras 129-131). In Phase 4, article 190 of Law 140/2015 as recently amended by Law 99-A/2021 establishes a general duty for statutory auditors to report “any facts detected in the exercise of their public interest functions that indicate the commission of crimes” directly to the PPS. Similarly, article 422(3) Commercial Companies Code (CCC) also establishes a general duty for “the single auditor, the statutory auditor or the members of the supervisory board” to report “any misconduct that they have become aware of and that constitute public crimes” to the PPS. During the on-site visit, some panellists were confident that both legal grounds are not contradictory, and excluded any issue related to their concurrent application.

68. Failure to report exposes external auditors to sanctions. The OROC can sanction auditors that fail to report crime on the basis of “any of the obligations established in [Law 140/2015 – thus including article 190] or in other applicable regulations, as well as those arising from his or her functions” with disciplinary penalties ranging from a fine to expulsion.³⁴ Furthermore, the CMVM can apply administrative sanctions for any breach of “reporting duties established by Law”, with a fine ranging from EUR 2 500 to 500 000.³⁵ Further to this sanctioning power, officials of the CMVM and the OROC have a general duty to report suspicions to the PPS (including if suspicions of foreign bribery appear in the framework of disciplinary or administrative proceedings). OROC representatives at the on-site visit indicated that the PPS had not provided feedback on their reports.

69. As for reporting in practice, an OROC representative at the on-site visit expressed concerns that, because of the reform introduced by Law 99-A/2021, the OROC would no longer keep statistics on auditors' statements from 31 January 2022 onwards (date of entry into force of article 190 of Law 140/2015 as amended by Law 99-A/2021). Regarding the period prior to that date, OROC identified one report on suspicions of money laundering predicated on domestic corruption, and one case of legal action against an auditor who reported suspicions of crime. As for the CMVM, it indicated that five cases were reported to the DCIAP between 2020 and 2021.

Commentary

The lead examiners welcome OROC’s continuing efforts to raise awareness and train auditors on the foreign bribery offence and on reporting foreign bribery. Nevertheless, in view of the supervisory role of the CMVM, the lead examiners encourage the CMVM to seize the opportunity of the on-going development of an Action Plan, expected for 2023, to issue guidance and further raise awareness on the foreign bribery offence and on reporting foreign bribery.

In view of the recent reform, the lead examiners further recommend the Working Group to follow up on the reporting by external auditors of foreign bribery allegations in practice, including through statistics collected by the OROC and CMVM.

11. Self-reporting by companies

70. Portugal does not have as such a policy to encourage companies to self-report foreign bribery to the authorities. No foreign bribery cases have been so far detected through this source. Portugal indicates

³⁴ Article 93 of Law 140/2015.

³⁵ Article 45(3)(a) of the Legal Framework on Audit Supervision, annexed to Law 148/2015.

that the recent legislative reforms that included the waiver of sanctions in article 5 (1) of Law 20/2008 are an incentive to self-report. However, as it will be further discussed below (see Part 1(c)), this provision raises important issues regarding Articles 1 and 3 of the Convention and cannot be considered proper incentive for self-reporting. The grant of a sanction waiver that amounts to an exclusion of liability by simply self-reporting goes against the Convention and the Anti-Bribery Recommendation XV.ii and Annex I.A.1.a. Moreover, the perception in the private sector that sanctions for foreign bribery against legal persons are low represents a major obstacle to self-reporting of companies (see Part C. Responsibility of legal persons). After reviewing a draft of this report, Portugal noted, among other measures, that the obligation to implement a compliance programme in the RGPC would compensate for the aforementioned lack of due incentives for self-reporting. This is not enough to encourage companies to self-report, however. Specific policies and incentives for self-reporting (i.e. guidelines, clear procedures, and proportionate benefits) that are in line with the Convention and the Anti-Bribery Recommendation are, therefore, necessary.³⁶

Commentary

Self-reporting is an important source of detection of foreign bribery cases. The lead examiners, therefore, recommend that Portugal consider adopting additional measures to incentivise companies to self-report foreign bribery to law enforcement. In implementing this recommendation, Portugal should take into consideration the elements in the Anti-Bribery Recommendation XV.ii and XVIII.ii with regard to cooperation with law enforcement authorities and adoption of remediation measures.

³⁶ See: OECD (2017), The Detection of Foreign Bribery, www.oecd.org/corruption/the-detection-of-foreign-bribery.htm, pp. 21-27.

B. Enforcement of foreign bribery

1. The foreign bribery offence

71. The Phase 3 Report was the first occasion for the Working Group to assess the new foreign bribery offence enacted by Portugal in article 7 of Law 20/2008. The Working Group noted that Portugal's foreign bribery offence presented several ambiguities, including some already identified in Phase 2. The Written Follow-Up report found that Portugal had partially implemented recommendation 1(b), and had not implemented 1(a) and 1(c). Since then, the legal framework for the foreign bribery offence remains unchanged. This report will therefore focus on outstanding issues that the Working Group identified in Phase 3 in view of the Written Follow-Up report and the Phase 4 on-site visit.

(a) Concurrent application of Portugal's foreign bribery offences

72. Portugal's main foreign bribery offence is foreseen in article 7 of Law 20/2008, which specifically addresses bribery to obtain an unfair advantage in international trade. According to article 6(1) of Law 20/2008, article 7 only applies if the offence is not punishable with a more serious sanction by any other legal provision.

73. In Phase 2 (paras. 130-131) and in Phase 3 (paras. 39-40), the Working Group noted that two other offences covered bribery of foreign public officials. Article 374 Criminal Code (CC) covered cases of active bribery of a public official in the European Union (EU) and its member states. Article 18 of Law 34/87 covered cases of bribery of a political officeholder in the EU and its member states. In Phase 3, the Working Group highlighted that article 6(1) of Law 20/2008 did not expressly exclude the concurrent application of other offences and recommended that Portugal take all measures to clarify that article 374 CC and article 18 of Law 34/1987 do not apply to foreign bribery cases (recommendation 1(c)). At the time of the Written Follow-Up report, the Working Group considered recommendation 1(c) not implemented.

74. MOJ representatives reiterated during the on-site visit that Law 20/2008, as a "special law", would prevail over the CC. They further indicated that article 7 of Law 20/2008 is specific in that it covers bribes promised, offered or given in the context of international business transactions and that it would be up to the relevant judges to consider the specific intent and circumstances of the facts at hand and to establish the most appropriate legal basis. Most panellists stated that article 7 would apply in foreign bribery cases. No further clarification or case law was provided, notably on concurrent application of two special laws (i.e. Law 20/2008 and Law 34/1987).

Commentary

The lead examiners acknowledge the consensus among anti-corruption stakeholders in Portugal on the application of article 7 of Law 20/2008 to cases of bribery in the context of international business transactions. However, in the absence of case law, the lead examiners recommend the Working Group to convert Phase 3 recommendation 1(c) into a follow-up issue to assess the concurrent application of Portugal's foreign bribery offences as case law develops.

(b) The elements of the offence*Definition of a foreign public official*

75. In Phase 3 (paras. 35-36), the Working Group was concerned that the definition of a foreign public official failed to cover (i) officials of “an autonomous territory or a separate customs territory”, which represented a departure from Commentary 18 of the Convention; (ii) officials performing public functions without working for or taking part in the “administrative or judicial service”. The Working Group recommended that Portugal take all measures to clarify that the offence covers bribery of any person exercising a public function for a foreign country, and officials of autonomous territories and separate customs territories (recommendation 1(b)(i)). At the time of the Written Follow-Up report, Portugal had expanded the definition of a foreign public official to persons taking part or exercising a public service function “in a private company within the scope of a public contract”.³⁷ The Working Group concluded that recommendation 1(b) was partially implemented.

76. MOJ representatives stated during the on-site visit that autonomous and customs territories are recognised as the countries they are part of by Portugal, and public officials of those territories would thus be covered by Law 20/2008, which remains nevertheless to be asserted in practice absent any supporting case law.

Proof of the knowledge of the offer or promise of the bribe by the foreign public official

77. In Phase 3 (paras. 30-32), the Working Group expressed concerns with regards to the contradictory positions between prosecutors, the Ministry of Justice and judges about the necessity to prove the official’s knowledge of the offer, promise or giving of the bribe to complete the offence. The Working Group recommended that Portugal take measures to clarify that the offence does not require proof that the foreign public official knows of the offer or promise of the bribe for a completed offence (recommendation 1(a)(i)). At the time of the Written Follow-Up report, Portugal reiterated that the mere provision of an undue advantage, even when such does not reach the official or even if the official has no knowledge of it, was enough to constitute the foreign bribery offence. However, the Working Group concluded that Portugal had not undertaken any action to implement recommendation 1(a).

78. MOJ representatives met at the on-site visit considered that, if the offer, promise or giving of a bribe takes place without knowledge of the intended foreign public official (e.g. the briber sends the offer at a wrong email address), it might constitute an “attempt” under article 7 of Law 20/2008. After the on-site visit, Portugal provided case law, including a first instance court decision providing for a similar interpretation with respect to domestic bribery. Judges and prosecutors at the on-site visit were of the view that proof of the foreign public official’s knowledge of the offer or promise of the bribe was not required, considering that the offence was constituted as long as the agent has promised, offered or given an undue advantage to a foreign public official in the context of international business transactions but it is difficult to assess how this provision will be interpreted in practice.

Bribery through intermediaries and knowledge of the identity of the bribe recipient

79. In Phase 3 (para. 33), the Working Group noted that, according to article 7 of Law 20/2008, bribery through an intermediary was possible when it was committed with the briber’s own “consent or ratification”, and recommended that Portugal clarify that its offence does not require proof that the briber knows the details and identity of the recipient of the bribe, when the bribery is committed through an intermediary (recommendation 1(a)(ii)). At the time of the Written Follow-Up report, Portugal reiterated that the cases where the agent knows that the advantage is for an official, but does not specifically know such official,

³⁷ Amendments introduced by Law 30/2015.

were covered. The Working Group nevertheless considered that Portugal had not undertaken any action to implement recommendation 1(a).

80. Panellists stated that the proof of the briber's knowledge of the details and identity of the bribe recipient is not required when the bribery is committed through an intermediary, as long as the briber knows that the bribe is destined to a public official but absent any case law, it is difficult to assess how this provision will be interpreted in practice.

Knowledge by the foreign public official of the improper advantage given to a third party

81. In Phase 3 (para. 37), the Working Group noted that where article 7 of Law 20/2008 covered bribes paid "to a third-party beneficiary", it required knowledge of the foreign official. Portuguese authorities maintained at the time that proof of this knowledge element was required for the liability of the official but not the briber. However, the Working Group was not satisfied with this explanation and recommended that Portugal clarify that the offence does not require proof that the official knows that an improper advantage has been given to a third party (recommendation 1(a)(iii)). At the time of the Written Follow-Up report, the Working Group considered that recommendation 1(a) was not implemented.

82. Portuguese public prosecutors at the on-site visit stated that it is not necessary to prove that the foreign public official knows that an undue advantage has been given to a third party, as long as it is proven that the official has somehow unduly benefited from the bribe. While judges agreed on this argument, their reasoning differed and focussed on the intention of the briber rather than on the resulting benefit for the public official. MOJ representatives did not provide further clarification on this issue. Absent any case law, it is difficult to assess how this provision will be interpreted in practice.

Bribery in order that the official act or refrain from acting in relation to the performance of official duties

83. In Phase 3 (para. 38), the Working Group found that article 7 of Law 20/2008 did not expressly cover bribery "in order that the official act or refrain from acting in relation to the performance of official duties" and therefore departed from Commentary 19 to the Convention.³⁸ The Working Group therefore recommended that Portugal clarify that the offence covers [...] bribery in order that an official act or refrain from acting in relation to the performance of official duties (recommendation 1(b)(ii)). Similarly to the above, no further legal amendments were adopted since then.

84. Most panellists stated that acts committed within foreign public officials' authorised competence as well as outside their authorised competence were covered. Absent any case law, it is difficult to assess how this provision will be interpreted in practice.

Commentary

The lead examiners acknowledge that some concerns regarding the interpretation of the foreign bribery offence are now clarified. Nevertheless, the lead examiners could not assess how article 7 of Law 20/2008 would be interpreted in practice absent any case law. Therefore, the lead examiners recommend the Working Group to convert Phase 3 recommendations 1(a) and 1(b) into follow-up issues, to assess how article 7 of Law 20/2008 will be interpreted as case law develops.

³⁸ Commentary 19 to the Convention specifies that "one case of bribery which has been contemplated under the definition in paragraph 4.c [of the Convention] is where an executive of a company gives a bribe to a senior official of a government, in order that this official use his office – though acting outside his competence – to make another official award a contract to that company." (underline added for emphasis)

(c) Waiver from punishment (effective regret)

85. In Phase 3 (para. 41), the Working Group considered that article 5(b) of Law 20/2008 provided for a defence of “effective regret” applicable to foreign bribery cases, and hence recommended that Portugal amend article 5(b) of Law 20/2008 and eliminate such effective regret defence from the active foreign bribery offence (Phase 3 recommendation 2). At the time of the Written Follow-Up report, the Working Group noted as a positive development the amendment of article 5(b) of Law 20/2008 by Law 30/2015 according to which the release from liability for foreign bribery due to effective regret was no longer automatic but left to the discretion of a judge. The recommendation was considered fully implemented.

86. In December 2021, Portugal adopted Law 94/2021, which amended again article 5 of Law 20/2008. This provision could raise some issues regarding Article 1 and 3 of the Convention. The amended article 5(1)(a) of Law 20/2008 establishes a waiver of sanctions for persons who self-report acts of foreign bribery if they have: (i) “denounced the crime” prior the commencement of the criminal proceedings; and (ii) withdrawn the promise of advantage or requested its return or repudiation from the official or holder of political office. Once these conditions are met, the judge should apply the waiver.

87. The amended article 5(2) further provides that a waiver may be granted to a person under the same circumstances as above if they have (i) self-reported after the beginning of the criminal proceedings and before the end of the instruction phase; and (ii) contributed decisively to the discovery of the truth. It is not clear whether the requirement of decisive contribution to the discovery of the truth implies full co-operation with law enforcement authorities. Moreover, in this case, the PPS may decide, with the agreement of an instruction judge, not to bring the case to court (article 280 CCP).

88. After reviewing a draft of this report, Portugal stated that confiscation would still be possible in both cases, as established by article 110 CC.

89. Portugal indicates that there is no record of any exemption from criminal liability in a foreign bribery case applied on the basis of this article, which was confirmed by judges and public prosecutors at the on-site visit. The public prosecutors welcomed this mechanism and considered it as a means of encouraging self-reporting and co-operation between the private sector and law enforcement authorities. Most of the other panellists indicated that this is a very recent reform still to be tested in practice. One panellist stressed that, to benefit from the waiver, the offender should do more than just self-report.

Commentary

In several country evaluations, the Working Group has associated certain mechanisms of exemption from liability or from sanctions as a consequence of self-reporting with the defence of effective regret. Indeed, in cases of foreign bribery, both forms of exemption lead to the same result, i.e. allowing the self-reporting offender to escape punishment. As such, exemption from sanctions may undermine the deterrent effect of prosecution and punishment.

The lead examiners are concerned that article 5(1)(a) of Law 20/2008 could provide for an automatic waiver of sanction should the offender denounce the crime prior to the commencement of the criminal proceedings (and as long as the other conditions of article 5(1)(a) of Law 20/2008 are met), could undermine the positive development highlighted at the time of the Written Follow-Up report, i.e. that the waiver be left to the discretion of the judge rather than be automatic.

Therefore, the lead examiners recommend that Portugal amend article 5(1) of Law 20/2008 to ensure that the effective regret defence cannot be applied to bribery of foreign public officials.

2. Jurisdiction over natural persons

90. Portugal's jurisdiction to prosecute foreign bribery committed outside Portugal raised legal and practical issues in Phase 3 (paras. 97-100).

91. First, from a legal perspective, the Working Group observed a confusion as to whether article 5 CC or article 3 of Law 20/2008 should govern the territorial application of Portuguese criminal law on foreign bribery cases, and thus recommended that Portugal clarify whether jurisdiction to prosecute Portuguese nationals for extraterritorial foreign bribery is governed by article 3 of Law 20/2008 or article 5 CC (recommendation 6(a)). At the time of the Written Follow-Up report, Portugal had not taken any steps to clarify this issue.

92. Second, as relates to practice, the Working Group recommended that Portugal take steps to ensure that its law enforcement authorities consider the exercise of nationality jurisdiction to prosecute foreign bribery whenever appropriate (recommendation 6(b)), and that Portuguese authorities thoroughly explore territorial links to Portugal in foreign bribery cases, so as to rely on territorial jurisdiction to prosecute wherever possible (recommendation 6(c)). At the time of the Written Follow-Up report, the Working Group considered recommendations 6(b) and 6(c) partially implemented in view of foreign bribery cases opened on the basis of territorial jurisdiction.

93. The legal framework remains unchanged, and Portugal did not provide further information on these issues. Contrary to Phase 3, the panellists met at the on-site visit mostly agreed that article 3 of Law 20/2008 would govern jurisdiction over natural persons in foreign bribery cases. However, Portugal prosecutors have indicated at the on-site visit that some kind of territorial connection would be necessary to initiate an investigation, even on the grounds of nationality jurisdiction. Such a restrictive interpretation of nationality jurisdiction could impair the application of nationality jurisdiction by the Portuguese authorities.

Commentary

The lead examiners note that the panellists met at the on-site visit mostly agreed that article 3 of Law 20/2008 would govern jurisdiction over natural persons in foreign bribery cases. Nevertheless, in absence of case law, the lead examiners cannot fully assess how the application of articles 3 of Law 20/2008 and article 5 CC will be interpreted in practice. Hence the lead examiners recommend that the Working Group convert Phase 3 recommendation 6(a) into a follow-up issue to assess the application of article 5 CC and article 3 of Law 20/2008 as case law develops.

As relates to practice, the lead examiners consider recommendation 6(c) implemented in view of the foreign bribery cases opened on the basis of territorial jurisdiction. However, the lead examiners recommend that the Working Group convert Phase 3 recommendation 6(b) into a follow-up issue to ensure that its law enforcement authorities consider the exercise of nationality jurisdiction to prosecute foreign bribery wherever appropriate.

3. Sanctions and confiscations against natural persons

(a) Sanctions against natural persons

94. Natural persons are punishable for foreign bribery under article 7 of Law 20/2008 by imprisonment of one to eight years.

95. In Phase 3 (paras. 54-55), the Working Group was concerned that under the Portuguese legal framework, fines against natural persons were available only as converted jail sentences,³⁹ unless a jail sanction of less or equal to one year was imposed and converted into a fine (or another non-custodial sentence). The Working Group recommended that Portugal take steps to ensure that sanctions against natural persons are effective, proportionate and dissuasive in all foreign bribery cases, in light of the system of converting prison sentences to fines (recommendation 4(a)). This recommendation was not implemented at the time of the Written Follow-Up report.

96. Since Phase 3, the legal framework for sanctions, including the unavailability of fines unless resulting from the conversion of a prison sentence, remains largely unchanged.⁴⁰ Yet, foreign bribery cases often involve the payment of substantial bribes in exchange for highly profitable business advantages and the value of the fines, cumulated with imprisonment time, should be significant enough to deter such practice. Furthermore, the Working Group has repeatedly highlighted that monetary sanctions are a fundamental deterrent for economic offences such as foreign bribery. After reviewing a draft of this report, Portugal reiterated that the system of seizure and confiscation would tackle the issue in substance. However, while confiscation is a deterrent for economic offences and part of monetary sanctions, fines constitute the punitive part of monetary sanctions and cannot be overlooked. Therefore, sanctions against natural persons that do not foresee fines, unless resulting from the conversion of prison sentences, do not appear effective, proportionate and dissuasive.

(b) Mitigation of sanctions

97. Article 5(5) of Law 20/2008 provides that the penalty will be specially mitigated if, “until the end of the trial hearing in the first instance, the agent actively collaborates in the discovery of the truth, contributing in a relevant way to the proof of the facts.” Article 8 of Law 36/94 also provides for mitigation of sanctions and replicates the same language.

98. Nevertheless, these provisions raise some issues regarding Article 3 of the Convention as well as the Anti-Bribery Recommendation XV. First, the law does neither expressly require any acceptance of responsibility (Rec. XV.ii.c) nor any timely and appropriate remediation (Rec. XV.ii.c). Second, the requirement for an “active collaboration in the discovery of the truth” raises questions on how to assess the offender’s collaboration – i.e. whether self-reporting would be required, whether the reporting person should cooperate during the entire investigation, whether some disclosure is required to meet this criteria and benefit from a mitigation of sanction. After reviewing a draft of this report, Portugal stressed that, while these questions were to be addressed by the courts, the agent should provide a “high level of cooperation” with law enforcement authorities by “disclosing facts” and by contributing to “obtaining evidence as regards the facts”. Third, Portugal has not provided any training to help assess the decrease of sanctions and to ensure the final sanction is effective, proportionate and dissuasive in practice.

(c) Sanctions imposed in practice and statistics

99. In Phase 3, the Working Group noted that Portugal had not sanctioned any natural person for foreign bribery and very few for domestic corruption. Over the period 2008-2011, 239 convictions for “corruption offences” yielded only 13 prison sentences (excluding suspended or converted sentences). The Working Group decided to follow up on the sanctions imposed against natural and legal persons for foreign bribery, especially in the light of the system of converting certain prison sentences into fines (follow-up issue 13(c)). These issues remained outstanding at the time of the Written Follow-Up report.

³⁹ Former article 43 CC.

⁴⁰ The system of converting prison sentences to fines remains unchanged but is now foreseen in article 45 CC.

100. Portugal indicates that “less than three” foreign bribery cases were terminated in the trial phase in first instance judicial courts over the period 2016-2020, but does not specify the exact number of cases due to a principle of “statistical secrecy” applicable whenever the number of occurrences does not reach that threshold. Portugal further indicates that four defendants have been involved in criminal cases terminated in the trial phase in first instance judicial courts over the same period, without being convicted. By contrast, 413 natural persons have been convicted with domestic bribery offences provided by CC, in the context of 134 completed cases. Among these, only 17 natural persons were convicted with a fine or imprisonment converted to a fine (4.1%), 9 with imprisonment replaced by community work (2.2%), 4 with imprisonment replaced by a prohibition to exercise a professional function or activity (1%), 78 with suspended imprisonment (19%), 59 with effective imprisonment (14.3%), 244 with suspended imprisonment with behaviour rules, disciplinary rules or duties (59.1%) and the rest was not available. This significant proportion of suspended imprisonment was corroborated by three out of the five court decisions provided by Portugal after the on-site visit, in which suspended imprisonment were mostly imposed against natural persons. The evaluation team could not assess how fines are calculated in practice in domestic corruption cases, nor whether they take into account the amounts of the bribe paid and the value of the profits or other benefits-derived, as required by the Anti-Bribery Recommendation.⁴¹ Similarly, whether and how the mechanisms of waiver or mitigation of sanctions are applied in practice could not be assessed.

101. These statistics suggest a clear lack of foreign bribery enforcement, in particular in comparison to other corruption offences. Furthermore, the low number of fines - or prison sentences converted into fines - imposed in domestic corruption cases increases the Working Group's concerns about the absence of monetary sanctions in practice, despite their fundamental deterrent role for economic crimes such as foreign bribery. The lack of statistics on the application of mitigating factors does not allow the lead examiners to fully assess the impact of these mechanisms on the effectivity, the proportionality, and the dissuasiveness of sanctions in foreign bribery or corruption cases.

Commentary

In the absence of monetary sanctions, sanctions against natural persons are still not effective, proportionate, and dissuasive. The fact that Portugal has failed to address this issue despite multiple reforms to the CC is of serious concern. Given that monetary sanctions are a fundamental deterrent for economic offences such as foreign bribery, the lead examiners reiterate Phase 3 recommendation 4(a) as well as the follow-up issue 13(c). The lead examiners recommend that the Portuguese authorities amend Portuguese law to impose fines in addition to imprisonment for the foreign bribery offence (article 7 of Law 20/2008). The lead examiners note that the use of mitigating factors raises issues regarding Article 3 of the Convention. The lead examiners hence recommend that Portugal develop training and disseminate good practices on the mechanisms of mitigation of sanctions and their possible impact on the effective, proportionate and dissuasive nature of sanctions, and make it available to judges and prosecutors.

The lead examiners further recommend that Portugal maintain detailed statistics on the application of these mechanisms of mitigation of sanctions in foreign bribery cases.

(d) Confiscation

102. In Phase 3 (para. 61), the legislative framework for confiscation against natural persons did not raise any particular concerns. Since then, Portugal further developed its legal framework for confiscation against natural persons in relation to foreign bribery. For instance, confiscation of the “instruments of a

⁴¹ The Anti-Bribery Recommendation XV “recommends that member countries: i. take appropriate steps, [...], to help ensure that sanctions against natural and legal persons for foreign bribery are transparent, effective, proportionate, and dissuasive in practice, including by taking into account the amounts of the bribe paid and the value of the profits or other benefits derived and other mitigating or aggravating factors.”.

typical unlawful act referred to in Article 1” [e.g. instruments of foreign bribery] that “do not endanger public safety, morals or order, nor offer a serious risk of being used for committing new typical unlawful acts” can be applied in foreign bribery cases (articles 1 and 12-B of Law 5/2002 as amended by Law 30/2017). The CC now provides for definitions of “proceeds of a typical illicit” and “advantages of a typical illegal” and clarifies the corresponding regimes of confiscation (articles 110-111 CC).

103. However, the main issue lies in the actual use of confiscation and maintenance of corresponding statistics. In Phase 3 (para. 62), in light of the lack of systematic application of confiscation against the offenders, even when assets had been seized beforehand, the Working Group recommended that Portugal take steps to make full use of confiscation measures available in its law and ensure that law enforcement authorities routinely consider confiscation in foreign bribery cases (recommendation 4(b)). The Working Group complemented this request by further recommending that Portugal maintain detailed statistics on the application of confiscation in foreign bribery cases (recommendation 7(ii)). At the time of the Written Follow-Up report, the freezing of assets in several on-going cases did not alleviate the Working Group’s concerns on whether these seizures would lead to final confiscation, and statistics on confiscation were still not maintained, leaving recommendation 4(b) partially implemented and recommendation 7(ii) not implemented.

104. Since then, Portugal’s Prosecutor General issued Directive 1/2021, which aims at implementing the priorities set up in Law 55/2020 and further promoting asset recovery mechanisms. According to Portugal, this priority shall be developed by the Asset Recovery Office (GRA), under the terms provided in Law 45/2011, and by the PPS. Directive 1/2021 is only binding to public prosecutors and the other criminal police bodies participate in investigations under the control and dependence of the PPS. Regarding investigations in which the GRA intervened, no specific increase could be observed in cases where confiscation was ordered and in the value of the confiscated assets.

105. Panellists at the on-site visit seemed not to be clear as regards the role of the GRA in the context of the application and execution of confiscation in foreign bribery cases, and public prosecutors indicated that they would most often proceed without the intervention of the GRA. After reviewing a draft of this report, Portugal indicated that the GRA, which is part of the criminal police, intervenes by delegation and under the control of the PPS in the course of a criminal investigation. In addition, the GRA would only intervene to carry out patrimonial and financial investigations for confiscation, if the threshold of 1000 UCs (approximately EUR 102 000.00) is met.

106. However, a lack of comprehensive statistics needs to be noted. Whereas the GRA is responsible for collecting, analysing, and processing anonymised statistical data,⁴² GRA representatives indicated that such statistics would only cover cases in which it intervened – a very limited scope in the light of prosecutors’ declarations. The statistics provided by the GRA do not differentiate cases related to “typical corruption” crimes from foreign bribery cases and concern assets seized, without specifying whether such seizures ended up in confiscation. While this lack of statistics does not prejudice the use of confiscation, it does hamper the assessment of lead examiners of the use of confiscation mechanisms in practice - notwithstanding the examples of domestic corruption cases shared by Portugal after the on-site visit, in which confiscation measures had been used.

Commentary

The lead examiners note Portugal’s efforts to further develop the legal framework for confiscation and prioritise the application of the mechanisms of confiscation.

Nevertheless, Portugal could not provide for statistics on the actual use of confiscation related to foreign bribery cases, in particular regarding confiscation directly sought by public prosecutors. In the absence of such statistics, the lead examiners cannot assess whether law enforcement

⁴² Article 3(2) of Law 45/2011 as amended by Law 30/2017.

authorities make full use of confiscation measures available in the Portuguese law and routinely consider confiscation in foreign bribery cases. The lead examiners therefore reiterate Phase 3 recommendations 4(b) and 7(ii).

4. Related offences of false accounting and money laundering

(a) False accounting offence

107. In Phase 3 (paras. 59-60), the Working Group identified four offences that could concurrently apply to false accounting unless a tax issue was involved. The Legal Regime of Tributary Offences (RGIT) offences were applicable only if the “illicit capital advantage” from the offence exceeded EUR 15 000. The Working Group could not assess whether these offences were adequately enforced and resulted in sufficient sanctions due to a lack of detailed statistics. The Working Group recommended that Portugal maintain detailed statistics on investigations, prosecutions and sanctions for false accounting, including data on whether foreign bribery is the predicate offence (recommendation 7(i)), and considered this recommendation not implemented at the time of the Written Follow-Up report.

108. The offences identified in Phase 3 remain in force. In response to its Phase 4 questionnaire, Portugal presented “new false accounting offences foreseen by Articles 519 (false information) and 519-A (Submission of adulterated or fraudulent accounts) of the Commercial Companies Code” (CCC), introduced by Law 94/2021. Article 519 was already in place, but was substantially changed through Law 94/2021, foreseeing more severe penalties. The offence provided by article 519(1) CCC is punished by a prison sentence of up to two years or by a fine the amount of which will be determined by the court in line with article 47 CC. The sanction is aggravated (i) if the act is committed with the intention of causing material or moral damage (prison sentence of up to two years and six months or a fine); and (ii) if serious damage, material or moral, is caused (prison sentence of up to three years or a fine). Law 94/2021, through article 519-A CCC, further introduced a variation of this offence, targeting the “Submission of adulterated or fraudulent accounts” by managers or administrators, punished by a prison sentence of up to three years or a fine. The offence of false information, and its variation, is not covered by Article 11 CC and is thus not applicable against legal persons (see Part C. Responsibility of legal persons). Auditors at the on-site visit seemed aware of the false accounting offences, including the recently amended article 519 CCC, and indicated that the interpretation and enforcement of this offence had to be followed up.

109. Portugal asserted that it maintains data regarding criminal cases in the trial phase terminated in first instance judicial courts, defendants and convicted persons in all types of crimes foreseen in Portuguese legislation. After the on-site visit, Portugal provided some statistics on the number of cases, the number of convictions and the type of sanctions provided for forgery, damage and theft of documents or technical notation and false certificates (articles 256 and 259 CC), and tax fraud and qualified tax fraud (articles 103 and 104 of the Legal Regime of Tributary Offences (RGIT)). Statistics provided by Portugal indicate that an annual average of 614 cases were terminated in the trial phase in first instance judicial courts under articles 256 and 259 CC in 2016-2020. These cases involved an average of 843 defendants (i.e. 807 natural persons and 37 legal persons) and resulted in the conviction of an average of 636 natural persons and 22 legal persons. This suggests a decrease compared to Phase 3 (average of 1 173 persons convicted annually in 2007-2011). An annual average of 216 cases were terminated in the trial phase in first instance judicial courts under articles 103 and 104 of RGIT in 2016-2020. These cases involved an average of 838 defendants (i.e. approx. 546 natural persons and 292 legal persons), and resulted in the conviction of an average of 239 natural persons and 121 legal persons.

Commentary

In light of the non-applicability of the newly amended false accounting offence to legal persons, the lead examiners recommend that Portugal ensure that natural and legal persons could be held

liable for all false accounting offences committed for the purpose of bribing foreign public officials or of concealing such bribery.

Portugal provided statistics on the number of cases closed at the trial phase in the first instance judicial courts, the number of defendants and the number of convictions for the offences provided by articles 256 and 259 CC as well as articles 103 and 104 of RGIT. The lead examiners reiterate Phase 3 recommendation 7(i) that Portugal maintain detailed statistics on investigations, prosecutions, convictions and sanctions against natural and legal persons for false accounting, including data on whether foreign bribery is the predicate offence.

(b) Money laundering offence

110. Article 368-A CC defines the offence of money laundering, and provides for a maximum sanction of 12 years. The money laundering crime is an autonomous offence from the predicate crime (referred to as “typical illegal acts”) and may be committed on the advantages or goods, including rights and things, “deemed to be those resulting from the commission, in any form of participation” of typical illegal acts.⁴³ Self-laundering is also a punishable offence.

111. In Phase 3 (para. 117), in view of the low number of prosecutions, the Working Group recommended that Portugal take appropriate measures to enforce the money laundering offence, particularly where foreign bribery is the predicate offence (recommendation 8(a)). In addition, the Working Group recommended that Portugal maintain detailed statistics on investigations, prosecutions and sanctions for money laundering, including data on whether foreign bribery is the predicate offence (recommendation 7(i)). At the time of the Phase 3 Follow-Up report, the Working Group welcomed that money laundering investigations had been opened, although those had yet to result in convictions, and considered recommendation 8(a) partially implemented. Recommendation 7(i) was not implemented.

112. Law 58/2020 amended article 368-A CC. First, article 368-A(1)(k) now expressly refers to “corruption harming international trade” as one of the “typical illegal acts”. Second, article 368-A(5) punishes “whoever acquires, holds or uses the advantages originating from the illicit act, with knowledge of that quality at the moment of acquisition or at the initial moment of holding or using”.

113. The money laundering offence remains otherwise unchanged and could raise an issue for follow-up: the coverage of foreign predicate offences, i.e. the laundering in Portugal of the proceeds of foreign bribery committed outside the country. Article 368-A(6) states that the punishment for the crimes provided for in Article 368-A(3) to (5) takes place even if the place of practice of the “typical illicit acts” from which the advantages come is ignored, or the identity of the perpetrators is ignored, or even if such acts have been committed outside the national territory, unless the acts are lawful under the law of the place where they were committed and to which the Portuguese law is not applicable under the terms of article 5 CC. Such requirements could be understood as restricting the application of the money laundering offence predicated on foreign bribery committed outside of Portugal, and hence departing from Article 7 of the Convention. However, after reviewing a draft of this report, Portugal highlighted that the solution would be the same for both domestic corruption and foreign bribery, therefore being in line with the requirements of Article 7 of the Convention. Furthermore, Portugal referred to a decision of the Court of Appeal of Lisbon of 6 June 2017, in which the Court considered that “the appealed decision was very wrong to conclude that the Portuguese courts do not have international jurisdiction to pursue the crime of money laundering,

⁴³ The principle of autonomy of the crime of money laundering provided for in article 368-AA CC has been notably confirmed in a decision of the Court of Appeal of Lisbon of 6 June 2017 ([208/13.9TELSB.G.L1-5](#)): “The verification of the crime of money laundering does indeed presuppose a prior illegality, but it does not depend on a conviction for the previous crime, nor even on its criminal prosecution, in the country of origin of the produced advantages, goods or rights, because this is how the principle of the autonomy of the crime of money laundering provided for in Article 368-A of the Criminal Code results” (extract translated by the evaluation team).

perpetrated in Portugal, on the grounds that the previous crimes occurred outside national territory, in this case in Angola, and to understand that Article 5 of the Penal Code is applicable”.

114. According to statistics provided by Portugal, 189 money laundering cases were completed between 2016 and 2020, resulting in 329 convictions (305 natural persons and 24 legal persons). As with the foreign bribery offence, the percentage of pecuniary sanctions is almost zero for natural persons. While the total number of convictions of legal persons remains low (approximately 4.8 per year), the number of natural persons convicted has increased since Phase 3 (approximately 61 per year, compared to 8.5 per year in Phase 3). Portugal did not provide data on whether foreign bribery was the predicate offence in those cases. Nevertheless, at least two of the foreign bribery cases identified above include allegations of money laundering predicated on foreign bribery.

Commentary

The lead examiners welcome Portugal’s increased enforcement of the money laundering offence, as well as Portugal’s efforts in maintaining statistics on investigations, prosecutions and sanctions for money laundering. However, the lack of detailed statistics on the investigation, prosecution and punishment of money laundering with foreign bribery as the predicate offence precludes a comprehensive assessment of the enforcement of money laundering predicated on foreign bribery. Therefore, the lead examiners reiterate Phase 3 recommendations 8(a) and 7(i) on the provision of detailed statistics, including data on whether foreign bribery is the predicate offence.

5. Investigative and prosecutorial framework

(a) Overview of authorities responsible for the investigation and prosecution of foreign bribery

115. The PPS is responsible for criminal investigations and prosecutions in Portugal. It comprises DCIAP in Lisbon (articles 57-60 of Law 68/2019) and regional Departments of Criminal Investigation and Prosecution (DIAPs), each of which covers a judicial district (articles 70-72 of Law 68/2019). Both DCIAP and DIAPs can prosecute, in principle, the foreign bribery offence. In 2011, Portugal’s Attorney General issued Circular 2/2011, which mandated all DIAPs to transmit reports, news, and information about foreign bribery to the DCIAP. Portugal maintains that the circular is binding, and it also covers the investigation of foreign bribery cases but there has been at least one case (*Thoroughfare (Mozambique)*) that has been investigated by a DIAP because, according to Portugal, the investigation was at an advanced stage and DIAP was in a better position to investigate the case.

116. The UNCC is the specialised unit of the Criminal Police that conducts corruption and foreign bribery investigations under the direction of DCIAP (article 31 of Law 137/2019).

(b) Resources, training and expertise

Resources

117. Both the DCIAP and UNCC increased their staff numbers since Phase 3. The DCIAP has 36 prosecutors, up from 26 in Phase 3. Similarly, the UNCC has 115 investigators, up from 63 in Phase 3. It is unclear, however, whether the staff increase has been proportional to the increase of the offices’ workload. In September 2022, Portugal launched an ambitious recruitment programme (Decree Order 245/2022) for careers in criminal investigation, forensic analysis, and security in the Criminal Police, which is expected to further strengthen UNCC’s capacity to investigate foreign bribery. However, despite multiple requests, Portugal provided no information about the number of prosecutors and investigators that are currently assigned to conduct foreign bribery investigations. During the on-site visit, DCIAP and UNCC

representatives stated that their offices are sufficiently resourced, but DCIAP prosecutors did stress the need for more specialised resources on forensic financial analysis and information technology (See Training and expertise).

Training and expertise

118. In Phase 3, the Working Group was concerned that law enforcement authorities in Portugal did not have sufficient expertise to investigate foreign bribery. It recommended that Portugal train investigators and prosecutors on foreign bribery, including on the enforcement of corporate liability (recommendation 5(f)), and provide the DCIAP and UNCC with sufficient specialised expertise (recommendation 5(g)). An increase of foreign bribery training at the time of the Written Follow-Up report partially implemented these recommendations. In Phase 4, Portugal continues to train DCIAP prosecutors and UNCC investigators on foreign bribery.

119. More problematic appears to be the familiarity of judges with the foreign bribery offence. The Centre for Judiciary Studies (CEJ) offers annual training programmes to judges on economic and financial crimes, that continued throughout the pandemic. However, none of the judges who attended the on-site visit had participated in these trainings, and judges did not seem concerned about their lack of experience in hearing foreign bribery cases. Moreover, according to DCIAP, there has been at least one foreign bribery case (*Aircraft Service (Angola)*) where the instruction judge did not accept the original indictment for foreign bribery but after an appeal by DCIAP the case was moved to trial for money laundering and foreign bribery.

120. Portugal's training efforts for prosecutors and investigators are useful but do not address shortages in forensic financial analysis and information technology. The DCIAP and UNCC continue to have access to specialised information technology and financial expertise units (e.g. *Núcleo de Assessoria Técnica (NAT)*). However, DCIAP prosecutors and judges at the on-site visit were of the view that specialised resources, including personnel, could be strengthened considerably, in particular, in view of the amount and complexity of the evidence involved in foreign bribery cases.

121. Portuguese law enforcement authorities had mixed views regarding the impact of the COVID-19 crisis on corruption and foreign bribery investigations. On the one hand, the UNCC indicated all staff had remote access to workstations and relevant databases and continued to co-operate through the Europol and Interpol channels. On the other hand, the DCIAP considered that investigations with an international dimension had been affected by the pandemic restrictions. More generally, law enforcement authorities stressed the shift toward increased digitalisation of investigations since the beginning of the pandemic.

Commentary

The lead examiners are pleased that the human resources available to the DCIAP and UNCC have increased since Phase 3. They also welcome Portugal's efforts to train judges, prosecutors and investigators on foreign bribery. However, training is an ongoing requirement and, in view of the apparent lack of familiarity of judges with the foreign bribery offence, the lead examiners reiterate recommendation 5(f), which remains partially implemented, and recommend that Portugal continue training investigators, prosecutors and, in particular, judges on foreign bribery, including on the enforcement of corporate liability.

Portugal should also ensure that the DCIAP have access to sufficient specialised expertise (Phase 3 recommendation 5(g)), especially in forensic financial analysis and information technology, for investigating and prosecuting foreign bribery.

6. Conducting foreign bribery investigations and prosecutions

(a) Commencement and conduct of investigations

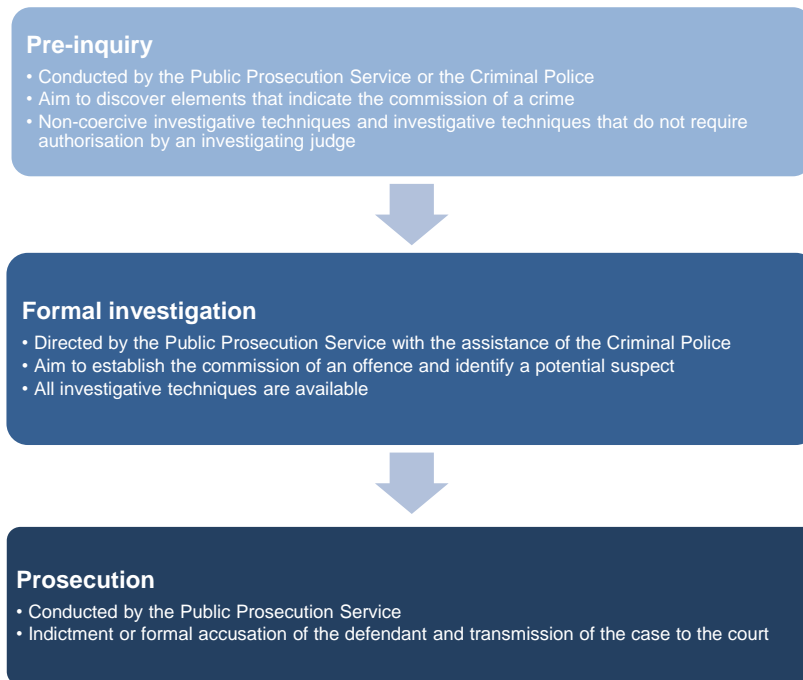
122. Criminal proceedings in Portugal comprise a formal investigation and the prosecution (Figure 5.). Foreign bribery investigations often begin with a pre-inquiry during which the PPS and the Criminal Police may use investigative techniques (e.g. voluntary witness interviews, information from public sources, financial information contained in STRs) that do not require authorisation by an investigating judge (article 1 of Law 36/94).

123. In Phase 3, the Working Group recommended that Portugal take proactive steps to gather information from diverse sources to enhance pre-inquiries (recommendation 5(b)). The Written Follow-Up report found that Portugal had partially implemented this recommendation, including due to an increase in the use of STRs. Portugal has made considerable efforts to monitor national and foreign media for foreign bribery allegations and increased the sources of detection compared to Phase 3. Recommendation 5(b) is considered fully implemented. However, there are concerns that after a foreign bribery allegation is detected, the Portuguese authorities do not take full advantage of the diverse sources of information available to them for investigation purposes (See Part Enforcement of the foreign bribery offence).

124. The UNCC shares the full list of its foreign bribery pre-inquiries with the DCIAP on a monthly basis. The UNCC can also do that on an ad hoc basis, if for instance, during a pre-inquiry it discovers elements that indicate the commission of foreign bribery, in which case it informs immediately the DCIAP and opens a formal investigation (article 3 of Law 36/94). If on the other hand, the pre-inquiry does not yield sufficient evidence, or when the authorities can ascertain that foreign bribery has not been committed, they may terminate the investigation. The decision to terminate a pre-inquiry is made by a prosecutor or the Director of the Criminal Police, who then informs the PPS.

125. Public prosecutors in DCIAP direct formal investigations in foreign bribery cases. During a formal investigation, the suspect acquires the status of defendant and has access to all procedural rights of the CCP. In turn, the DCIAP has access to a broad range of investigative techniques with some of them requiring authorisation by an investigating judge (See Part Investigative and prosecutorial framework). The law provides that the formal investigation of corruption crimes, including foreign bribery, must be concluded within 8 months, if there are defendants in pre-trial detention, and 14 months if there are not (article 215(2) and 276 CCP). These time limits are flexible in practice and may be extended by a court order at the prosecutor's request. The DCIAP prosecutors at the on-site visit stated that they were never denied an extension request and that the only consequence for not completing an investigation within the prescribed limits is that the defendant obtains access to the case file and may request from the prosecution to speed up the process.

Figure 5. Pre-inquiries and criminal proceedings in Portugal



(b) *Investigative techniques*

126. The Working Group did not identify any issues regarding the availability of investigative techniques in Phase 3. Non-coercive investigative techniques are generally available to law enforcement authorities during the pre-inquiry and formal investigation. For coercive investigative techniques, the law requires either prior authorisation by an investigating judge (article 269 CCP e.g. house searches, interception of communication) or reserves them to the investigating judge (article 268 CCP e.g. first interrogation of the defendant, asset freezing and seizing).

Asset freezing and seizing

127. Asset freezing and seizing is possible in foreign bribery cases with the authorisation of an investigating judge. If, however, there is urgency or well-founded fear that the assets will disappear, be destroyed, or damaged, the law enforcement authorities can still seize assets without an authorisation, but the freezing and seizing order needs be validated within 72 hours by an investigating judge (article 178 CCP).

128. In Phase 3, the Working Group recommended that Portugal maintain detailed statistics on the use of pre-trial seizures, including on the offence involved and the amount seized, in order to be able to assess their use in practice (recommendation 7(iii)). The Written Follow-Up report found that Portugal had not implemented the recommendation. In Phase 4, Portugal reports that the Asset Recovery Office (GRA) has seized assets of EUR 6.7 million in the context of two foreign bribery investigations since 2017, and the DCIAP EUR 150 million in another foreign bribery investigation. However, maintaining detailed statistics on pre-trial seizures remains an issue for Portugal, as they do not allow for a breakdown by offence, and it remains difficult for the Working Group to assess comprehensively their use in practice.

Commentary

The lead examiners welcome the use of pre-trial seizures in some foreign bribery cases since Phase 3. Nevertheless, Portugal continues not to maintain detailed statistics on pre-trial seizures, and the lead examiners are unable to assess comprehensively their use in practice. They therefore reiterate Phase 3 recommendation 7(iii), and recommend that Portugal maintain detailed statistics on the use of pre-trial seizures, including on the offence involved and the amount seized.

Bank and tax secrecy

129. There are several laws that allow the Portuguese authorities to access banking information in foreign bribery cases. Article 181 CCP provides that an investigating judge may seize documents, securities, amounts and safes from financial institutions. Judicial authorities may also access secret bank information in the scope of criminal proceedings under article 79(2)(e) of Legal Framework of Credit Institutions and Financial Companies (Decree-Law 298/92). Finally, law enforcement authorities may obtain from credit and financial institutions information subject to bank secrecy, and suspend movements, under articles 2-4 of Law 5/2002. The Bank of Portugal maintains a central database of all bank accounts in the country, which allows law enforcement authorities to obtain account information without the need to resort to individual banks. However, for requests to open bank accounts or suspend movements, the law enforcement authorities need to issue notices to the bank concerned.

130. In Phase 3, Portugal stated that tax secrecy did not apply to “legal co-operation between the tax administration and other public entities, acting within their powers” nor does it apply to “collaboration with justice” (article 64(2) of General Tax Law). In general, law enforcement authorities have access to tax administration databases (article 2 of Law 5/2002) and law enforcement authorities at the on-site visit reported no problem with accessing tax information during foreign bribery investigations.

Special investigative techniques

131. Special investigative techniques are available in foreign bribery investigations with the prior authorisation of an investigating judge. Available techniques include interception of communications (articles 187-189 CCP), audio and visual recording (article 6 of Law 5/2002), undercover investigations (Law 101/2001) and controlled deliveries. Portugal reports that it has employed special investigative techniques in one foreign bribery case (*Sanitation, Irrigation and Energy Production (Republic of Congo)*).

(c) *Provisional suspension of proceedings*

132. The prosecutor may decide any time before the prosecution of the case to suspend the proceedings with the agreement of the investigative judge. In Phase 3, Portugal indicated that the provisional suspension of proceedings under article 281 CCP, did not apply to foreign bribery cases. This is because article 281 CCP applies to offences punishable with a prison sentence not exceeding 5 years or with a sanction other than imprisonment; foreign bribery is punished with a prison sentence between one to eight years.

133. Suspension of foreign bribery proceedings against both natural and legal persons is possible under article 9 of Law 36/94. The Phase 3 report did not refer to this provision, but in Phase 4, Portugal stated that suspension would apply to foreign bribery cases by virtue of articles 7 and 10 of Law 20/2008, which clarifies that Law 36/94 covers foreign bribery. Some panellists at the on-site visit, including the DCIAP prosecutors and representatives of the legal profession and academia, noted, however, that the provision has fallen into disuse.

134. The suspension of proceedings under articles 281 CCP and 9 of Law 36/94 is effectively a non-trial resolution mechanism. It can be requested by the prosecutor or the defendant, and requires the agreement of all relevant parties, including of an investigating judge. To benefit from suspension, the defendant must have “contributed decisively to the discovery of the truth”. This requirement could benefit

from clarification, as panellists at the on-site visit were uncertain as to whether the defendant must self-report the crime, fully collaborate with the authorities after they have detected the case and commenced investigation, or both.

135. The defendant must also comply with certain injunctions. Article 281(2) CCP, applicable *ex vi* to article 9 of Law 36/94, provides for a non-exhaustive list of injunctions (e.g. compensation to the injured party or to the State, adequate moral satisfaction, public service) but according to panellists at the on-site visit, the prosecutor may freely choose to impose other injunctions that they deem appropriate and proportionate to the harm caused. For example, representatives of the legal profession and academia stated that the prosecution could request from a legal person to implement an anti-corruption compliance programme (as provided for by article 9(3) of Law 36/94), while the DCIAP prosecutors argued that they could request full compensation without, however, being able to clarify how the compensation would be determined in a foreign bribery case. Portugal further argues that there are sufficient safeguards in law and in practice to ensure that the application of the measure would result in effective, proportionate, and dissuasive sanctions in foreign bribery cases.

136. Moreover, the law does not provide whether the defendant must admit facts and/or guilt to benefit from the suspension. DCIAP prosecutors at the on-site visit, stated that, while it is important for the defendant to “assume responsibility”, in practice, the prosecutor might not always request the admission of guilt. On the other hand, representatives of the legal profession and academia stated that there is no admission of facts or guilt but that the defendant pleads no contest. DCIAP prosecutors submitted that it is not possible to negotiate the facts of the case or responsibility. Representatives of the legal profession and academia submitted that there is room for negotiation between the defendant and the prosecutor, on the injunctions imposed.

137. The suspension of proceedings may last up to two years and, if the defendant complies with the injunctions, the prosecutor closes the case. The case cannot be reopened (articles 9(2) of Law 36/94 and 282(3) CCP). The closure of the case does not require judicial approval and does not provide for judicial review. With the closure of the case, the investigating judge also declares the confiscation of any seized assets (article 268(1)(e) CCP applicable *ex vi* to article 9(2) of Law 36/94).

138. Suspension decisions could be more transparent. All suspension decisions are registered in the Attorney General's Office database (Decree-Law 299/99), which is accessible, however, only to public prosecutors. The Anti-Bribery Recommendation XVIII(iv) asks countries to make public elements of non-trial resolutions, including the main facts and the natural and/or legal persons concerned, considerations for resolving the case with a non-trial resolution, and the nature and rationale of sanctions imposed. No elements of the suspension decisions are made public in Portugal and the decision itself cannot be communicated to third parties, including persons who may have a legitimate interest in reviewing it.

139. Portugal has not suspended any foreign bribery cases to date. However, in the *Farm Equipment and Aircraft (Zimbabwe)* case, the defendant paid approx. EUR 700 000 as an injunction to have the tax fraud proceedings against them suspended. Judges at the on-site visit also mentioned that some domestic bribery cases have been resolved by suspension of proceedings, but they could not provide more information on the type of injunctions imposed.

Commentary

The lead examiners commend Portugal for enacting legislation to provide for a non-trial resolution mechanism. Similar provisions in other Working Group members have proven to be instrumental in foreign bribery enforcement.

However, some of the parameters of the suspension of proceedings under articles 281 CCP and 9 of Law 36/1994 could be better aligned with the requirements of the Anti-Bribery Recommendation.

In particular, the lead examiners recommend that Portugal issue clear and transparent guidance and disseminate good practices to clarify:

- (a) The requirement that the defendant must have “contributed decisively to the discovery of the truth”;***
- (b) Whether the defendant must admit facts and/or responsibility to benefit from the suspension; and***
- (c) The relevant considerations for resolving the case with suspension of proceedings, and the rationale for applying certain injunctions, in particular, with regard to foreign bribery cases.***

The lead examiners also recommend that Portugal make public, where appropriate and consistent with data protection rules and privacy rights, as much information about its non-trial resolutions as possible, in line with the Anti-Bribery Recommendation.

Finally, the lead examiners recommend that the Working Group follow up, as practice develops, (a) on the practical application of this mechanism, including on injunctions imposed in foreign bribery cases, and (b) whether the suspension of proceedings in foreign bribery cases results in effective, proportionate, and dissuasive sanctions.

(d) Prosecution

140. The prosecutor may decide at the end of the formal investigation whether to archive or prosecute the case, depending on whether there is enough evidence to establish the commission of an offence. The prosecution in Portugal entails the indictment or formal accusation of the defendant, and the transmission of the case to the court (article 283 CCP).

(e) Limitation periods

141. In Phase 3, the Working Group found that the 10-year statute of limitations for foreign bribery was sufficient on its face, but was concerned by its application in practice, noting in particular procedural delays in foreign bribery cases and the fact that the investigation of several of those cases could have been statute-barred. It decided to follow up this issue as practice develops (follow-up issue 13(e)) and recommended that Portugal maintain detailed statistics on foreign bribery and other cases in which the statute of limitations had expired (recommendation 7(iv)). The Written Follow-Up report found that Portugal had not implemented this recommendation and, due to the continued lack of statistics, could not monitor whether the statute of limitations was in practice adequate.

142. In April 2015, Portugal extended the statute of limitations for the foreign bribery offence to 15 years (article 118(1)(a)(iv) CC). Panellists at the on-site visit were confident that the extended statute of limitations is sufficient both on paper and in practice. Moreover, according to the statistics provided by Portugal no foreign bribery proceedings have been terminated due to the expiry of the statute of limitations since 2015.

Commentary

The lead examiners commend Portugal for extending the statute of limitations for the foreign bribery offence to 15 years and for maintaining statistics on foreign bribery and other cases in which the statute of limitations has expired. Therefore, they consider the Phase 3 recommendation 7(iv) fully implemented.

7. Enforcement of the foreign bribery offence

143. In Phase 3, the Working Group was concerned that Portugal's enforcement of the foreign bribery offence was extremely low. Despite Portugal's strong economic links to countries prone to corruption, only 15 foreign bribery allegations had surfaced at the time, none of which resulted in a prosecution. Moreover, Portugal had closed prematurely several of these investigations.

144. The enforcement situation in Phase 4 remains concerning. As discussed in the Introduction, the evaluation team is aware of 29 foreign bribery allegations involving Portuguese natural or legal persons that have surfaced in the over 20 years since the Convention entered into force in Portugal. Of these 29 allegations, 27 allegations have been investigated but only 2 cases have been prosecuted. Portugal has terminated 13 foreign bribery cases without prosecution in Phase 4, which is significantly higher than in Phase 3. Foreign bribery allegations in two cases have been investigated as other offences. More importantly, Portugal has yet to successfully conclude a foreign bribery case. These issues are discussed below considering the outstanding Phase 3 recommendations and new developments in the area of enforcement.

(a) Investigation before termination of cases

145. Concerns that Portugal does not investigate thoroughly and proactively foreign bribery allegations before it decides to terminate relevant cases date back to Phase 2. The Phase 3 report echoed these concerns, and the Working Group recommended that Portugal ensure that its authorities do not prematurely terminate foreign bribery cases (recommendation 5(c)(i)). The Written Follow-Up report found that Portugal had partially implemented this recommendation.

146. In Phase 4, Portugal reiterates that the principle of legality is in force, which means that all reports and suspicions of foreign bribery, with no exception, should be investigated and that foreign bribery investigations can be closed only when the conditions foreseen by the law are met (article 277 CCP). In addition, according to Portugal, explanations were provided concerning its legal and institutional framework addressing Phase 3 recommendations, with the intention to prove a clear evolution responding to these concerns. Portugal provided further information during the discussion of this report about the criminal proceedings that were undertaken in Phase 4.

147. Portugal has terminated 13 foreign bribery cases without prosecution in Phase 4, which is significantly higher than in Phase 3. In addition, as in Phase 3, there are substantial concerns that the Portuguese authorities have terminated several of these cases "due to the lack of sufficient evidence" but Portugal reports limited investigative steps to obtain such evidence.

148. In the *Thoroughfare (Mozambique)* case for example, a Portuguese construction company allegedly secured through bribery a contract of USD 12.5 million to rebuild a thoroughfare in Mozambique. Portugal decided to close the case because the local authorities were unable to corroborate the allegations but reports no additional steps to verify the allegations. Similarly, in the *Public Works (Malawi)* case, a major Portuguese construction company allegedly paid bribes and made gifts to then-President of Malawi to obtain project contracts in the country. Portugal decided to close the case after it sought unsuccessfully international co-operation from Malawi, but again it reports no additional steps to verify the allegations.

149. Moreover, in two cases, Portugal terminated the investigations while proceedings abroad were ongoing. In the *Construction Cartel (Peru)* case, a major Portuguese construction company, together with Spanish and Brazilian construction companies, allegedly formed a cartel to control the assignment of public works in Peru by bribing officials. Portugal closed the case in September 2019 but two months later, in November 2019, the Brazilian company signed a leniency agreement with the Brazilian authorities pleading guilty to foreign bribery in Peru. During the discussion of this report, Portugal informed that it has contacted the Brazilian authorities about the agreement. In the *Trains (Argentina)* case, a Portuguese company

allegedly paid bribes to the then-Secretary of Transport of Argentina to secure the sale of wagons and locomotives. In response to an MLA request from Argentina, Portugal stated during the discussion of this report, that they opened a mirror investigation, which inter alia covered analysis of financial and commercial records and interviews. Portugal closed the case in May 2017 because the Argentinian authorities informed DCIAP that they could not corroborate at the time the allegations. Portugal later specified that their own investigation was also closed because no wrongdoing was ascertained. In April 2022, the then-Secretary of Transport was convicted in Argentina for accepting bribes for the purchase of wagons and locomotives from Portugal. Portugal contacted Argentina about the sentence of the case during the discussion of this report.

150. There is also a broader concern that the investigation of foreign bribery is not a priority for Portugal. The issue was first discussed in Phase 3 when the Working Group recommended that the Portuguese authorities give sufficient priority to investigating and prosecuting foreign bribery (recommendation 5(g)). The Written Follow-Up report found that Portugal had partially implemented this recommendation. In Phase 4, Portugal reiterates that the investigation of corruption, which includes foreign bribery, remains a priority from a policy and institutional perspective (article 5 of Law 55/2020, which defines the criminal policy for preventing and repressing criminality in 2020-2022 and Attorney General's Directive 1/2021). There are, however, doubts that this is the case also in practice and there are concerns – also shared by civil society representatives at the on-site visit – that Portuguese authorities prioritise investigation of domestic bribery, money laundering and tax fraud over foreign bribery.

151. In the *Construction Contracts (Angola)* case for example, a Portuguese construction company, allegedly secured contracts in Angola through bribe payments. A Portuguese congressman was allegedly also involved in the scheme. Portugal did not investigate the foreign bribery allegations but chose instead to focus its investigation on domestic bribery, which was itself dismissed due to the expiration of the statute of limitations. Similarly, in the *Real Estate (Angola)* case, Portuguese-Angolan companies credited funds to bank accounts of a former Angolan minister and his wife in Portugal. The funds were then used to acquire real estate registered in the name of third parties. The Portuguese authorities focused their investigation on the money laundering aspect of the case, which was itself dismissed due to lack of sufficient evidence and the fact that some defendants in the case were acquitted in Spain.

Commentary

The lead examiners are seriously concerned that the Portuguese authorities have prematurely closed foreign bribery cases without investigating relevant allegations thoroughly and proactively. This pattern persists since Phase 2. Portugal has terminated 13 foreign bribery cases without prosecution in Phase 4, which is significantly higher than in Phase 3. Premature closure of cases aside, there are broader concerns that the investigation of foreign bribery is not a priority for Portugal. Instead, the Portuguese authorities seem to prioritise in practice investigations of domestic bribery, money laundering and tax fraud.

The lead examiners therefore reiterate Phase 3 recommendation 5(c)(i) and recommend that Portugal take urgent steps to ensure that its authorities investigate thoroughly and proactively all foreign bribery allegations and that relevant cases are not prematurely closed. The lead examiners also reiterate Phase 3 recommendation 5(g) and recommend that the Portuguese authorities give sufficient priority to the investigation and prosecution of the foreign bribery offence.

(b) Deferring to foreign authorities and multijurisdictional cases

152. The Portuguese authorities also appear to defer to foreign authorities instead of conducting their own investigations. The Working Group recommended in Phase 3 that Portugal consider whether to conduct concurrent or joint investigations in foreign bribery cases (recommendation 5(c)(iii)). The Written Follow-Up report found that Portugal had partially implemented this recommendation. In Phase 4, Portugal

did not provide new information on this issue. However, based on the information provided on the cases, the Working Group concludes that Portugal continues to defer investigations to foreign authorities.

153. Portugal argues that the decision to defer investigations to foreign authorities is ultimately made with a view to avoiding parallel or concurrent investigations and harming investigations conducted by foreign authorities that could be more advanced or better placed to conduct the investigation. However, there is an expectation that the Portuguese authorities would at least consult with their foreign counterparts and ascertain that a foreign bribery investigation into the same case encompasses individuals and entities that are subject to Portuguese jurisdiction. This does not seem to be the usual practice in Portugal.

154. In the *Subsidiaries (Angola)* case for example, a Portuguese subsidiary of a US based multinational cable manufacturing company, made payments to officials of Angola's state-owned public utilities. While Portugal opened initially a pre-inquiry, it eventually concluded that the facts of the case were already covered by an investigation in the United States, and that the evidence reported in relation to Portugal was not sufficient to justify the opening of an independent formal investigation. Portugal did not contact the US authorities with a view to coordinating investigations in the case. Similarly, in the *Intermediary (Brazil)* case, a Portuguese-Brazilian national allegedly acted as an intermediary for a Korean shipbuilding company to secure contracts worth USD 1.2 billion through bribes in Brazil. The intermediary was arrested in Portugal following an extradition request by Brazil. Portugal did not execute the extradition order and decided not to prosecute the intermediary for foreign bribery because, according to Portugal, a broader investigation was ongoing in Brazil and all evidence was abroad. Portugal did not contact the Brazilian authorities either.

Commentary

The Anti-Bribery Recommendation (XIX.C) calls on countries to encourage direct coordination in concurrent or parallel investigations and prosecutions, where appropriate, including through such means as the sharing of information and evidence. The lead examiners are concerned that the Portuguese authorities appear to defer to foreign authorities rather than conducting their own investigations of foreign bribery allegations. The lead examiners reiterate Phase 3 recommendation 5(c)(iii) and recommend that Portugal, where appropriate, consider whether to conduct concurrent or joint investigations. This is particularly important because foreign authorities may not always investigate and prosecute Portuguese individuals and/or companies implicated in a foreign bribery case.

8. Article 5 of the Convention

155. Foreign bribery investigations and prosecutions in Portugal must conform to Article 5 of the Convention. The provision requires that investigations and prosecutions must not be influenced by considerations of national economic interest, the potential effect upon relations with another State, or the identity of the natural or legal persons involved.

156. In Phase 3, the Working Group expressed concerns that Portugal's foreign bribery investigations and prosecutions could be vulnerable to influence by factors prohibited under Article 5. The conclusion was based on factors such as the possible lack of awareness of the standard by the Portuguese authorities, the political and economic sensitivity of many foreign bribery cases involving high-level foreign officials and/or major Portuguese companies, and the high number of foreign bribery allegations involving Angola. The Working Group provided three recommendations in this respect for Portugal to:

- ensure that, where foreign bribery allegations involve senior foreign public officials and/or major Portuguese companies, these allegations are promptly and proactively investigated on a high priority basis and with sufficient resources (recommendation 5(e)(i));

- take appropriate steps to ensure that all prosecutors are aware of the requirement to record their reasons for terminating investigations of the bribery of foreign public officials (recommendation 5(e)(ii));
- raise awareness of Article 5 within the DCIAP, UNCC and other relevant government bodies (recommendation 5(f)).

157. The Written Follow-Up report found that Portugal had partially implemented these recommendations. In particular, the Working Group notes that there is a somewhat mixed picture on whether Portugal investigates on a high priority basis high-profile foreign bribery allegations. In three cases (*Construction Cartel (Peru)*, *Parliamentarian No. 2 (Brazil)* and *Public Works (Malawi)*), involving both senior foreign public officials and major Portuguese companies, the investigations have stalled for several years and were eventually dismissed. In two other high profile cases (*Sanitation, Irrigation and Energy Production (Republic of Congo)* and *Credit Line (Brazil)*), Portugal has launched prosecutions.

158. Moreover, of Portugal's 13 terminated foreign bribery investigations, two-thirds involve officials of countries with strong economic ties with Portugal. Angola alone accounts for about half of all terminated cases. The political and economic sensitivities of these cases are evident. In 2013, Angola threatened to sever special economic ties with Portugal amid a probe by the Portuguese authorities into the fortunes of senior Angolan officials.⁴⁴ In 2018, according to media articles, Portugal's Prime Minister visited Angola with the mission to repair ties amid tensions between the two countries. The tensions arose following the initiation of proceedings by the Portuguese judicial authorities against Angola's then Vice President over bribery allegations.⁴⁵ Some civil society representatives at the on-site visit stated that concerns over Article 5 prohibited factors are not unfounded, however, prosecutors and judges firmly denied such allegations. DCIAP prosecutors further provided information on the increasing level of judicial co-operation with Angola since April 2019.

159. Portugal has made no efforts to raise the awareness of Article 5 within the DCIAP and UNCC either. None of the trainings organised for these authorities since the Phase 3 Written Follow-Up has covered topics relevant to independence or the Article 5 prohibited factors, and the DCIAP prosecutors at the on-site visit were of the view that such trainings are not necessary. After reviewing a draft of this report, Portugal argued that general independence issues are covered as part of the prosecutors' initial training. On a more positive note, the evaluation team was satisfied that the DCIAP prosecutors who attended the on-site visit were aware of the requirement to record their reasons for terminating investigations of foreign bribery.

Commentary

The lead examiners are concerned that Portugal has taken limited measures to address the Phase 3 recommendations with regard to Article 5 of the Convention. Many of Portugal's foreign bribery allegations continue to involve high-level foreign public officials and/or major Portuguese companies, and only two of these cases has resulted in prosecution. Moreover, Portuguese companies continue to operate in a challenging environments. Therefore, Portugal should take additional steps to safeguard its foreign bribery investigations and prosecutions against possible influence by Article 5 factors. The lead examiners therefore reiterate Phase 3 recommendation 5(f), and recommend that Portugal raise awareness of Article 5 within the DCIAP, UNCC, judiciary, and other relevant government bodies.

The lead examiners consider that Portugal has fully implemented Phase 3 recommendation 5(e)(i) and (ii).

⁴⁴ France 24 (October 2013), [Angola threat to end special relations with Portugal](#).

⁴⁵ France 24, (September 2018), [Portugal and former colony Angola seek to repair ties](#).

9. Enforcement of corporate liability for foreign bribery and related offences

160. In Phase 3, the Working Group was concerned by the absence of corporate prosecutions in Portugal. The report references two cases where executives of Portuguese companies had been charged or put under investigation, but the authorities took no measures against the legal persons. In general, the authorities did not routinely commence proceedings against legal persons and the Working Group recommended that Portugal review its approach to enforcement, especially regarding corporations (recommendation 5(a)), and take steps to ensure the usage of the corporate liability provisions where appropriate (recommendation 5(c)(iv)). The Written Follow-Up report found that Portugal had fully implemented recommendation 5(a), and partially implemented 5(c)(iv).

161. There has been a considerable increase of corporate prosecutions for economic offences since Phase 3. According to the 2016-2020 statistics on the use of corporate liability provisions, Portugal has sent 103 legal persons to trial for economic offences, including for money laundering and misappropriation, with 36 out of those for domestic corruption. In the same period, 57 legal persons were convicted and sanctioned for economic offences, with 30 out of those convicted and sanctioned for domestic corruption. Recently, Law 94/2021 amended the CCP to include specific procedural rules for legal persons, which would presumably facilitate prosecutions against companies.

162. Regarding corporate proceedings in foreign bribery cases since Phase 3, no legal person has faced trial, been convicted, or sanctioned for foreign bribery to date. Portugal does not always clarify whether the legal persons involved in the cases described in this report were formally under investigation or prosecution. However, according to the information available to the evaluation team, Portugal has investigated legal persons for foreign bribery in at least two cases (*Subsidiaries (Angola)* and (*Training Facility and Public Buildings (Equatorial Guinea)*) and formally charged legal persons for foreign bribery in another case (*Credit Line (Brazil)*).

Commentary

The lead examiners acknowledge the increase of corporate prosecutions since Phase 3. They are also encouraged that recent amendments to the CCP could enhance further the enforcement of corporate liability for foreign bribery and related offences. They therefore consider Phase 3 recommendation 5(c)(iv) fully implemented and encourage the Portuguese authorities to continue using the corporate liability provisions in the investigation and prosecution of foreign bribery cases.

10. International co-operation

(a) Mutual Legal Assistance (MLA)

Legal framework for MLA

163. The principal bases for seeking and providing MLA in Portugal are multilateral and bilateral treaties, and Law 144/1999. For treaty-based requests, the rules specified in the treaty apply. Where such provisions do not exist or suffice, Law 144/1999 applies (article 3). Portugal is party to several multilateral treaties on mutual legal assistance: Portuguese Speaking Countries Community (CPLP) countries; UN Convention against Transnational Organized Crime (including the 3 additional Protocols) (UNTOC); UN Convention against Corruption (UNCAC); 1959 European Convention on Mutual Assistance in Criminal Matters (including the 1978 and 2001 protocols); and the 2000 Convention on Mutual Assistance in

Criminal Matters between the Member States of the European Union (and 2001 Protocol). Portugal is also party to 12 bilateral MLA treaties.⁴⁶

Central authority and the use of technology

164. The Attorney General's Office is Portugal's central authority for international judicial co-operation in criminal matters (article 21 of Law 144/1999). In 2019, the Attorney General formally set up a new Department of Judicial Co-operation and International Relations (DCJRI) responsible for, inter alia, receiving and verifying the compliance of international co-operation requests with the Constitution of the Portuguese Republic and with the law, ensuring their correct instruction, translation, and transmission as well as for the issuing of requests to other countries. Portugal indicates that the DCJRI has issued "guidance" to judges and prosecutors to facilitate international co-operation procedures. During the on-site visit, DCJRI representatives indicated that the central authority is well resourced to perform its duties.

165. Portugal indicates that the DCJRI uses an electronic system that digitalises records and distributes all requests addressed to it, including requests for judicial co-operation. It also mentions that DCIAP uses an electronic platform where all incoming and outgoing requests for judicial co-operation are registered, allowing information to be added on underlying offences, the countries involved and the responsible officials. Portugal further informs that since late April 2022 the central authority, DCIAP, and other two regional DIAPs are participating in a pilot project in the use of the E-Evidence platform (EDES), following EU Council conclusions of 9 June 2016. The system consists of a secure electronic communication platform to expedite the exchange of evidence between the competent judicial authorities of the EU States, either in European Investigation Order (EIO), rogatory letters or other instruments. This system will be mandatory for all EU member States by 2025.

Types of assistance available

166. The applicable treaty sets out the available types of MLA. For non-treaty requests, article 145 of Law 144/1999 specifies the types of available assistance. These include taking statements; transfer of judicial documents; submissions of documents and reports; conducting of enquiries or inspections; examination of objects and places; search and seizure; asset tracing; freezing and seizure; creating joint investigation teams; and communications control. Regarding requests for companies' information, Portugal reports that DCIAP has direct access to the public registry of companies. For financial information, the PPS orders the lifting of the bank secrecy, and the time of response depends on each institution.

MLA in non-criminal proceedings against legal persons

167. In Phase 3 (para.151), the Working Group was concerned that Portugal was not able to provide MLA for use in civil or administrative proceedings. The reason was that that article 1(3) of Law 144/1999 does not mention co-operation for civil and administrative purposes. An exception is made for "co-operation in matters of criminal offenses, at the stage in which they are being processed before administrative authorities, as well as regulatory offences, whose proceedings admit judicial appeal." It was not clear at the time of Phase 3 if "regulatory offences" included foreign bribery. The Working Group, therefore, decided to follow up whether MLA can be provided in foreign bribery related civil and administrative proceedings against a legal person to a foreign state whose legal system does not allow criminal liability for legal persons (follow-up issue 13(h)). DCJRI representatives reiterated at the Phase 4 on-site visit that Portugal would only be able to provide MLA in purely administrative proceedings if the final decision can be appealed to a court of law.

⁴⁶ Algeria, Argentina, Australia, Brazil, Canada, China (People's Republic of), Hong Kong (China), Macau (China), Morocco, Mexico, Tunisia, and the United States. Department for International Cooperation and International Relations. [Mutual legal assistance in criminal matters: treaties.](#)

*MLA in practice***Statistics**

168. Portugal provided partial statistics on incoming MLA requests on foreign bribery cases received from Working Group member countries since 2017. From 2017 to 2022, Portugal received seven MLA requests from seven Working Group member countries. Portugal's average response time was approx. seven months. Regarding outgoing MLA requests, Portugal provides that, in 2014-2022, it has sent 18 MLA requests on foreign bribery cases to 13 countries (11 of them were Working Group member countries). Portugal has not provided statistics on the total number of MLA requests sent and received in the same periods.

Delays and translation issues

169. The 2021 survey of Working Group members on international co-operation with Portugal (2021 WGB survey) raises concerns about Portugal's processing time and translation of the requests. The Secretariat received information from nine Working Group member countries. The feedback from most countries was overall positive. However, two countries mentioned translation problems and one country complained of a delay of eight months for Portugal to respond a request. After reviewing a draft of this report, Portugal noted that some MLA requests are accompanied by voluminous documentation in several languages, what takes time and additional resources to translate and respond.

Proactivity in seeking co-operation from foreign authorities

170. In Phase 3 (paras.77-82), the Working Group was extremely concerned that Portugal had not proactively sought MLA from foreign authorities in many foreign bribery cases. At that time, Portugal had not sought MLA in any of the eight terminated cases. Even when MLA had been sought, Portuguese authorities sometimes had not pursued the request diligently. Of particular concern was the seeking of co-operation and MLA from Angola. The Working Group, therefore, recommended that Portugal proactively seek co-operation and MLA from foreign countries whenever appropriate (recommendation 5(c)(ii)). This recommendation was considered partially implemented at the time of the Written Follow-Up report.

171. Portugal has sought MLA in 60% of the foreign bribery cases described in this report (12 of 20 cases). However, in three of these cases, Portugal has not followed up with the foreign authorities on the outstanding requests.⁴⁷ Portugal confirms that it did not seek MLA in five foreign bribery cases,⁴⁸ and has not provided information on international co-operation in three other cases.⁴⁹

172. Moreover, Portugal has terminated a high number of investigations without seeking MLA or following up on outstanding requests. In the *Construction Cartel (Peru)* case for example, the Portuguese authorities terminated the case without seeking MLA from Peru and Brazil, where investigations are ongoing or have been successfully concluded. In the *Intermediary (Brazil)* case, Portuguese authorities have yet to seek MLA despite the advanced stage of the investigations in Brazil. One other case (*Farm Equipment and Aircraft (Zimbabwe)*) has been terminated despite pending MLA requests, including from the country of the foreign public official.

⁴⁷ Farm Equipment and Aircraft (Zimbabwe); Sanitation, Irrigation and Energy Production (Republic of Congo); and Supermarket (Angola).

⁴⁸ Construction Cartel (Peru); Supply of services (Angola); Subsidiaries (Angola); Shareholding (Angola and Guinea); and Dam (Angola).

⁴⁹ Construction Contracts (Angola); Intermediary (Brazil); Military Personnel (undisclosed African country).

173. Like in Phase 3, of particular concern is the seeking of co-operation and MLA from Angola. As mentioned above (see Part B.8), Angola alone accounts for about half (six cases) of all terminated cases. In four of these cases, Portugal did not report having sought MLA to Angola before terminating the cases. Representatives of the DCJRI stated at the on-site visit that despite problems in the past, communication with Angolan authorities is much better now. This improvement has yet to be reflected on foreign bribery cases.

Commentary

The lead examiners acknowledge the difficulties that Portugal faces in obtaining MLA in foreign bribery cases. Portuguese authorities still do not proactively seek MLA from foreign authorities or insufficiently follow up pending requests before terminating an important number of cases. However, the lead examiners also acknowledge the increased level of co-operation with Angola.

The lead examiners, therefore, recommend that Portugal proactively seek co-operation and MLA from foreign countries whenever appropriate, especially before deciding to terminate a foreign bribery case, using all available means to secure MLA, in particular through contact with foreign authorities via informal channels and the Working Group's Informal Meetings of law enforcement officials.

They also recommend that the Working Group follow up (a) the use of MLA in present and future foreign bribery cases; and (b) the response time of incoming MLA requests and the quality of the outgoing requests; (c) the provision of the full range of assistance in non-criminal matters in conformity with the requirements under the Convention.

(b) Extradition

174. Portugal can seek and provide extradition in foreign bribery cases based on bilateral and multilateral treaties, the European Arrest Warrant (for EU members), and articles 31-75 of Law 144/1999.

175. Extradition of nationals is admitted only exceptionally. Article 32(2) of Law 144/1999 conditions the extradition of nationals to cases where an agreement to which Portugal is party requires extradition for offences of terrorism and international organised crime, and if the legal system of the requesting State sufficiently guarantees a fair trial. When extradition is refused solely on the grounds of nationality, then "criminal proceedings shall be instituted for the offence [underlying the request, and] the requesting State shall be asked to provide such information as necessary" (article 32(5) of Law 144/1999). In Phase 3 (para. 157), the Working Group was concerned that Portugal had never prosecuted a national for foreign bribery where extradition had been denied on the grounds of nationality and decided to follow the issue (follow-up issue 13(i)).

176. Since Phase 3, Portugal indicates that it has extradited to the United States a Portuguese-Swiss national who acted as an intermediary in the payment of bribes from a Brazilian construction company to Venezuelan public officials. However, in this case the individual had renounced its Portuguese nationality before the extradition. In another case, *Intermediary (Brazil)*, Portugal initiated investigations for money laundering predicated on foreign bribery following the refusal to surrender a Portuguese-Brazilian national to Brazil. Portugal provides that the refusal was not grounded on the nationality of the individual, but on due process concerns.

177. With regard to all crimes, Portugal provides the following extradition information from four annual PPS reports:

- 2017: Portugal surrendered 83 individuals and received 119 through European arrest warrants. It also extradited 10 people and received 14 through extradition requests.
- 2018: Portugal surrendered 57 individuals and received 108 through European arrest warrants. It also sent 27 extradition requests and received 19.

- 2019: Portugal surrendered 72 individuals and received 133 through European arrest warrants. It also extradited two individuals and received 11 through extradition requests.
- 2020: Portugal received 114 and sent 334 European arrest warrants. It also extradited four individuals and received eight through extradition requests.

Commentary

The lead examiners recommend that the Working Group continue to follow up to ensure that, consistent with Article 10(3) of the Convention when it denies a request to extradite a Portuguese national, Portugal authorities proactively and timely investigate and prosecute the case.

C. Responsibility of legal persons

178. Corporate liability for foreign bribery in Portugal is criminal in nature and is foreseen in article 11 CC and article 4 of Law 20/2008. Since Phase 3, there have been substantive legislative reforms affecting the corporate liability regime. Law 94/2021 amended article 11 CC and several other provisions. New procedural rules focused on legal persons were also included in the CCP. Moreover, the General Regime for the Prevention of Corruption (RGPC - Decree-Law 109-E/2021) foresees a series of obligations for public and private entities with 50 or more employees and administrative sanctions for those failing to implement them.

1. Scope of corporate liability for foreign bribery and related offences

(a) Legal persons subject to liability

179. In Phase 3 (para. 45), the Working Group was concerned that state owned enterprises (SOEs) in Portugal were excluded from liability under the then article 11(2) CC. Similar concerns were expressed about legal persons governed by public law (including public corporations), concessionaires of public services, regardless of their ownership, and any other legal persons enjoying public power prerogatives. The Working Group, therefore, recommended that Portugal amend article 11 CC so that “all legal persons, especially state-owned enterprises, can be held criminally liable for foreign bribery” (recommendation 3(a)). In April 2015, Portugal amended the CC to cover expressly SOEs and all other legal persons, excluding, however, those “acting in the exercise of public power prerogatives”. The Written Follow-Up report considered that this term was not sufficiently clear and could potentially exclude, for instance, utilities companies leaving recommendation 3(a) only partially implemented.

180. Portugal clarifies that the term “acting in the exercise of public power prerogatives” in article 11(2) CC does not concern the private functions of a company, such as business transactions. Rather the exclusion of liability may be granted only in relation to the exercise of prerogatives of public power (*ius imperii*). In support of this position, Portugal provides a judgment from the Court of Appeal of Porto, where the Court decided that: “The exercise of private functions, exactly the same as those of any other legal person, even if of public utility, does not justify the exemption from criminal liability provided for in the aforementioned precept [article 11(2) CC].”⁵⁰

Commentary

The lead examiners consider that the Working Group’s concerns in Phase 3 are now alleviated. The April 2015 amendment to article 11(2) CC expressly covers SOEs as legal persons subject to criminal liability. Further, the judgement of the Court of Appeal of Porto clarifies that the exclusion of liability in article 11(2) CC does not apply to legal persons acting in business transactions. The lead examiners, therefore, consider that Phase 3 recommendation 3(a) is now fully implemented.

⁵⁰ Court of Appeal of Porto, Decision [1535/13.0TDPRT. P1](#) of 13 June 2018.

(b) Standard of liability

181. In Phase 3 (paras. 48 and 49), the Working Group was concerned with two aspects of the standard for liability in Portugal (follow-up issue 13(b)). The first issue on how liability for failure of surveillance or control would operate in practice remains open. Portugal has not presented any case law where prosecutors successfully established liability under article 11(2)(b) CC. After the on-site visit, Portugal provided three court decisions to the evaluation team but none of them referred to liability under article 11(2)(b) CC.

182. The second issue, whether the terms “in the legal person’s name” and “collective interest” in the then article 11(2)(a) CC would exclude from liability bribery paid to obtain advantages other than profits, or whether bribery paid by a subsidiary or joint venture would exclude liability of the parent company, still raises questions. Law 94/2021 amended article 11(2)(a) CC replacing the term “collective interest” for “or on their behalf and in their direct or indirect interest”. The term “indirect interest” appears to include advantages other than profits and the situation where a parent company would be held liable by an act of a subsidiary or joint venture. However, during the on-site visit, it was not clear whether or under what circumstances a parent company would be responsible for foreign bribery committed by a subsidiary. Representatives from DCIAP affirmed that courts have adopted conflicting positions on this issue. Portugal has not provided these court decisions to the evaluation team.

Commentary

The lead examiners recommend that the Working Group continue to follow up (a) how liability for failure of surveillance or control would operate in practice in foreign bribery cases; and (b) whether and under which circumstances parent companies are criminally liable for foreign bribery committed by a subsidiary abroad in practice.

(c) Autonomous liability of legal persons in practice

183. Article 11(7) CC expressly states that the liability of legal persons does not depend on the liability of natural persons. During the on-site visit, however, judges affirmed that, in practice, the conviction of a legal person would depend on the conviction of the natural persons involved in the case. Other panellists diverged, but agreed that Portuguese judges would tend to require the conviction of the natural person in order to find a legal person guilty of a crime. After the on-site visit, Portugal provided a court decision that confirms the lack of autonomous liability in practice. A judgment from the Court of Appeal of Lisbon expressly states that a company “can only be held liable insofar as the agent is also liable.” The reason would be that “the liability of a legal person always presupposes that the holder of its body or its representative acted with fault on its behalf, since the fault of a legal person results from the fault of the natural person who acted on its behalf and in its interest.”⁵¹ This reasoning does not comply with the Anti-Bribery Recommendation Annex 1.B.2.

Commentary

The lead examiners are concerned that liability of legal persons in Portugal is not, in practice, autonomous from the liability of natural persons. Therefore, they recommend that Portugal take all necessary steps, including training for judges, to ensure that the liability of legal persons for foreign bribery is not restricted to the cases where a natural person or persons who perpetrated the offence are prosecuted or convicted.

⁵¹ Court of Appeal of Lisbon, [Decision 11110/05.8TDLSB.L2-3](#) from 5 August 2013.

(d) Defence of acting against express orders or instructions

184. Article 11(6) CC provides that the liability of legal persons may be excluded when the agent acted against express orders or instructions of authorised persons. In Phase 3 (paras. 50-51), the Working Group reiterated Phase 2 concerns that this defence is vaguely defined. It could be possible for a company, for instance, to attempt to limit its liability by issuing a blanket prohibition on foreign bribery, or even issuing specific prohibitions directed at individual transactions, regardless of the actual level of the company's supervision, oversight and control over employee or intermediary behaviour. The Working Group, therefore, recommended that Portugal repeal the defence of acting against express orders or instructions (recommendation 3(b)). At the time of the Written Follow-Up report, Portugal had not repealed the defence and this recommendation was considered not implemented.

185. The concerns expressed by the Working Group in Phases 2 and 3 remain relevant. Absent case law, the evaluation team tested the application of article 11(6) CC with different panellists at the on-site visit. This resulted in conflicting positions, which supports the conclusion that the elements of this defence are still vaguely defined. In one panel, a representative from a public authority indicated that the words "orders and instructions" are defined by the corporate law as concrete orders in relation to specific acts. Therefore, a blanket order not to commit foreign bribery would not be sufficient under article 11(6) CC. Other panellists indicated that if the company has an established compliance culture, such blanket prohibition, including through a provision in the Code of Ethics, would suffice to exclude the liability of the legal person for foreign bribery committed by an employee. In any case, if the company issues a specific order directed at an individual transaction it would arguably not be held liable regardless of the actual level of the company's supervision, oversight and control over the employee or intermediary behaviour.

186. After reviewing a draft of this report, Portugal noted that this defence is in accordance with the Anti-Bribery Recommendation Annex 1.B.3.b and would be justifiable to avoid strict criminal liability. The Working Group has, however, repeatedly rejected these arguments at the time of Phases 2 and 3. Article 11(2)(b), by itself, would be enough to rule out the strict criminal liability argument, by requiring a breach of the duties of supervision or control to impose criminal liability. The defence in article 11(6) would, therefore, serve solely as an additional obstacle to the enforcement of the foreign bribery offence.

Commentary

The lead examiners reiterate the Working Group's concerns in Phases 2 and 3 regarding the defence of acting against express orders or instructions. The elements of this defence are still unclear and no case law was provided to support the narrow interpretation of the provision advanced by Portuguese authorities. The lead examiners, therefore, reiterate Phase 3 recommendation 3(b) and recommend that Portugal repeal the defence of acting against express orders or instructions in article 11(6) CC.

2. Jurisdiction over legal persons

187. Article 5(1)(g) CC provides that the Portuguese criminal law is applicable to acts committed abroad by a legal person or against a legal person that has its headquarters (*sede*, in Portuguese) in Portugal. Portugal indicates that article 5(1)(g) CC would not include all forms of foreign business representations in Portugal, as the provision requires that a legal person has its formal headquarters in the country or at least that its decision centre is located there. Portugal also affirms that it has jurisdiction over every offence whether committed in Portugal, or when its effects occurred in the country. During the on-site visit, several panellists agreed that Portugal would have no jurisdiction over a foreign company's branch located in the country for an offence entirely committed abroad by the Portuguese branch employees and with no effects in Portugal. In other words, if foreign employees from a Portuguese branch of a foreign company negotiate and pay a bribe abroad and the profits of the tainted contract are directly credited to the company's

headquarters in a third country, Portugal would not have jurisdiction over the case. This creates a potential loophole that could be used by companies to escape liability for foreign bribery while operating in a WGB member country.

Commentary

The lead examiners recommend that the Working Group follow up whether Portugal has jurisdiction over all forms of foreign businesses representations in the country for foreign bribery as case law develops.

3. Sanctions available for legal persons for foreign bribery

188. Portugal has yet to sanction a legal person for foreign bribery. Since Phase 3, fines and dissolution continue to be the main available sanctions against legal persons (article 90-A CC). The maximum and minimum values of the fines and the hypothesis for dissolution remain the same. Article 90-A CC also provides for accessory sanctions, which remained untouched since Phase 3. Law 94/2021 expressly included in article 90-A CC a list of alternative sanctions and amended their provisions. With these amendments, the available sanctions against legal persons in Portugal for foreign bribery are currently as follows:

Table 2. Sanctions against legal persons

Sanctions	Description
Fines (Articles 90-A(1) and 90-B CC)	From EUR 12 000 to EUR 9 600 000
Dissolution (Articles 90-A(1) and 90-F CC)	Only applicable when the legal person: (i) was created with the exclusive and predominant intention of committing crimes; or (ii) has been used exclusively or predominantly, for this purpose, by whoever occupies a leadership position.
Alternative sanctions (Article 90-A(3) CC)	(a) Admonition (article 90-C CC); (b) Good conduct bond (article 90-D CC); (c) Judicial surveillance (article 90-E CC).
Accessory sanctions (Article 90-A(2) CC)	(a) Judicial injunction (article 90-G CC); (b) Prohibition of the exercise of an activity (article 90-J CC); (c) Prohibition to enter into certain contracts or contract with certain entities (article 90-H CC); (d) Deprivation of the right to subsidies, subventions or incentives (article 90-I CC); (e) Closure of establishment (article 90-L CC); (f) Publicity of the conviction (article 90-M CC).

Source: Criminal Code

(a) Monetary sanction

189. The statutory amounts of fines against legal persons and the way they are calculated have not changed since Phase 3. Fines in a specific case are determined based on the sentence of imprisonment that would have been imposed, had a natural person committed the crime. The amount of the fines are calculated in days-fine. One month in prison corresponds to 10-days fine. The judge will determine the value of the day-fine between EUR 100 to EUR 10 000, depending on factors such as the number of employees, and the financial situation of the legal person (Article 90-B CC). A legal person can be fined even if no natural person has actually been sentenced to imprisonment. Portugal indicates that the determination of an appropriate sanction is to be made within the limits established by law and in accordance with the level of guilt and prevention needs at stake.

190. The foreign bribery offence is punishable with one to eight years' imprisonment.⁵² Therefore, a legal person that commits foreign bribery may be sanctioned with a fine ranging from EUR 12 000 to EUR 9 600 000. While the maximum statutory fine for foreign bribery could be adequate in some instances, the minimum end (EUR 12 000) could be too low to be effective, proportionate, and dissuasive. After reviewing a draft of this report, Portuguese authorities noted that the minimum statutory fine would be proportionate in cases involving Portuguese SMEs doing business abroad in corruption prone jurisdictions. Finally, a fine might not be applied at all if the court considers that an alternative sanction would better serve the purposes of punishment.

191. During the on-site visit, private sector and civil society representatives unanimously stated that the statutory fines for foreign bribery are very low, especially when compared with sanctions to regulatory offences. For competition offences, for instance, the maximum fines (which are administrative and not criminal fines) can reach 10% of the annual turnover of a company or group of companies.⁵³ The Working Group has encouraged countries to set maximum fines for foreign bribery that refer to a company's turnover.⁵⁴ The perception in the private sector that sanctions are very low may arguably undermine their deterrent effect and, thus, frustrate the purposes of Article 3 of the Convention. Court decisions in domestic bribery cases show a lack of method and consistency when imposing fines to legal persons. Portugal indicates that between 2016 and 2020, 30 legal persons have been convicted with domestic bribery offences in first instance courts. Fines were imposed in 21 of these cases. After the on-site visit, Portugal provided court decisions on four domestic bribery cases where fines were imposed against legal persons. In three of them the description of facts was redacted, resulting in the impossibility to analyse the underlying circumstances of the cases. In all cases the involved legal persons were convicted of active domestic corruption (article 374 CC). It was not clear if judges took into consideration the value of the bribes and the amount of the resulting profits when calculating the fines. In one case, the judge considered the value of damage against the victim as an aggravating factor and the good record as a tax payer as a general mitigating factor. In another case, the judge convicted five legal persons to the payment of the same amount of fines, even though they apparently had different degrees of participation in the scheme. Moreover, in this last case, the value of the fines was below the statutory minimum.

(b) *Alternative and accessory sanctions*

192. Law 94/2021 amended article 90-A CC to include a list of alternative sanctions against legal persons, namely admonition, good conduct bond or judicial surveillance.⁵⁵ These alternative sanctions are applicable when the fine can be replaced by another measure that "will adequately and sufficiently achieve the purposes of the punishment". The replacement of fines by alternative sanctions is at the discretion of the courts. A determinative factor for that could be the adoption or implementation of an adequate compliance programme to prevent recidivism. The amount of days-fine established at sentencing will determine which alternative sanction may be applicable.

193. The alternative sanctions, however, may not be effective, proportionate, and dissuasive against foreign bribery. Foreign bribery cases often entail the payment of substantial bribes in return for highly profitable business advantages. In these cases, converting a fine into judicial surveillance, good conduct bond, or admonition may be perceived as a lesser punishment. Portugal indicates that from 2016-2020, out of the 30 legal persons convicted for domestic corruption offences in first instance courts, nine had

⁵² Article 7 Law 20/2008.

⁵³ Article 69 Law 19/2012.

⁵⁴ [Germany Phase 4](#), para. 243 and Commentary after para. 244. Germany had increased fines to EUR 10 million, but was also encouraged to proceed with a plan to introduce administrative fines up to 10% of a company's turnover.

⁵⁵ These sanctions were already available at the time of Phase 3.

their sanctions converted to a good conduct bond. No information was provided on these cases but after the on-site visit, Portugal provided a court decision involving violation of labour security rules where a EUR 200 fine was converted into a EUR 85 000 conduct bond. There is no information on the application of other alternative sanctions.

194. Legal persons may also receive accessory sanctions together with a fine or any of the alternative sanctions. The list of accessory sanctions in article 90-A(2) CC includes judicial injunction, prohibition on the exercise of an activity; prohibition on executing certain contracts or contracts with certain entities; deprivation of the right to subsidies, subventions or incentives; closing of establishment; and publicity of a conviction sentence (articles 90-G to 90-M CC). Some of these sanctions could enhance aspects of the sanctioning regime if consistently applied. The judicial injunction allows the court to determine the adoption and implementation of a compliance programme together with a fine or an alternative sanction. The prohibition on executing contracts with the public administration and receiving subsidies can have an important deterrent effect, especially when applied to companies in certain sectors of activity, such as infrastructure and defence.

(c) *Special mitigating factors to legal persons*

195. Whenever the law provides for a special mitigating factor, the statutory maximum fine will be reduced to a third and the minimum to the lower level in the law (article 73(1)(c) CC). Law 94/2021 established different special mitigating factors to sanctions against legal persons. A general special factor was introduced in the CC, while a specific one was inserted into Law 20/2008.

196. Article 90-A(4) CC provides that the court will, in addition to the cases expressly provided for by law, reduce the sanctions against a legal person considering the circumstance that it has adopted and implemented, before the commission of the crime, an adequate compliance programme to prevent such crime or offences of the same kind. Article 5(5) of Law 20/2008 provides that the penalty will be specially mitigated if, “until the end of the trial hearing in the first instance, the agent actively collaborates in the discovery of the truth, contributing in a relevant way to the proof of the facts.” Article 8 of Law 36/94 replicates the same language (see Part B.1(b)).

(d) *The “adoption and implementation of an adequate/appropriate compliance programme” as a factor to be considered at sentencing*

197. Law 94/2021 has amended all relevant articles in the CC to ensure that judges consistently consider the adoption and implementation of an adequate/appropriate compliance programme at sentencing, namely on the following situations: (i) application of a mitigating factor (article 90-A(4) CC); (ii) application of an accessory sanction (article 90-A(5) CC); (iii) application of an alternative sanction (article 90-A(6) CC); and (iv) calculation of the amount of day-fines (article 90-B(4) CC).

198. There is no indication, however, of what elements an adequate/appropriate compliance programme should contain, nor where or based on what standards the judge should seek guidance to make such assessment. During the on-site visit, panellists expressed different views on this issue. Representatives from the MOJ affirmed that judges should refer to the RGPC to determine whether a compliance programme is appropriate. Other panellists affirmed that the judges would probably designate experts to assess compliance programmes. Representatives from the judiciary indicated that the reforms are very recent, and training will be provided to judges on how to evaluate compliance programmes. Considering the general lack of specialisation of Portuguese courts, it is safe to assume that the majority of judges in Portugal would not be able to assess if a compliance programme is appropriate considering, for instance, the size of the company and the specific risks arising out of its businesses.

Commentary

The lead examiners are concerned that sanctions against legal persons for foreign bribery might not be effective, proportionate, and dissuasive in practice.

According to private sector and civil society panellists, the statutory fines for foreign bribery against legal persons might not be adequate, which potentially undermines their deterrence effect. Accessory sanctions should be consistently applied in foreign bribery cases. Moreover, there is no clarity on the definition of an “appropriate compliance programme” or based on what standards Portuguese judges will make such assessment before granting benefits to convicted companies at sentencing.

The lead examiners, therefore, recommend that Portugal take the appropriate steps to ensure that sanctions against legal persons for foreign bribery are effective, proportionate, and dissuasive in practice.

The lead examiners also encourage Portugal to clarify the standards and develop training to help judges and prosecutors assess whether a compliance programme is appropriate considering the risk exposure of the legal persons involved in the concrete case.

4. Confiscation against legal persons

199. There are no specific provisions for confiscation against legal persons in Portugal. The rules applicable to natural persons are also valid for legal persons. For this reason, please refer to Part B. above on confiscation against natural persons for a more detailed analysis of the legislative framework. Regarding confiscation against legal persons in practice, after the on-site visit, Portugal provided information on one domestic bribery case where a first instance judge ordered the confiscation of almost EUR 3 million against five legal persons.

5. Engagement with the private sector

(a) The General Regime for the Prevention of Corruption (RGPC) and the National Anti-Corruption Mechanism (MENAC)

200. On 9 December 2021, the Council of Ministers, through the Decree-Law 109-E/2021, adopted the RGPC. The RGPC establishes obligations to public and private sector entities (including SOEs) with headquarters in Portugal and 50 or more employees to adopt mechanisms and measures to prevent corruption, including foreign bribery. It also provides for administrative sanctions against the entities that fail to implement these obligations or do not do it adequately. The RGPC will enter into force gradually starting in June 2022 (articles 26-29 Decree-Law 109-E/2021).

201. Articles 5 to 10, 17, and 18 of the RGPC provide the anti-corruption measures that covered entities in the private sector should adopt or/and implement.⁵⁶ They include: (i) Implementation of a compliance programme and the designation of a responsible person (article 5); (ii) Adoption of a prevention plan for risks of corruption (PPR) and related offences (article 6); (iii) Adoption of a code of conduct (article 7); (iv) Implementation of internal reporting channels (article 8); (v) Promotion of training and awareness raising (article 9); (vi) Implementation of an evaluation system (article 10); (vii) Implementation of internal controls (articles 15 and 17); and (viii) Adoption of previous due diligence proceedings (article 18).

⁵⁶ As the scope of this evaluation is not domestic bribery, the provisions concerning the public sector will not be the analysed here.

202. The RGPC also establishes administrative sanctions for inadequate or lack of implementation of some of the measures above mentioned, namely the adoption of the PPR, code of conduct and implementation of internal controls. The main sanction is a fine ranging from EUR 1 000 to 44 891.81 for legal persons and up to EUR 3 740.98 for natural persons (article 20 of the RGPC). The RGPC also establishes the accessory sanction of making the sanctioning decision public (article 23 of the RGPC).

203. During the on-site visit, some representatives from the private sector expressed some concerns with the adoption of the RGPC. They mentioned that most Portuguese companies would not be able to meet their obligations due to lack of resources. Some panellists were concerned with the lack of guidelines and directives from the government regarding the RGPC obligations. Representatives from civil society and business associations were largely more optimistic. One panellist mentioned that the RGPC has the potential to change the culture in the Portuguese business sector. The majority of panellists agreed that the government should make greater efforts to raise awareness of the obligations and other aspects of the RGPC to the private sector.

204. The RGPC has the potential to be an effective anti-corruption awareness raising tool, especially for SMEs, which account for 99.9% of Portuguese companies. By imposing obligations to entities with 50 or more employees, the RGPC has the potential to be an effective tool to raise awareness of foreign bribery to SMEs. SMEs are often not aware of corruption and foreign bribery risks, much less of the importance of implementing minimal anti-corruption measures. By imposing a legal obligation to do so, Portugal might be able to effectively raise awareness of corruption and foreign bribery to all businesses, including SMEs. It is important, however, to follow up whether the Portuguese authorities will include foreign bribery in their awareness raising and monitoring activities.

205. The Decree-Law 109-E/2021 also created the National Anti-Corruption Mechanism (MENAC), an independent administrative authority that will monitor the implementation of the RGPC including by sanctioning public and private entities. MENAC will also be responsible for providing guidelines on anti-corruption compliance programmes and promoting transparency and awareness raising activities on corruption and related offences. MENAC is not yet fully functional. After the on-site visit, Portugal reported that MENAC has been temporarily set up by Decree 164/2022, which entered into force on 5 July 2022, when the Council of Ministers appointed the President of MENAC.⁵⁷ In terms of resources, MENAC will be temporarily supported by staff of the MOJ and the Ministry of Finance.

Commentary

The lead examiners commend Portugal for the enactment of the RGPC, which has the potential to be an effective tool to foster a culture of compliance in the country's business sector, including to SMEs. They also commend Portugal for the creation of MENAC. They therefore recommend that the Working Group identify the implementation of the RGPC and the creation of MENAC as both good practices and positive achievements.

They also recommend that the Working Group follow up (a) the effective implementation of MENAC including the resources allocated to it; (b) whether MENAC and/or other relevant Portuguese authorities will effectively monitor the implementation of specific anti-corruption measures to address foreign bribery risks of Portuguese companies doing business abroad, especially SMEs.

(b) Awareness raising initiatives to the private sector

206. In Phase 3 (paras. 159-164), the Working Group was very concerned with the low level of awareness of foreign bribery and the lack of interest in this issue in Portugal by the private sector and media. At that time, the Ministry of Justice (MOJ), the AICEP (official trade promotion agency), and the MFA had made some efforts to raise awareness of foreign bribery with the private sector. However, other

⁵⁷ Resolution of the Council of Ministers [n. 56/2022](#), of 5 July.

important authorities such as the Securities Market Commission (CMVM), the Ministry of Economy, and the Institute for Support to Small and Medium-Sized Enterprises and Innovation had made only limited efforts. The Working Group, therefore, recommended that Portugal take steps to raise awareness in the private sector and media (recommendation 11(a)). At the time of the Written Follow-Up report, the Working Group considered this recommendation partially implemented. Even though Portugal presented several awareness raising initiatives taken by the MOJ and the DCIAP, the other authorities listed above remained inactive despite their importance in the engagement with the private sector.

207. Portugal has not reported awareness raising activities to the private sector focused on foreign bribery since Phase 3. It refers to the preparation and implementation of the NACS as a very important occasion for the engagement with the private sector. Portugal adds that the NACS provides for the development of public campaigns in a clear and accessible language drawing attention to common corruptive practices and indicating the existing reporting channels. During the on-site visit, AICEP representatives indicated that the agency is aware of foreign bribery risks, but it does not deal with the private sector directly. After the on-site visit, CMVM informed that it has promoted several awareness raising initiatives, including circulars, workshops on supervised companies reporting duties, and guidelines on compliance and good practices in matters of money laundering prevention. None focused on foreign bribery specifically. Finally, representatives of civil society organisations presented at least two Collective Action initiatives aimed at raising awareness on foreign bribery and the importance of anticorruption compliance.

Commentary

The lead examiners acknowledge that Portuguese companies are now better aware of their exposure to foreign bribery risks than they were in Phase 3. They note, however, the absence of government initiatives in this regard. Phase 3 recommendation 11(a), therefore, remains partially implemented.

The lead examiners further consider that the implementation of the MENAC and RGPC will likely increase the level of awareness of Portuguese companies of the foreign bribery offence and risks if accompanied by relevant initiatives. They, therefore, recommend that Portugal take greater efforts to raise awareness of foreign bribery in the private sector, especially amongst SMEs and other companies doing business abroad.

(c) Corporate governance and compliance

208. In Phase 3 (paras.134-137), the Working Group was extremely concerned by the lack of corporate compliance, internal controls, and ethics programmes in Portugal to explicitly address foreign bribery. This concern was even greater when referring to SMEs. The Working Group, therefore, recommended that Portugal “make greater efforts to encourage Portuguese companies (particularly SMEs) to adopt internal control, ethics and compliance measures that explicitly address foreign bribery, and ensure that these efforts involve all government bodies that interact with Portuguese companies, including AICEP, Ministry of Economy and Employment, IAPMEI, DGAE and CMVM” (recommendation 9(b)). At the time of the Written Follow-Up report, the WGB considered this recommendation partially implemented. Portugal reported several awareness raising initiatives, but only a few of them encouraged companies to adopt corporate compliance programmes.

209. Portuguese companies have shown some progress in implementing anti-corruption compliance programmes since Phase 3. During the on-site visit, a representative from a “Big 4” auditing company indicated that Portuguese companies have improved their anti-corruption controls in the last 10 years, including medium size companies. Another panellist emphasised that Portuguese companies are now more diligent when elaborating gift policies and engaging with foreign consultants. A representative from

the business sector indicated that large Portuguese companies are more aware now of their foreign bribery risks as they were in the past.

210. Some concerns remain, however. SMEs are still exposed to considerable corruption and foreign bribery risks while having no internal controls or anti-corruption measures. Moreover, a representative from the civil society indicated that Portuguese companies and law firms doing business in high-risk countries with strong historical and economic ties with Portugal do not have adequate corporate compliance or anti-corruption controls. The number of foreign bribery allegations described in this report involving Portuguese companies in these countries validate these concerns.

Commentary

The lead examiners note that Portuguese companies now seem to have better anti-corruption programmes than they had in Phase 3. They are encouraged that the MENAC and the RGPC have the potential to instil a culture of compliance in the Portuguese private sector. This would include SMEs with 50 or more employees that are also under the obligation to adopt the appropriate anti-corruption measures. They, therefore, consider that Phase 3 recommendation 9(b) is now fully implemented.

However, the lead examiners are also concerned that SMEs in general and companies doing business in high-risk countries with which Portugal has strong historical and economic ties could still be lagging behind. They, therefore, recommend that Portugal use the momentum of the implementation of the RGPC to closely monitor the implementation of anti-corruption measures in companies doing business in high-risk countries with which Portugal has strong economic and historical ties.

D. Other issues

1. Tax measures for combating foreign bribery

211. The Portuguese Tax and Customs Authority (AT) is responsible for managing taxes and custom duties, as well as for monitoring borders. In Phase 3, Portugal received three tax related recommendations (recommendations 10(a) to (c)) and one follow-up issue (13(g)). At the time of the Written Follow-Up report, the Working Group considered recommendation 10(c) fully implemented, 10(a) partially implemented, and 10(b) not implemented. The Working Group decided to continue to monitor the follow-up issue.

(a) *Non-tax deductibility of bribes and post-conviction enforcement*

212. In Phase 3 (para. 139), the Working Group noted that Portuguese tax legislation expressly prohibited the deduction of payments involving breach of Portuguese tax and criminal law, whether the payment was made inside or outside Portugal. Nevertheless, the Working Group identified two cases in which the tax authorities were not informed of convictions on the grounds of corruption and did not examine the tax returns of the individuals and companies involved. The Working Group decided to follow up the enforcement of the non-tax deductibility of foreign bribes, particularly whether Portuguese courts promptly inform the tax authorities of convictions related to foreign bribery, and whether tax authorities examine the tax returns of taxpayers convicted of foreign bribery (follow-up issue 13(g)). At the time of the Written Follow-Up report, the Working Group agreed to continue monitoring this issue.

213. The Portuguese legal framework prohibits the deduction of unlawful (illegal) expenses, including bribes, for tax purposes. The non-tax deductibility of bribe payments is stipulated by provisions of the Corporate Income Tax Code (CIRC), article 23-A(1)(d), and of the Personal Income Tax Code (CIRS) that contains a referral (article 32 CIRS) to the CIRC. These provisions cover taxpayers which determine their taxable income according to accountancy regime rule – i.e. legal persons, subject to the Corporate Income tax Code (CIRC), and natural persons that carry out personal/individual businesses, subject to the Personal Income tax Code (CIRS), which either exceeded in the preceding tax year an annual gross amount of business and professional income of EUR 200 000 in the course of their activity, or which voluntarily opt for this regime.⁵⁸ Otherwise, legal persons and natural persons carrying out personal/individual businesses determine their taxable income according to simplified tax regimes,⁵⁹ by applying fixed coefficients to their respective revenues without consideration of any expenses.⁶⁰ Deductions from the resulting taxable income are only allowed in very limited situations according to the simplified tax regime. Article 33(7) CIRS concerning the non-deductibility of illegal expenses for tax purposes was removed by Law 82-E/2014. After reviewing a draft of this report, Portugal stressed that article 33 CIRS prohibited the deduction of a number of expenses in determining the taxable income under

⁵⁸ Article 28(1)(b) CIRS.

⁵⁹ Article 28(1)(a) CIRS.

⁶⁰ As provided by article 86B(1) CIRC and article 31(1) of CIRS, respectively applicable to legal persons and natural persons that carry out personal/individual businesses.

accountancy regime and was amended as its provisions were redundant with article 23A(1)(d) of CIRC. This amendment would hence not hinder the application of the rule of non-tax deductibility of illegal expenses.

214. During the on-site visit, AT representatives indicated that any conviction “relevant from the tax authorities’ perspective” (i.e. describing facts likely to be relevant from the tax legal point of view) would be monitored and would lead to the re-examination of the relevant tax returns. However, they stated AT is not systematically informed by Portuguese courts of any convictions related to domestic corruption or foreign bribery.

Commentary

The lead examiners recommend that the Working Group continue to follow up on the non-tax deductibility of foreign bribes and post-conviction enforcement, in particular whether Portuguese courts promptly inform the tax authorities of convictions related to foreign bribery, and whether tax authorities examine the tax returns of taxpayers convicted of foreign bribery.

(b) Tax treatment of sanctions and confiscation imposed on legal persons

215. Article 23(A)(1)(e) CIRC prohibits legal persons and, through the referral to article 32 of CIRS, natural persons that carry out personal/individual businesses, from deducting from taxable income “penalties, administrative fines, and other charges, including compensatory and default interest, for the practice of infringements of any kind which do not have a contractual origin, as well as by conduct contrary to any rules governing the exercise of the activity”. AT representatives at the on-site visit stated that confiscated instrumentalities, property or any kind of assets ordered as a criminal penalty were not deductible.

216. Similarly to the above, other legal persons and natural persons carrying out personal/individual businesses determine their taxable income according to simplified tax regimes by applying fixed coefficients to their revenues, without consideration of expenses, including potential sanctions and confiscations.

(c) Awareness raising, detection and reporting of foreign bribery by tax authorities

Awareness raising

217. In Phase 3 (paras. 140-141), the Working Group recommended Portugal to incorporate the essential elements of the OECD Bribery Awareness Handbook into the standard Manual for Tax Auditing, regularly update the Manual to reflect latest trends on how the crime of foreign bribery is committed, and provide guidelines and training with the Handbook to existing and newly recruited tax examiners (recommendation 10(a)). At the time of the Written Follow-Up report, an updated version of the Manual including fundamental elements of the OECD Bribery Awareness Handbook for Tax Examiners was “soon-to-be-finished” and two training modules addressing corruption were foreseen. The Working Group considered recommendation 10(a) partially implemented.

218. Since then, the Portuguese version of the OECD Bribery Awareness Handbook has been published on AT’s intranet and e-learning centre platform, as well as on CPC’s website. In addition, the standard Manual has been supplemented by a new chapter called “Corruption”, which would include a section on the “Legislative framework in national tax law” and the “Internal control assessment procedures”. After the on-site visit, AT representatives stated that a tax auditing traineeship programme was provided between 2015 and 2018 including on money-laundering and international corruption that gathered 916 participants (with 891 newcomers) and covered reporting obligations of tax inspectors, corruption and foreign bribery case studies and related indicators of corruption and foreign bribery (e.g. payment to

offshore entities, operations in high-risk sectors, allocation of contracts by relatives, excessive amounts invoiced as compared to services provided).

Detection

219. In Phase 3 (para. 141), the Working Group was unclear as to whether Portuguese tax authorities systematically undertook any specific diligence regarding shell companies involved in complex bribery schemes, in particular those registered in the Madeira FTZ. In addition, the Working Group pointed out issues specifically related to the detection of undocumented expenses and made a recommendation in that respect, as reflected under section Undocumented expenses below. At the time of the Written Follow-Up report, Portugal was foreseeing the inclusion on the Integrated Information System for Tax Auditing (*Sistema Integrado de Informação da Inspeção Tributária* - SIIT), of a Methodology Check List designed to improve the detection of foreign bribery and that tax inspectors would have to consider during inspections.

220. AT representatives at the on-site visit stated that the tax audit software programmes SIIT and the Integrated Information System of Customs Antifraud (*Sistema Integrado de Informação Aduaneira Antifraude* - SIIIA) had been supplemented in January 2022 with a set of four questions, including whether the taxpayer accounted for undocumented expenses and there are suspicions of the crime of active corruption in international trade. They further stated that these developments were part of an ongoing dematerialisation of inspection procedures in Portugal. All the audits performed by tax authorities to each Portuguese taxpayer, including taxpayers registered in Madeira FTZ, are registered in the tax audit software programmes.

Reporting

221. As in Phase 3 (para. 146), the general obligation on all Portuguese public officials to report crimes applies to tax authorities. Tax secrecy rules should be lifted upon decision taken by a Public Prosecutor. In Phase 3, the Working Group pointed out the lack of statistics, the lack of guidance on reporting to tax examiners and the lack of reporting by the AT to the PPS of foreign bribery cases, including cases where bribe payments had been channelled through shell companies. The Working Group decided to follow up the reporting of foreign bribery cases by Portuguese tax officials (follow-up issue 13(g)).

222. AT representatives at the on-site visit stated that trainings covered reporting. Nevertheless, the detection of foreign bribery cases by the AT remains low. The AT detected and reported only one case presenting indications of possible foreign bribery to the PPS (*Military Personnel (undisclosed African country)*). Nevertheless, the DCIAP prosecutors at the on-site visit indicated that the subsequent criminal investigation did not address foreign bribery and was terminated due to lack of evidence.

Commentary

The lead examiners welcome Portugal's efforts to implement measures aimed at raising awareness of tax examiners and facilitating the detection of foreign bribery through dematerialised procedures. Accordingly, the lead examiners consider Phase 3 recommendation 10(a) implemented.

However, they note that the number of foreign bribery cases detected continues to be low, and encourage Portugal to build on the efforts above. The lead examiners recommend that the Working Group continue to follow up the reporting of foreign bribery cases by Portuguese tax officials.

(d) Undocumented expenses

223. In Phase 3 (paras.142-145), the Working Group reiterated concerns, already expressed in Phase 2, on the possibility for Portuguese taxpayers to declare undocumented expenses, which could

prevent tax examiners from detecting bribe payments. Such expenses were not deductible for companies subject to CIRC and triggered an aggravated tax payment. The Working Group also stressed that it would be “extremely difficult” for tax examiners to verify such expenses without supporting documentation and pointed out that the level of suspicion required to trigger an investigation may be “unduly high” in practice. The Working Group recommended that Portugal take all appropriate measures to discourage the use of undocumented expenses and ensure that tax examiners routinely assess whether undocumented expenses are hidden bribes (recommendation 10(b)).

224. At the time of the Written Follow-Up report, the Working Group welcomed the amendment of article 23(A)(1) CIRC which reaffirmed the non-tax deductibility of undocumented expenses but regretted that no similar provision had been included in the CIRS. The Working Group further observed that the SIIT aimed at facilitating the detection of bribes among undocumented expenses were not yet in use. Recommendation 10(b) was considered not implemented.

225. Since then, the non-deductibility of undocumented expenses remains unchanged. As for the detection of bribes hidden as undocumented expenses, tax authorities referred to undocumented expenses as one of the indicators of corruption risks in supports for training courses of tax inspectors, which may encourage them to verify such expenses in the course of tax audits. Further, the tax authorities have included, in the tax audit software programmes, a question on the accounting of undocumented expenses (see paras. 219 and 220). The case reported to the PPS on possible suspicions of foreign bribery originated from the assessment of expenses other than undocumented expenses.

Commentary

The lead examiners welcome the references to undocumented expenses as indicators of corruption risks in the training materials for tax inspectors, and in tax audit software since the 1st January of 2022, which could trigger a more systematic and thorough verification of such expenses during tax audits. Portugal has undertaken some measures to ensure a routine assessment of undocumented expenses by tax inspectors. The lead examiners hence convert recommendation 10(b) into a follow up issue.

(e) Co-operation between tax and law enforcement authorities, both domestically and abroad

226. In Phase 3 (para. 146), the Working Group questioned the effectiveness of the co-operation between tax and domestic law enforcement authorities in view of the lack reporting from the AT to the PPS and from Portuguese courts to the AT. Panellists at the on-site visit asserted that the AT cooperates with law enforcement authorities, notably with the FIU and GRA, which both have direct access to tax information through AT detached officials, and the Criminal Police and the Guarda Nacional Republicana to carry out complex investigations involving money laundering and tax offences. As regards the Bank of Portugal cooperation through information sharing on tax regularisation regimes RERT I, II and III should also be highlighted.⁶¹ Regarding co-operation between the PPS and the AT, AT representatives at the on-site visit indicated that no feedback was received from the PPS on AT reports of indications of possible foreign bribery nor, due to the secrecy of judicial proceedings, from ongoing investigations. After reviewing a draft of this report, DCIAP noted that while criminal evidence was subject to judicial secrecy, and hence could not be shared, criminal intelligence would be shared with tax authorities. Law enforcement authorities have access to tax administration databases (article 2 of Law 5/2002) and might request AT to proceed to investigative steps if needed.

⁶¹ This cooperation between AT and Bank of Portugal occurred in the context of and according to article 303, of Law 71/2018, consisting in the transmission by the Bank of Portugal, to AT, of the tax regularization declarations issued under the exceptional tax regularization regimes held in the past (RERT I, II and III).

227. On co-operation with foreign authorities, the Working Group recommended that Portugal promptly ratify the Convention on Mutual Administrative Assistance in Tax Matters (MAC) and consider systematically including the language of article 26 OECD Model Tax Convention in its future bilateral tax treaties with countries that are not MAC signatories (recommendation 10(c)). At the time of the Written Follow-Up report, the Working Group concluded that Portugal had fully implemented recommendation 10(c) in view of the ratification of the MAC on 1 March 2015 and the conclusion of bilateral treaties including the language of article 26. Since 2015, Portugal concluded 16 supplementary bilateral tax treaties.⁶²

Commentary

The lead examiners welcome improvements regarding the co-operation between tax authorities and law enforcement authorities in Portugal, although in practice co-operation channels appear mostly used for tax crimes and money laundering investigations. The lead examiners recommend that Working Group follow up on the co-operation between law enforcement authorities and tax authorities with a view to improving the detection, investigation, and prosecution of foreign bribery.

2. Public advantages

228. This section deals with three specific areas that involve the granting of public advantages to the private sector: (a) public procurement contracts; (b) official development assistance (ODA); and (c) officially supported export credits. Portugal received recommendations in Phase 3 for all three topics, which were deemed partially implemented at the time of the Phase 3 Written Follow-Up report.

229. As noted in Part A. Detection of foreign bribery above, public entities must develop plans for the management of risks of corruption and related infractions, under Recommendation 1/2009 of the Council for the Prevention of Corruption of 1 July 2009 on Corruption and Related Offences Risk Management Plans. This Recommendation emphasises that the areas of public procurement and the granting of public benefits contain high risks of corruption, which should be prevented through appropriate prevention plans.

230. These plans should contain, inter alia, the following elements: a) Identification, for each area or department, of the risks of corruption and related infractions; b) Based on this identification of risks, indication of the measures adopted to prevent their occurrence (internal control mechanisms; segregation of functions, prior definition of general and abstract criteria, namely in the granting of public benefits and the use of external specialists, appointment of different juries for each competition, programming of appropriate training actions, inter alia); c) Definition and identification of the various persons responsible for managing the plan, under the direction of the highest governing body; d) Annual preparation of a report on the plan's execution. The plans and execution reports are sent to the CPC, as well as to the supervisory, guardianship and control bodies. Several public entities reported during the on-site visit that they had indeed developed such plans, but that foreign bribery was not necessarily covered per se.

(a) Public procurement

231. In Phase 3, the Working Group recommended that Portugal take steps to (i) ensure that all procuring authorities verify whether participants in public procurement, including legal persons, have foreign bribery convictions, and (ii) raise awareness of article 90-H CC among procuring authorities (recommendation 12(a)). This CC article allows a court to prohibit a legal person that has been convicted of a crime from entering into certain contracts or contracts with certain entities for one to five years. The

⁶² See [List of Double Taxation Agreements \(DTA\)](#) and [List of Tax Information Exchange Agreements \(TIEA\)](#) signed by Portugal and published by the Tax and Customs authority.

Phase 3 Written Follow-Up report concluded this recommendation was only partially implemented as Portugal had not specifically addressed these two points.

232. Since Phase 3, Portugal amended article 1-A(2) of the Public Procurement Code, included in that Code through Law 30/2021, of May 21, "(...) the contracting authorities must ensure, in the formation and execution of public contracts, that economic operators respect the applicable rules in force on (...) preventing and combating corruption arising from international, European, national or regional law". In addition, another amendment included in such Public Procurement Code through Law 30/2021, of May 21, established that in public contracts worth more than EUR 750 000, the body competent for the procurement decision must request the contractor, whenever it is a Large Company, to submit a plan for the prevention of corruption and related offences (article 81(9) of the Public Procurement Code). The CPC issued an updated Recommendation in 2019 on prevention of corruption in public procurement.

233. The Government Shared Services Entity (*Entidade de Serviços Partilhados da Administração Pública, I. P.* – ESPAP), as well as procuring authorities at the on-site visit, stated that it is mandatory for suppliers whose proposals were awarded to present a certificate stating that their criminal record is clean, including for the crimes of bribery and corruption. Phase 3 recommendation 12(a) is thus fully implemented.

234. In addition, concerning gifts, article 19 of Law 52/2019 stipulates that public entities covered by the law, including the Government, shall approve Codes of Conduct to be published in the Official Journal and tackle, amongst other issues, gifts and hospitality (also article 16 of Law 52/2019).

(b) Official development assistance

235. ODA from Portugal is channelled through CICL, successor since 2012 to the former Institute of Development Assistance, and the *Sociedade para o Financiamento do Desenvolvimento* (SOFID-Portuguese Development Finance Institution), created in 2007 to support private sector companies conducting aid projects in developing countries.

236. In Phase 3, the Working Group recommended that CICL and SOFID (i) raise awareness of foreign bribery among their staff, and their public and private sector partners, (ii) report all foreign bribery allegations involving Portuguese companies or individuals to Portuguese law enforcement authorities, and issue guidelines to staff on the reporting procedure, (iii) insert appropriate anti-corruption clauses in their contracts, and (iv) before approving support for a project, consider whether the recipient of support has a prior conviction for foreign bribery (recommendation 12(b)). This recommendation was deemed partially implemented at the time of the Written Follow-Up report.

237. Further to the elements contained in Part A. Detection of foreign bribery above, CICL and SOFID provided information on steps taken to raise awareness of corruption and foreign bribery risks among their staff, as well as among their partners but it was not specified whether the latter focused on foreign bribery and therefore the implementation of Phase 3 recommendation 12(b)(i) could not be adequately assessed.

238. CICL and SOFID have adopted their respective prevention and management of corruption risks plans, which include provisions for training and for guidelines on reporting channels for staff, that have the same mandatory duty to report crimes of which they become aware in the exercise of their functions and because of those functions, thereby implementing Phase 3 recommendation 12(b)(ii).

239. According to information provided by Portugal, the Partnership Agreements/Protocols signed between CICL, the Ministry of Justice of Portugal and the Ministries of Justice of Angola, Cape Verde, Guinea-Bissau, Mozambique, São Tomé and Príncipe and Timor-Leste in the area of justice co-operation and Strategic Cooperation Programs, contain an anti-corruption clause. This clause states that "the Signatories undertake not to offer, directly or indirectly, advantages to third parties, nor to request, promise or accept, for their own benefit or that of others, offers with the purpose of obtaining a favourable judgment on the services to be provided".

240. In addition, partnership agreements concluded with implementing partner entities of partner States include a clause on anti-bribery and anti-corruption, stating that “Parties warrant and undertake that they have not given or agreed to give (and will not give or accept to give) any person, any gift or consideration of any kind, to encourage or reward for doing or tolerating something, related to the execution of this MoU and that the Parties undertake that they will comply with their policies and procedures to avoid the risk of bribery and fraud within their organisations and in connection with its dealings with third parties.” Therefore, Phase 3 recommendation 12(b)(iii) is fully implemented.

241. Portugal reports that corruption risks are taken into consideration by CICL Field staff when assessing requests for ODA and to determine whether ODA applicants have been convicted of foreign bribery offences, including by monitoring resources such as court reports and media in recipient countries. Therefore, Phase 3 recommendation 12(b)(iv) is fully implemented.

242. In terms of sanctions, at the time of Phase 3, SOFID had added a clause to its standard contract allowing the agreement to be cancelled in case of foreign bribery. The Written Follow-Up report did not indicate, however, whether CICL may revoke a contract and recover funds in case of foreign bribery. Recommendation 12(b) was deemed to be partially implemented. According to information provided during the on-site visit, Portugal notes that CICL, within the scope of its activities, may consider penalties for non-compliance or civil or criminal liability for contracts concluded with cooperating agents or partner entities but has not yet done so. Neither the CICL nor the SOFID reported consulting MDB debarment lists.

(c) Export credits

243. In 2019, the OECD adopted the 2019 Recommendation of the Council on Bribery and Official Supported Credits (the 2019 Recommendation), which replaced the previous 2006 Recommendation. This Phase 4 evaluation is the first time that Portugal’s export credit system is reviewed in light of the 2019 Recommendation. Topics such as prevention (promotion of awareness and checking of multilateral financial institutions’ debarment lists), detection (reporting mechanisms and enhanced due diligence), and sanctions will be analysed under the new standards.

244. The Phase 3 Report raised three concerns: awareness-raising, due diligence on agent fees and commissions, and reporting. In the Written Follow-Up report, Portugal stated that it provided some training on agent fees, although details about the training were not provided. Only very general information was provided about the two other matters. The Companhia de Seguros de Crédito (COSEC) informed its clients of “the regulatory framework of the activities it develops on behalf of the Portuguese State, including those concerning the fight against corruption and its legal effects on the insurance policies.”

245. According to information provided by COSEC during the on-site visit, it has undertaken several steps to implement the 2019 Recommendation, including raising awareness among its staff and exporting clients through sectoral initiatives, in particular when onboarding new companies. It has also developed and adopted a code of conduct for staff and established an electronic reporting channel. COSEC has developed guidelines for its staff on conducting appropriate due diligence and a clear, written policy on reporting foreign bribery allegations to law enforcement.. COSEC has reported after the on-site visit that it consults MDB debarment lists. Phase 3 recommendation 12(c) is implemented.

Commentary

The lead examiners welcome progress made with regard to public advantages, including that public entities must develop plans for the management of risks of corruption and related infractions and recommend that Portugal, whenever appropriate, encourage these entities to include foreign bribery in their plans. The lead examiners also note that Phase 3 recommendation 12(a) is fully implemented.

Concerning ODA, the lead examiners welcome information provided on awareness-raising, reporting channels and training activities, the development of anti-corruption clauses in contracts as well as steps taken to determine whether ODA recipients have been convicted of foreign bribery. Phase 3 recommendation 12(b) is considered implemented. The lead examiners note the increase in steps taken by COSEC to raise awareness and provide training to staff and clients, as well as a clear, written policy on reporting foreign bribery allegations to law enforcement, thus implementing Phase 3 recommendation 12(c).

The lead examiners recommend that CICL, SOFID and COSEC continue to raise awareness on foreign bribery for their staff and public and private counterparts, and for CICL and SOFID to check the debarment lists of multilateral development banks.

Conclusion: Positive achievements, recommendations, and follow-up issues

246. The Working Group welcomes Portugal's efforts to implement the Convention and related instruments. Based on the findings of this report, the Working Group acknowledges good practices and positive achievements, makes recommendations to Portugal and identifies issues for follow-up. The Working Group invites Portugal to submit, within one year, an oral report on the measures taken to implement recommendations 4, 8, 11(c) and 14. The Working Group also invites Portugal to submit a written report on the implementation of all recommendations and follow-up questions raised by the Working Group in two years' time (i.e. October 2024), including detailed information on its enforcement of the foreign bribery offence when submitting this report.

247. Regarding implementation of the Phase 3 recommendations, the Working Group considers that Portugal has fully implemented recommendations 3(a), 5(a), 5(b), 5(c)(iv), 5(d), 5(e) (i) and (ii), 6(c), 7(iv), 9(a) and (b), 10(a), 10(c), 12(a) to (c); partially implemented recommendations 4(b), 5(c)(ii), 5(f), 5(g), 10(b), 11(a) to (c); and not implemented recommendations 2, 3(b), 4(a), 5(c)(i) and 5(c)(iii), 7(ii) and (iii), and 8(b). Phase 3 recommendations 1(a) to 1(c), 6(a), 6(b), 7(i), 8(a), 8(c), and 10(b) are converted into follow-up issues.

Good Practices and Positive Achievements

248. The report has identified a number of good practices and positive achievements by Portugal regarding implementation of the Convention and related instruments.

249. The enactment of the General Regime for the Prevention of Corruption and the establishment of the National Mechanism Against Corruption are both positive achievements and good practices. Portugal must use the momentum to increase its awareness raising activities to the private sector, especially SMEs doing business abroad.

250. Concerning detection, Portugal has enacted comprehensive legislation on whistleblower protection, which includes elements that constitute good practice for the protection of whistleblowers. OROC's continuing efforts to raise awareness and train auditors on the foreign bribery offence and on reporting foreign bribery, efforts to implement measures aimed at raising awareness of tax examiners and facilitating the detection of foreign bribery through dematerialised procedures are also positive achievements. The awareness raising activities to local judicial and law enforcement authorities in demand side countries with which Portugal has strong cultural and economic ties are noted as a good practice.

251. In terms of enforcement, human resources available to the DCIAP and UNCC have increased since Phase 3, as have Portugal's efforts to train prosecutors and investigators on foreign bribery. The increase of corporate prosecutions since Phase 3 is welcome and recent amendments to the CCP could enhance further the enforcement of corporate liability for foreign bribery and related offences. Similarly, Portugal is commended for enacting legislation to provide for a non-trial resolution mechanism.

252. Progress made with regard to public advantages is a positive achievement, including plans to be developed for the management of risks of corruption and related infractions, awareness-raising, reporting channels and training activities in ODA, and the development of anti-corruption clauses in contracts as well as steps taken to determine whether ODA recipients have been convicted of foreign bribery.

Recommendations of the Working Group

Recommendations regarding prevention and detection of foreign bribery

1. Regarding **reporting by public officials**, the Working Group recommends that Portugal:
 - (a) remind public officials of their duty to report foreign bribery [Anti-Bribery Recommendation IV.i and XXI];
 - (b) raise awareness of foreign bribery and the Convention among Portuguese public officials, including those monitoring foreign media [Anti-Bribery Recommendation IV.i and XXI].
2. Regarding specifically **diplomatic officials**, the Working Group recommends that Portugal continue to provide training and raising awareness of foreign bribery to Portuguese public officials posted abroad [Anti-Bribery Recommendation IV.i and XXI].
3. Regarding **whistleblower reporting and protection**, the Working Group recommends that Portugal:
 - (a) clarify that the motive of the whistleblower is immaterial for the purpose of protection of whistleblowers under the law [Anti-Bribery Recommendation XXII];
 - (b) consider broadening the definition of retaliation to clarify that is not limited to workplace retaliation within Law 93/2021 [Anti-Bribery Recommendation XXII.vi];
 - (c) ensure that appropriate remedies are in place to compensate direct and indirect consequences of retaliation, and provide for interim relief pending the resolution of legal proceedings [Anti-Bribery Recommendation XXII.vii];
 - (d) cover as part of the annual reports and periodic reviews the effectiveness of the legal and institutional framework for the protection of whistleblowers; and consider making publicly available the results of these reports and reviews [Anti-Bribery Recommendation XXII.xiii];
 - (e) continue to raise awareness of the law and provide guidance on the establishment and operation of reporting channels and protective frameworks for whistleblowers both in the public and private sectors [Anti-Bribery Recommendation XXII.xii].
4. Regarding **money-laundering**, the Working Group recommends that Portugal:
 - (a) take the appropriate measures to enforce the money-laundering offence, particularly where foreign bribery is the predicate offence [Convention Article 7; Phase 3 recommendation 8(a)];
 - (b) prepare and provide guidelines and typologies to reporting entities that specifically refer to foreign bribery, as well as additional training to the FIU, law enforcement authorities, reporting entities and oversight authorities on adequately detecting, preventing and prosecuting money-laundering by politically exposed persons [Anti-Bribery Recommendation IV.ii and Anti-Bribery Recommendation VIII; Phase 3 recommendation 8(b)];

- (c) ensure better feedback by the FIU to reporting institutions regarding STRs [Convention Article 7; Phase 3 recommendation 8(c)];
 - (d) specifically consider money-laundering predicated on foreign bribery in future national risk assessments [Convention Article 7 and Anti-Bribery Recommendation VIII];
 - (e) ensure regular coordination between the FIU and DCIAP in the context of its dual reporting system for STRs [Anti-Bribery Recommendation XI];
 - (f) urge the FIU to expedite the implementation of the goAML software, develop manuals and provide training to reporting entities on its use [Anti-Bribery Recommendation IV.ii and Anti-Bribery Recommendation VIII].
5. Regarding **detection of foreign bribery by auditors**, the Working Group recommends that Portugal encourage the CMVM to seize the opportunity of the on-going development of an Action Plan, expected for 2023, to issue guidance and further raise awareness on the foreign bribery offence and on reporting foreign bribery [Convention article 8; Anti-Bribery Recommendation IV.i and XXIII.B.iii and v].
 6. Regarding **self-reporting**, the Working Group recommends that Portugal consider adopting additional measures to incentivise companies to self-report foreign bribery to law enforcement [Anti-Bribery Recommendation XV.ii and/or XVIII.ii].

Recommendations regarding enforcement of the foreign bribery and related offences

7. Regarding the **foreign bribery offence**, the Working Group recommends that Portugal amend article 5(1) of Law 20/2008 to ensure that the effective regret defence cannot be applied to bribery of foreign public officials [Convention Articles 1 and 3; Anti-Bribery Recommendation IV.iii and VI.i].
8. Regarding **sanctions and confiscation**, the Working Group recommends that Portugal:
 - (a) amend Portuguese law to impose fines in addition to imprisonment for the foreign bribery offence defined in article 7 of Law 20/2008 [Convention Article 3(1); Phase 3 recommendation 4(a)];
 - (b) develop training and disseminate good practices on the mechanisms of mitigation of sanctions and their possible impact on the effective, proportionate and dissuasive nature of sanctions, and make it available to judges and prosecutors [Convention Article 3; Anti-Bribery Recommendation IV.iii, X.iii and XV];
 - (c) ensure that law enforcement authorities routinely consider confiscation in foreign bribery cases [Convention Article 3(3); Anti-Bribery Recommendation XVI; Phase 3 recommendation 4(b)].
9. Regarding **false accounting**, the Working Group recommends that Portugal ensure that natural and legal persons could be held liable for all false accounting offences committed for the purpose of bribing foreign public officials or of concealing such bribery [Convention, Article 8; Anti-Bribery Recommendation IV.iii and XXIII.A].
10. Regarding **non-trial resolutions**, the Working Group recommends that Portugal issue clear and transparent guidance and disseminate good practices to:
 - (a) clarify the requirement that the defendant must have “contributed decisively to the discovery of the truth” [Convention Articles 3 and 5 and Commentary 27; Anti-Bribery Recommendation XVIII.ii and Annex I.D];

- (b) clarify whether the defendant must admit facts and/or responsibility to benefit from the suspension [Convention Articles 3 and 5 and Commentary 27; Anti-Bribery Recommendation XVIII.i and Annex I.D];
- (c) clarify the relevant considerations for resolving the case with suspension of proceedings, and the rationale for applying certain injunctions, in particular, with regard to foreign bribery cases [Convention Articles 3 and 5 and Commentary 27; Anti-Bribery Recommendation XVIII.iii and Annex I.D];
- (d) make public, where appropriate and consistent with data protection rules and privacy rights, as much information about its non-trial resolutions as possible, in line with the Anti-Bribery Recommendation [Convention Articles 3 and 5 and Commentary 27; Anti-Bribery Recommendation XVIII.iv and v and Annex I.D].

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

- (a) continue training investigators, prosecutors, and judges on foreign bribery, including on the enforcement of corporate liability [Convention Article 5 and Commentary 27; Anti-Bribery Recommendation Annex I.D; Phase 3 recommendation 5(f)];
- (b) ensure that the DCIAP has sufficient access to specialised expertise, especially in forensic financial analysis and information technology, for investigating and prosecuting foreign bribery [Convention Article 5 and Commentary 27; Anti-Bribery Recommendation Annex I.D; Phase 3 recommendation 5(g)];
- (c) take urgent steps to ensure that its authorities investigate thoroughly and proactively all foreign bribery allegations and that relevant cases are not prematurely closed [Convention Article 5 and Commentary 27; Anti-Bribery Recommendation Annex I.D; Phase 3 recommendation 5(c)(i)];
- (d) give sufficient priority to the investigation and prosecution of the foreign bribery offence [Convention Article 5 and Commentary 27; Anti-Bribery Recommendation Annex I.D; Phase 3 recommendation 5(g)];
- (e) consider, where appropriate, whether to conduct concurrent or joint investigations [Convention Article 5 and Commentary 27; Anti-Bribery Recommendation XIX.C; Phase 3 recommendation 5(c)(iii)];
- (f) raise awareness of Article 5 within the DCIAP, UNCC, judiciary, and other relevant government bodies [Convention Article 5 and Commentary 27; Anti-Bribery Recommendation Annex I.D; Phase 3 recommendation 5(f)].

12. Regarding **international cooperation**, the Working Group recommends that Portugal proactively seek co-operation and MLA from foreign countries whenever appropriate, especially before deciding to terminate a foreign bribery case, using all available means to secure MLA, in particular through contact with foreign authorities via informal channels and the Working Group's Informal Meetings of law enforcement officials [Convention Article 9; Anti-Bribery Recommendation XIX.A.x; Phase 3 recommendation 5(c)].

13. Regarding **enforcement data**, the Working Group recommends that Portugal maintain detailed statistics on:

- (a) investigations, prosecutions and sanctions for false accounting and money laundering, including data on whether foreign bribery is the predicate offence [Convention Articles 7 and 8; Phase 3 recommendation 7(i)];
- (b) the application of mechanisms of mitigation of sanctions in foreign bribery cases [Anti-Bribery Recommendation XV];

- (c) the use of pre-trial seizures, including on the offence involved and the amount seized [Anti-Bribery Recommendation XVI];
- (d) the application of confiscation in foreign bribery cases [Convention Article 3; Anti-Bribery Recommendation XV; Phase 3 recommendation 7(iii)].

Recommendations regarding liability of, and engagement with, legal persons

14. Regarding **liability of legal persons**, the Working Group recommends that Portugal:

- (a) take all necessary steps, including training for judges, to ensure that the liability of legal persons for foreign bribery is not restricted to the cases where a natural person or persons who perpetrated the offence are prosecuted or convicted [Convention Article 2; Anti-Bribery Recommendation Annex I.B];
- (b) repeal the defence of acting against express orders or instructions in article 11(6) CC [Convention Article 2; Anti-Bribery Recommendation Annex I.B; Phase 3 recommendation 3(b)];
- (c) take the appropriate steps to ensure that sanctions against legal persons for foreign bribery are effective, proportionate, and dissuasive in practice [Convention Articles 2 and 3; Anti-Bribery Recommendation XV and Annex I.B];
- (d) clarify the standards and develop training to help judges and prosecutors assess whether a compliance programme is appropriate, considering the risk exposure of the legal persons involved in the concrete case [Convention Articles 2 and 3; Anti-Bribery Recommendation XV and Annex I.B].

15. Regarding **engagement with the private sector**, the Working Group recommends that Portugal:

- (a) take greater efforts to raise awareness of foreign bribery in the private sector, especially amongst SMEs and other companies doing business abroad [Anti-Bribery Recommendation IV.ii and Annex II];
- (b) closely monitor the implementation of anti-corruption measures in companies doing business in high-risk countries with which Portugal has strong economic and historical ties [Anti-Bribery Recommendation IV.ii, XXIII.C and Annex II].

Recommendations regarding other measures affecting implementation of the Convention

16. Regarding **public advantages**, the Working Group recommends that Portugal:

- (a) encourage public entities, whenever appropriate, to include foreign bribery in their plans for the management of risks of corruption and related infractions [Anti-Bribery Recommendation XXIV];
- (b) continue to raise awareness on foreign bribery for CICL, SOFID and COSEC staff and public and private counterparts [Anti-Bribery Recommendation XXIV and XXV];
- (c) check the debarment lists of multilateral development banks by CICL and SOFID [Anti-Bribery Recommendation XXIV].

Follow-up by the Working Group

17. The Working Group will follow up on the issues below as case law, practice and legislation develops:

- (a) MENAC's competence to oversee the overall implementation of Law 93/2021 [Anti-Bribery Recommendation XXII.i]
- (b) reporting by external auditors of foreign bribery allegations in practice, including through statistics collected by the OROC and CMVM [Convention article 8; Anti-Bribery Recommendation IV.i and XXIII.B.iii and v];
- (c) regarding the foreign bribery offence: (i) the concurrent application of Portugal's foreign bribery offences; (ii) the interpretation of article 7 of Law 20/2008 in practice, to ensure it is interpreted consistently with Article 1 of the Convention; and (iii) the application of article 5 CC and article 3 of Law 20/2008 [Convention Articles 1 and 4; Anti-Bribery Recommendation III.ii and V, Phase 3 recommendation 1(a) to (c)];
- (d) sanctions imposed against natural and legal persons for foreign bribery, especially in light of the system of converting certain prison sentences into fines [Convention Article 3(1)];
- (e) regarding non-trial resolutions: (i) on the practical application of this mechanism, including on injunctions imposed in foreign bribery cases, and (ii) whether the suspension of proceedings in foreign bribery cases results in effective, proportionate and dissuasive sanctions [Convention Article 3];
- (f) regarding mutual legal assistance: (i) the use of MLA in present and future foreign bribery cases; (ii) the response time of incoming MLA requests and the quality of the outgoing requests, and (iii) the provision of the full range of assistance in non-criminal matters in conformity with the requirements under the Convention [Convention Articles 5 and 9];
- (g) whether Portugal proactively and timely investigate and prosecute foreign bribery cases when they deny requests to extradite Portuguese nationals [Convention Article 5 and 10(3)];
- (h) whether Portuguese law enforcement authorities consider the exercise of nationality jurisdiction to prosecute foreign bribery wherever appropriate [Convention Article 4(2); Phase 3 recommendation 6(b)];
- (i) whether Portugal has jurisdiction over all forms of foreign businesses representations in the country for foreign bribery [Convention Article 4];
- (j) regarding the standard of liability of legal persons: (i) how liability for failure of surveillance or control would operate in practice in foreign bribery cases; and (ii) whether and under which circumstances parent companies are criminally liable for foreign bribery committed by a subsidiary abroad in practice [Convention Article 2; Anti-Bribery Recommendation Annex 1.B];
- (k) regarding the MENAC: (i) the effective implementation of MENAC including the resources allocated to it; (ii) whether MENAC and/or other relevant Portuguese authorities will effectively monitor the implementation of specific anti-corruption measures to address foreign bribery risks of Portuguese companies doing business abroad, especially SMEs [Convention Articles 2 and 5; Anti-Bribery Recommendation IV.ii and VII];
- (l) regarding tax-related measures: (i) the non-tax deductibility of foreign bribes and post-conviction enforcement, particularly whether Portuguese courts promptly informs tax authorities of convictions related to foreign bribery and whether tax authorities examine the tax returns of taxpayers convicted of foreign bribery; (ii) the reporting of foreign bribery cases by Portuguese tax officials; (iii) measures to discourage the use of undocumented expenses and whether tax examiners routinely assess whether undocumented expenses are hidden bribes; and (iv) the co-operation between law enforcement authorities and tax

authorities with a view to improving the detection, investigation, and prosecution of foreign bribery [Anti-Bribery Recommendation XI and XX; 2009 Recommendation on tax measures, I and II; Phase 3 recommendation 10(b)].

Annex A. Summary of cases

1. Foreign bribery cases terminated without prosecution

253. *Case #1 - Construction Cartel (Peru)*: In 2011-2014, a major Portuguese construction company, together with a Spanish and a Brazilian construction company, allegedly formed a cartel known as “club de la construcción” to control the assignment of public works in Peru by bribing officials, including the then-Minister of Transportation and Communication. The then-President of Peru and his wife allegedly also received between USD 16 and 18 million in bribes from the cartel through intermediaries. Portugal detected the case through media reports and opened a pre-inquiry, which did not produce sufficient evidence. Portugal closed the case in September 2019. In November 2019, the Brazilian company signed a leniency agreement with the Brazilian authorities pleading guilty to foreign bribery.

254. *Case #2 - Thoroughfare (Mozambique)*: A consortium headed by a Portuguese construction company, allegedly secured a contract of USD 12.5 million by the Maputo Municipal Council to rebuild one of the city’s main thoroughfares, Julius Nyerere Avenue, through bribery. Allegations that the Portuguese company was not the best-qualified bidder surfaced following various delays in the project and the poor quality of the materials used. The project received funding from the World Bank. Portugal detected the case through media reports and opened a pre-inquiry. The case was also under investigation by the authorities in Mozambique (Central Office for the Fight against Corruption - GCCC) but Portugal reports that GCCC was unable to corroborate the allegations. Portugal closed the case due to lack of sufficient evidence in February 2017.

255. *Case #3 - East West Highway (Algeria)*: A consortium, with the participation of a Portuguese engineer consulting company, allegedly secured a USD 6.2 billion contract for the construction of the western and central sections of an east west highway in Algeria by paying USD 530 million in bribes to Algerian officials of the Ministry of Public Works. Portugal learned about the case through the WGB and opened a pre-inquiry. It sought unsuccessfully information from Panama about the company through Interpol. The Portuguese company was subsequently convicted in Algeria for foreign bribery, and Portugal sought again unsuccessfully to obtain through its MFA the court decision in February 2017. Portugal closed the case in September 2017 in order not to breach the *ne bis in idem* principle.

256. *Case #4 - Supply of services (Angola)*: A Portuguese state-owned enterprise allegedly agreed to pay false invoices to win a tender for the supply of services to a public entity in Angola. Portugal opened a pre-inquiry following a suspicious transaction report (STR) but closed the case due to lack of sufficient evidence in May 2015.

257. *Case #5 - Trains (Argentina)*: A Portuguese company allegedly paid bribes to the then-Secretary of Transport of Argentina to secure the sale of wagons and locomotives in 2006. Portugal opened a pre-inquiry in 2014 following a request for international co-operation from Argentina. Portugal reports that the Argentinian authorities could not corroborate the foreign bribery allegations, and it closed the case due to lack of sufficient evidence in May 2017. In April 2022, the Secretary of Transport of Argentina was convicted in Argentina for accepting bribes for the purchase of wagons and locomotives from Portugal.

258. *Case #6 - Subsidiaries (Angola)*: A US based multinational cable manufacturing company, self-disclosed to the US authorities that employees at its subsidiaries in Portugal and Angola directly and indirectly made payments to officials of Angola's state-owned public utilities. Portugal learned about the allegations through the WGB and opened a pre-inquiry. Portugal concluded that the facts of the case were already covered by the ongoing investigation in the United States, and that the evidence reported in relation to Portugal was not sufficient to justify the opening of an independent criminal investigation in Portugal.

259. *Case #7 – Intermediary (Brazil)*: A Korean shipbuilding company, allegedly paid bribes to executives of a Brazilian state-owned company, including its international director, to secure contracts worth USD 1.2 billion. A Portuguese-Brazilian national who allegedly acted as an intermediary was arrested in March 2016 in Lisbon, following an extradition request by Brazil. While the Portuguese courts initially granted the request to Brazil, the Supreme Court annulled the extradition due to the violation of process guarantees in the case. Portugal decided not to prosecute the intermediary for foreign bribery because, according to Portugal, a broader investigation is ongoing in Brazil and all evidence is abroad. However, at the time of the discussion of this report, Portugal informed the Working Group that they re-opened the case against the intermediary for money laundering predicated on foreign bribery.

260. *Case #8 - Public Works (Malawi) – Phase 3 Case #9*: In 2004-2012, a major Portuguese construction company allegedly paid bribes and made gifts (wedding gifts, purchase of rare books and construction of a mansion) to then-President of Malawi to obtain construction project contracts in the country. The President allegedly received 10% of all payments to the Portuguese company for the execution of the contracts. The Portuguese company also obtained a 35-year concession to manage ports on Lake Malawi allegedly without any bidding or formal procurement process. Portugal detected the case through media reports and opened a pre-inquiry in December 2014. It sought unsuccessfully international co-operation from Malawi. Portugal closed the case in 2021 due to the lack of sufficient evidence.

261. *Case #9 - Parliamentarian No. 2 (Brazil) - Phase 3 Case #10*: A major Portuguese telecommunications service provider, allegedly agreed to pay USD 7 million in bribes to the then-President of Brazil through a Brazilian businessman who acted as an intermediary. The intermediary reported the allegations to the Brazilian authorities in September 2012 and subsequently to the Brazilian media in November 2012. Portugal learned about the allegations in April 2013 when it was contacted by the Brazilian authorities. It obtained international co-operation from Belgium, Switzerland and the United States. In Phase 4, Portugal reports that it closed the case in September 2015 due to the lack of sufficient evidence.

262. *Case #10 - Shareholding (Angola and Guinea) - Phase 3 Case #11*: A Portuguese company allegedly made payments of USD 2.5 million to Angolan public officials. Portugal detected the case through an STR in November 2012. In Phase 3, Portugal had characterised the case as “complex”, “very sensitive” and that it “could affect its international relations”. In Phase 4, Portugal reports that the payments were proven to concern dividend payments from resource exploration in Guinea and management expenses. Accordingly, Portugal decided to close the case.

263. *Case #11 - Real Estate (Angola) - Phase 3 Case #12*: After receiving an MLA request from Spain in 2010, Portuguese authorities determined that funds from Portuguese-Angolan companies had been credited to bank accounts of a former Angolan minister and his wife in Portugal. The funds were then used to acquire real estate registered in the name of third parties. Bank accounts allegedly held by offshore entities were also involved. In Phase 3, Portugal was conducting a pre-inquiry for money laundering predicated on foreign bribery to determine the origin of the funds. In Phase 4, Portugal reports that it dismissed the case due to lack of sufficient evidence. Portugal adds that some defendants in the case were acquitted by a court in Spain.

264. *Case #12 - Aircraft Service (Angola) - Phase 3 Case #14*: A foreign company allegedly issued false invoices through fictitious entities in Spain and Gibraltar. Funds generated therefrom were used to purchase real estate in Portugal in the name of managers of corporate clients. The case also implicated a Portuguese company, and a Portuguese national who acted as an intermediary in the scheme. In Phase 3,

Portugal considered this case as “complex and sensitive” and could not share any information. In Phase 4, Portugal reports that it detected the case while conducting a separate money-laundering investigation. Portugal sought international co-operation from Angola, Germany and Brazil and indicted undisclosed Portugal nationals for foreign bribery in July 2017. However, the investigating judge did not accept the indictment for foreign bribery but Portugal stated during the discussion of this report that after an appeal by the DCIAP, the case was moved to trial for money laundering and foreign bribery.

265. *Case #13 - Farm Equipment and Aircraft (Zimbabwe) - Phase 3 Case #15*: Senior political officials in Zimbabwe allegedly received commissions for their involvement in the business of farm equipment and aircraft. The alleged payment was made by an offshore company from a Danish bank account to a Portuguese bank that had an office in South Africa. Portugal learned of the case through an STR. It obtained international co-operation from Denmark and South Africa but co-operation with Zimbabwe was unsuccessful. However, Portugal could not corroborate the foreign bribery allegations. The defendant eventually paid approx. EUR 700 000 under a provisional suspension of the investigation for tax fraud, and the case was definitively closed at the end of the suspension period.

2. Ongoing foreign bribery cases

266. *Case #14 - Sanitation, Irrigation and Energy Production (Republic of Congo)*: In 2013, a Brazilian sanitation, irrigation, and energy production company allegedly paid bribes to the family of the President of the Republic of Congo to secure public work contracts in the country. The Brazilian company subcontracted a Cypriot company with no obvious experience, financial capital or employees to execute part of the contract. A Portuguese national who acted as a local agent for the Brazilian company and intermediary in the scheme, was on paper the owner of company but its ultimate beneficial owner was a member of the President’s family. Portugal initiated a pre-inquiry following a request for judicial co-operation from Switzerland. Portugal reports that, as part of the formal investigation, it has formed a multidisciplinary investigation team, collected bank and tax information, intercepted communications, and conducted searches and seizures of assets. The Portuguese intermediary was put under arrest in 2016 pending trial. Portugal has also obtained international co-operation from Cabo Verde and Switzerland.

267. *Case #15 – Credit Line (Brazil)*: A former Portuguese bank, allegedly paid around EUR 2 million in bribes to then-Vice President of the Bank of Brazil to obtain approval for a credit line of about EUR 200 million to finance the Portuguese bank. The payments were allegedly made through offshore companies. Portugal opened a formal investigation (no information was provided on how the case was detected). It obtained international co-operation from Austria, Luxembourg and Switzerland. Portugal filed charges against a legal person and seven individuals accused of foreign bribery, money laundering, corruption in the private sector, and document forgery in December 2021. The case is pending trial since April 2022.

268. *Case #16 - Training Facility and Public Buildings (Equatorial Guinea)*: A Portuguese construction and public works company, allegedly paid over USD 10 million in bribes to Equatorial Guinea’s Minister of Mines and Hydrocarbons to obtain a contract to build a training facility and other public buildings in the country. The Portuguese company channelled the payments through the accounts of offshore companies owned by the Minister and intermediaries. Portugal learned about the allegations after a former employee of the Portuguese company lodged a written complaint with DCIAP. Portugal reports that, as part of the formal investigation, it has conducted searches and seizures and obtained international co-operation from Spain.

269. *Case #17 - Dam (Angola)*: A Chinese consortium allegedly bribed former Angolan public officials to win a contract for the construction of a dam in Angola. According to Portugal, a Portuguese company supplying engines joined later the consortium. Portugal opened a formal investigation following an STR but reports that the investigation is subject to the secrecy of judicial proceedings and no further information could be disclosed.

270. *Case #18 - Supermarket (Angola) - Phase 3 Case #13*: In 2006-2010, a Portuguese company allegedly sold goods and made payments of USD 2 million to a supermarket chain in Angola owned by one of the country's highest-ranking military officials. Sales were made through an offshore company and some of the proceeds were diverted to a Swiss bank account as kickbacks benefitting Angolan officials. Portugal detected the foreign bribery allegations during a tax crime investigation against the same company. Portugal reports that it has obtained international co-operation from France, Liechtenstein and Switzerland but no other investigative steps.

3. Cases not investigated as foreign bribery

271. *Case #19 – Construction Contracts (Angola)*: A Portuguese construction company allegedly secured contracts in Angola through bribe payments by an Angolan citizen and the Angolan Tax Authority, which both acted as intermediaries. A Portuguese congressman was allegedly also involved in the scheme. Portugal did not investigate the foreign bribery allegations. In April 2021, Portugal terminated the pre-inquiry for the domestic bribery and the charges against the Portuguese company and its directors were dismissed due to expiration of the statute of limitations.

272. *Case #20 – Military Personnel (undisclosed African country)*: Portugal and an African country agreed to host war-injured military personnel and citizens for treatment in Portuguese health facilities. In 2012-2014, the company responsible to provide medical services received payments from the African country of around EUR 9.2 million. However, some of the payments were not related to invoices nor were supported by contracts for the provision of services. In addition, approx. EUR 1.95 million were paid to third party accounts whose beneficiaries were African country public officials. Portugal detected the case from a tax audit whose conclusion were reported to the PPS with suspicions of foreign bribery. DCIAP prosecutors at the on-site visit indicated that the subsequent investigation did not address foreign bribery and the case was closed due to lack of evidence.

Annex B. Phase 3

Recommendations to Portugal

<i>Phase 3 recommendations</i>	<i>Status at 2015 Written Follow-up</i>
Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery	
1. With regards to the <u>foreign bribery offence</u> , the Working Group recommends that Portugal take all measures to clarify that:	
(a) The offence does not require proof that (i) the foreign public official knows of the offer or promise of the bribe for a completed offence, (ii) the briber knows the details and identity of the recipient of the bribe, when the bribery is committed through an intermediary, and (iii) the official knows that an improper advantage has been given to a third party [Convention Article 1; 2009 Recommendation III.ii and V];	Not implemented
(b) The offence covers (i) bribery of any person exercising a public function for a foreign country, and officials of autonomous territories and separate customs territories; and (ii) bribery in order that an official act or refrain from acting in relation to the performance of official duties [Convention Article 1; 2009 Recommendation III.ii and V];	Partially implemented
(c) Criminal Code Article 374 and Law 34/1987 Article 18 do not apply to foreign bribery cases [Convention Article 1; 2009 Recommendation III.ii and V].	Not implemented
2. With regards to <u>defences</u> to the foreign bribery offence, the Working Group recommends that Portugal amend Article 5(b) of Law 20/2008 and eliminate the effective regret defence from the active foreign bribery offence [Convention, Article 1; 2009 Recommendation III.ii, V].	Fully implemented
3. With regards to liability of legal persons, the Working Group recommends that Portugal amend Article 11 of the Criminal Code (a) so that all legal persons, including state-owned or state-controlled enterprises, can be held criminally responsible for foreign bribery, and (b) to repeal the defence of acting against express orders of legal persons [Convention Article 2; 2009 Recommendation Annex I.B].	Not implemented
4. With regards to sanctions and confiscation, the Working Group recommends that Portugal:	
(a) Take steps to ensure that sanctions against natural persons are effective, proportionate and dissuasive in all foreign bribery cases, in light of the system of converting prison sentences to fines [Convention Article 3(1)];	Not implemented
(b) Take steps to make full use of confiscation measures available in its law and ensure that law enforcement authorities routinely consider confiscation in foreign bribery cases [Convention Article 3(3)].	Partially implemented
5. Regarding <u>investigations and prosecutions</u> , the Working Group recommends that Portugal:	
(a) Review its overall approach to enforcement, especially regarding corporations, in order to effectively combat international bribery of foreign public officials [Convention Articles 1, 2, 5; 2009 Recommendation V];	Fully implemented

(b) Increase the use of proactive steps to gather information from diverse sources at the preinvestigative stage both to increase sources of allegations and enhance investigations [Convention Article 5, Commentary 27; 2009 Recommendation IX(i), Annex I.D];	Partially implemented
(c) Take steps to ensure that its authorities (i) do not prematurely terminate cases involving foreign bribery allegations, (ii) proactively seek co-operation and MLA from foreign countries whenever appropriate, (iii) consider whether to conduct concurrent or joint investigations, where appropriate, and (iv) use the corporate liability provisions where appropriate [Convention Articles 2, 5, Commentary 27; 2009 Recommendation XIII, Annex I.D];	Partially implemented
(d) Ensure that Portugal is not prevented from commencing a criminal investigation or prosecution solely because it has provided MLA to a foreign country in the same case [Convention Article 5, 9, Commentary 27; 2009 Recommendation Annex I.D];	Fully implemented
(e) Where foreign bribery allegations involve senior foreign public officials and/or major Portuguese companies, (i) ensure these allegations are promptly and proactively investigated on a high priority basis and with sufficient resources, and (ii) take appropriate steps to ensure that all prosecutors are aware of the requirement to record their reasons for terminating investigations of the bribery of foreign public officials [Convention Article 5, Commentary 27; 2009 Recommendation Annex I.D];	Partially implemented
(f) Train investigators, prosecutors and judges on investigating and prosecuting foreign bribery (including on the enforcement of corporate liability), and raise awareness of Article 5 within the DCIAP, UNCC and other relevant government bodies [Convention Article 5, Commentary 27; 2009 Recommendation III.i, Annex I.D];	Partially implemented
(g) Give sufficient priority to investigating and prosecuting foreign bribery, and provide the DCIAP and UNCC with sufficient specialised expertise [Convention Article 5, Commentary 27; 2009 Recommendation Annex I.D].	Partially implemented
6. Regarding <u>jurisdiction</u> over foreign bribery cases, the Working Group recommends that Portugal:	
(a) Clarify whether jurisdiction to prosecute Portuguese nationals for extraterritorial foreign bribery is governed by Article 3 of Law 20/2008 or Article 5 of the Criminal Code [Convention Article 4(2)];	Not implemented
(b) Take steps to ensure that its law enforcement authorities consider the exercise of nationality jurisdiction to prosecute foreign bribery wherever appropriate [Convention Article 4(2)];	Partially implemented
(c) Thoroughly explore territorial links to Portugal in foreign bribery cases, so as to rely on territorial jurisdiction to prosecute wherever possible [Convention Article 4(1)].	Partially implemented
7. With regards to enforcement data, the Working Group recommends that Portugal maintain detailed statistics on (i) investigations, prosecutions and sanctions for false accounting and money laundering, including data on whether foreign bribery is the predicate offence, (ii) the application of confiscation in foreign bribery cases, (iii) pre-trial seizures, including on the offence involved and the amount seized, (iv) cases in which the statute of limitations had expired [Convention Articles 3(3), 6, 7, 8].	Not implemented
Recommendations for ensuring effective prevention, detection, and reporting of foreign bribery	
8. With regards to <u>money laundering</u> , the Working Group recommends that Portugal:	
(a) Take appropriate measures to enforce the money laundering offence, particularly where foreign bribery is the predicate offence [Convention Article 7];	Partially implemented
(b) Provide guidelines and typologies to reporting entities that specifically refer to foreign bribery, as well as additional training to the FIU, law enforcement authorities, reporting entities and their supervisory and oversight authorities on adequately detecting, preventing and prosecuting money laundering by politically exposed persons [Convention Article 7; 2009 Recommendation III.i];	Partially implemented
(c) Ensure better feedback by the FIU to reporting institutions regarding STRs [Convention Article 7; 2009 Recommendation III.i].	Fully implemented

9. With regards to <u>accounting and auditing</u> , corporate compliance, internal control and ethics, the Working Group recommends that Portugal:	
(a) Train external auditors on how to detect foreign bribery, and further raise awareness among external auditors of their key role in detecting foreign bribery and their duty to report suspected foreign bribery [2009 Recommendation III.i, X.B];	Fully implemented
(b) Make greater efforts to encourage Portuguese companies (particularly SMEs) to adopt internal control, ethics and compliance measures that explicitly address foreign bribery, and ensure that these efforts involve all government bodies that interact with Portuguese companies, including AICEP, Ministry of Economy and Employment, IAPMEI, DGAE and the CMVM [2009 Recommendation X.C].	Partially implemented
10. With regards to <u>tax-related measures</u> , the Working Group recommends that Portugal:	
(a) Incorporate the essential elements of the OECD Bribery Awareness Handbook into the standard Manual for Tax Auditing, regularly update the Manual to reflect latest trends on how the crime of foreign bribery is committed, and provide guidelines and training with the Handbook to existing and newly recruited tax examiners [2009 Recommendation III.i, III.iii, VIII.i; 2009 Tax Recommendation II];	Partially implemented
(b) Take all appropriate measures to discourage the use of undocumented expenses, and ensure that tax examiners routinely assess whether undocumented expenses are hidden bribes [2009 Recommendation III.iii, VIII.i; 2009 Tax Recommendation II];	Not implemented
(c) Promptly ratify the Convention on Mutual Administrative Assistance in Tax Matters, and consider systematically including the language of Article 26 of the OECD Model Tax Convention (on the use of information for non-tax purposes) in its future bilateral tax treaties with countries that are not signatories of the Convention on Mutual Administrative Assistance in Tax Matters [2009 Recommendation VIII.i; 2009 Tax Recommendation I.iii].	Fully implemented
11. With regards to <u>awareness-raising and reporting</u> , the Working Group recommends that Portugal:	
(a) Take steps to raise awareness in the private sector and media with the involvement of all relevant ministries and bodies [2009 Recommendation III.i];	Partially implemented
(b) Take steps to ensure that (i) Portugal provide information and training as appropriate to its public officials posted abroad on implementing the Convention, (ii) MFA and AICEP proactively reach out to Portuguese companies, and (iii) MFA take further steps to ensure that its overseas missions report all foreign bribery allegations involving Portuguese companies or individuals to Portuguese law enforcement authorities [2009 Recommendation IX.i, IX.ii, Annex I];	Fully implemented
(c) Ensure that appropriate measures are in place to protect public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of foreign bribery from discriminatory or disciplinary action [2009 Recommendation IX.iii].	Partially implemented
12. With regards to <u>public advantages</u> , the Working Group recommends that:	
(a) Portugal take steps to (i) ensure that all procuring authorities verify whether participants in public procurement, including legal persons, have foreign bribery convictions, and (ii) raise awareness of Criminal Code Article 90-H among procuring authorities [Convention Article 3(4); 2009 Recommendation XI.i];	Partially implemented
(b) CICAL and SOFID (i) raise awareness of foreign bribery among their staff, and their public and private sector partners, (ii) report all foreign bribery allegations involving Portuguese companies or individuals to Portuguese law enforcement authorities, and issue guidelines to staff on the reporting procedure, (iii) insert appropriate anti-corruption clauses in their contracts, and (iv) before approving support for a project, consider whether the recipient of support has a prior conviction for foreign bribery [(Convention Article 3(4); 2009 Recommendation III.i, IX.ii, XI.i];	Partially implemented
(c) COSEC (i) continue to proactively raise awareness of foreign bribery among its staff and clients, (ii) train its staff on how to detect foreign bribery by conducting appropriate due diligence, and strengthen its due diligence for agent fees and commissions, and (iii) adopt a clear, written policy on reporting foreign bribery	Partially implemented

allegations to law enforcement, and issue guidelines to staff on this issue [2009 Recommendation III.i, IX.i, XII.ii; 2006 Export Credit Recommendation].	
<i>Phase 3 Follow-up by Working Group</i>	
13. The Working Group will follow up the issues below as jurisprudence and practice develop:	<i>Status at 2015 Written Follow-up</i>
(a) Application of the foreign bribery offence, particularly the elements of the offence that have raised issues identified in this report [Convention Article 1; 2009 Recommendation III.ii and V];	Continue to follow up
(b) Application of Article 11 of the Criminal Code, particularly the liability of legal persons for management's breach of duties of surveillance and control, and the terms "in the legal person's name" and "collective interest" [Convention Article 2, 2009 Recommendation Annex I.B];	Continue to follow up
(c) Sanctions imposed against natural and legal persons for foreign bribery, especially in light of the system of converting certain prison sentences into fines [Convention Article 3(1)];	Continue to follow up
(d) Investigations and prosecutions of foreign bribery allegations involving senior foreign public officials and/or major Portuguese companies [Convention Article 5, Commentary 27; 2009 Recommendation Annex I.D];	Continue to follow up
(e) Application of the statute of limitations in foreign bribery cases [Convention Article 6];	Continue to follow up
(f) Pre-trial seizure in foreign bribery cases [Convention Article 3(3)];	Continue to follow up
(g) Enforcement of the non-tax deductibility of foreign bribes, particularly whether Portuguese courts promptly informs tax authorities of convictions related to foreign bribery and whether tax authorities examine the tax returns of taxpayers convicted of foreign bribery; and the reporting of foreign bribery cases by Portuguese tax officials [2009 Recommendation VIII.i];	Continue to follow up
(h) Provision of MLA in foreign bribery-related civil or administrative proceedings against a legal person to a foreign state whose legal system does not allow criminal liability of legal persons [Convention Article 9(1)];	Continue to follow up
(i) Application of Article 32 of Law 144/1999 in foreign bribery cases [Convention Article 10].	Continue to follow up

Annex C: List of participants in the on-site visit

Government Ministries and agencies

- Asset Recovery Office (GRA)
- Asset Management Office (GAB)
- Bank of Portugal
- Camões–ICL
- Comissão de Normalização Contabilística
- COSEC
- Council for the Prevention of Corruption
- Directorate General for Treasury and Finances
- Financial Intelligence Unit
- Institute for Support to Small and Medium-Sized Enterprises and Innovation (IAPMEI)
- Ministry of Economy
- Ministry of Foreign Affairs
- Ministry of Justice
- Portugal Global - Trade & Investment Agency (AICEP)
- Securities Market Commission (CMVM)
- SOFID
- Tax and Customs Authority

Law enforcement

- Central Department for Criminal Investigation and Prosecution (DCIAP), Prosecutor General's Office
- Department of Judicial Cooperation and International Relations (DCJRI), Prosecutor General's Office
- National Anti-Corruption Unit of the Criminal Police (UNCC)

Judiciary

- Central Criminal Court of Lisbon
- Centre for Judicial Studies (CEJ)
- Council of Magistrates (CSM)

Private sector and business associations

Companies

- idD - Plataforma das Indústrias de Defesa Nacionais
- Jerónimo Martins
- Bosch Car Multimedia

Business associations

- CIP – Confederação Empresarial de Portugal
- Global Compact Network Portugal

Financial institutions and DNFBPs

- BCP
- BPI
- Caixa Geral de Depósitos
- Novo Banco
- Instituto dos Mercados Públicos, do Imobiliário e da Construção
- Ordem dos Advogados

Accounting

- Ordem dos revisores oficiais de contas (OROC)
- Ordem dos Contabilistas Certificados (OCC)
- Deloitte
- Ernst & Young
- KPMG

- PWC

Legal profession

- Cuatrecasas
- Rogério Alves & Associados

Academics

- Two professors from the Faculdade de Direito da Universidade de Lisboa

Journalists

- Sábado
- Observador
- Expresso

Civil Society

- All4Integrity
- Observatório de Economia e Gestão de Fraude (OBEGEF)
- Portuguese Association for Business Ethics (Associação Portuguesa de Ética Empresarial - APEE)
- Transparência e Integridade, Associação Cívica – TIAC (Transparency International Portugal)

Annex D: List of abbreviations, terms and acronyms

AG	Attorney General	CPLP	Portuguese Speaking Countries Community (<i>Comunidade dos Países de Língua Portuguesa</i>)
AICEP	Portugal Global Trade & Investment Agency (Agência para o Investimento e Comércio Externo de Portugal)	CSM	Council of Magistrates
AML	anti-money laundering	DCIAP	Central Department for Criminal Investigation and Prosecution (<i>Departamento Central de Investigação e Ação Penal</i>)
AT	Tax and Customs Authority (<i>Autoridade Tributária e Aduaneira</i>)	DIAP	Department of Criminal Investigation and Prosecution
CC	Criminal Code	DCJRI	Department of Judicial Cooperation and International Relations, Prosecutor General's Office
CCC	Commercial Companies Code	DGAE	Directorate-General for Economic Activities
CCP	Code of Criminal Procedure	DNFBPs	Designated Non-Financial Businesses and Professions
CEJ	Centre for Judicial Studies	EDES	E-Evidence platform
CICL	Camões-Institute for Co-operation and Language	EIO	European Investigation Order
CIRC	Corporate Income Tax Code	EU	European Union
CIRS	Personal Income Tax Code	EUR	Euro
CMVM	Securities Market Commission (<i>Comissão do Mercado de Valores Mobiliários</i>)	FATF	Financial Action Task Force
CNC	<i>Comissão de Normalização Contabilística</i>	FIU	Financial Intelligence Unit (<i>Unidade de Informação Financeira</i>)
CoE	Council of Europe	FTZ	Free Trade Zone
COSEC	<i>Companhia de Seguros de Crédito</i> (Portuguese export credit agency)	GAB	Asset Management Office
CPC	Council for the Prevention of Corruption		

GRA	Asset Recovery Office	PEP	Politically Exposed Person
IAPMEI	Institute for Support to Small and Medium-Sized Enterprises and Innovation (<i>Instituto de Apoio às Pequenas e Médias Empresas</i>)	PPS	Public Prosecutors Service
IGAP	Institute of Management and Public Administration	RCBE	Central Registry of Beneficial Owners (<i>Registo Central de Beneficiário Efetivo</i>)
ISA	International Standards on Auditing	RGIT	Legal Regime of Tributary Offences (<i>Regime Geral das Infrações Tributárias</i>)
MAC	Convention on Mutual Administrative Assistance in Tax Matters	RGPC	General Regime for the Prevention of Corruption
MDB	Multilateral Development Bank	SME	Small and medium-sized enterprise
MENAC	National Anti-Corruption Mechanism	SOE	state-owned or state-controlled enterprise
MFA	Ministry of Foreign Affairs	SOFID	Sociedade para o Financiamento do Desenvolvimento, Instituição Financeira de Crédito, S.A.
MLA	mutual legal assistance	STR	Suspicious Transaction Report
MOJ	Ministry of Justice	UN	United Nations
NACS	2020-2024 National Anti-Corruption Strategy	UNCAC	United Nations Convention against Corruption
NGO	Non-governmental organisation	UNCC	National Anti-Corruption Unit of the Criminal Police (<i>Unidade Nacional de Combate à Corrupção</i>)
NRA	National Risk Assessment	UNTOC	UN Convention against Transnational Organized Crime
ODA	Official Development Assistance	USD	United States dollar
OROC	Order of Statutory Auditors (<i>Ordem dos Revisores Oficiais de Contas</i>)		
OTOC	Order of Chartered Accountants (<i>Ordem dos Técnicos Oficiais de Contas</i>)		

Annex E: Excerpts of relevant legislation

Law 20/2008 (Foreign Bribery Offence)

Article 1 - Scope

The present law establishes the criminal liability regime regarding corruption in international trade and in the private sector.

Article 2(a) - Definitions

For the purposes of this law:

- a) "Foreign public official" means any person who, serving for a foreign country as an official, agent or in any other capacity, even if temporarily, either for free or paid, in a voluntary or compulsory manner, is called to work or take part in the administrative or judicial public service or, in similar circumstances, is called to work or take part in public-benefit organisations or has a management position or holds a supervisory post or is an employee in a state-owned company, nationalised company, public capital company or in a company with controlling public interest, or public service concessions holders;
- b) "Official of an international organization" shall be understood as any person who, working for a public international organization as an employee, agent or in any other capacity, even if temporarily, either for free or paid, in a voluntarily or compulsory manner, is called to work or take part in an activity;
- c) "Person holding a foreign political office" is any person who, working for a foreign country, holds a legislative, judicial or administrative office, at national, regional or local level, whether appointed or elected;
- d) "Employee in the private sector" means any person who works, or holding a management position or a supervisory post, under an individual working contract, or under a professional agreement or in any other capacity, even if temporarily, either for free or paid, at a private sector entity;
- e) "Private sector entity", shall be understood as a private law legal person, a civil company and a de facto association.

Article 3 Territorial application

Without prejudice to the general regime of the criminal law territorial application and to what is provided for in international judicial co-operation matters, the present law also applies:

- a) To Portuguese nationals or aliens found in Portugal, in the case of the offence referred to in article 7, irrespective of the place where it has been committed;
- b) In the case of the offences referred to in articles 8 and 9, irrespective of the place where it has been committed, when whoever offers, promises, requests or accepts any undue advantage or the promise of such advantage, is a national public officer or holds a national political office or, being a Portuguese national, is an official of an international organization.

Article 4 Criminal liability of legal persons or similar entities

Legal persons and similar entities shall be held liable, in general terms, for the offences laid down in the present law.

Article 5 - Special mitigation and waiver of the sentence

1 - The perpetrator shall be excused from punishment where he or she has reported the crime prior to the commencement of criminal proceedings and, in the situations provided for

a) in article 7, has withdrawn the promise of advantage or requested its return or repudiation from the official or holder of political office;

b) In article 8, has not committed the act or omission contrary to his or her functional duties for which he or she requested or accepted the advantage and voluntarily returns or repudiates the advantage or in the case of a fungible thing or animal, restores its value;

c) Under Article 9, has withdrawn the promise of advantage or requested its restitution or repudiation from the private sector employee prior to the commission of the act or omission contrary to his or her duties.

2 - The offender may be exempted from punishment whenever, during the investigation or enquiry, and verifying the provisions of paragraph 1, as applicable, he or she has decisively contributed towards the discovery of the truth.

3 - Exemption from punishment covers crimes that are an effect of the crimes under articles 7 to 9, or that have been intended to continue or hide those crimes or the advantages derived from them, provided that the perpetrator has denounced them or has decisively contributed to their discovery.

4 - Crimes committed against eminently personal property shall be exempt from the provisions of the preceding paragraph.

5 - The penalty shall be specially mitigated if, until the hearing of the case is closed in first instance, the offender actively collaborates in uncovering the truth by contributing in a relevant manner to the proof of the facts.

Article 6 Subsidiary law

1 – The penalties foreseen in the present law only apply if the offence is not punishable with a more serious sanction by any other legal provision.

2 – The provisions laid down in the Penal Code shall be ancillary applied to the offences set forth in the present law.

Article 7 - Active corruption in international trade

Whoever, per se or, by his/her own consent or ratification, through an intermediary, gives or promises to give to a national or foreign public official or official of an international organization or to a national or international holder of a political office, or to a third party, with knowledge of the foregoing, undue patrimonial or non-patrimonial advantage, in order to obtain or maintain a business, a contract or other undue advantage in international business transactions, is punished by imprisonment for a term between one to eight years.

[...]

[Criminal Code \(Liability of Legal Persons, Confiscation, Statute of Limitations, Money Laundering, False Accounting\)](#)

Article 11 - Liability of the natural and legal persons

1 – Except for the provisions of paragraph 2 below and in the special cases provided for by law, only natural persons can be held criminally liable.

2 - Legal persons and similar entities, with the exception of the State, legal persons in the exercise of prerogatives of public power and public international law organisations, shall be liable for the crimes provided for in articles [...], when committed:

(a) in their name or on their behalf and in their direct or indirect interest by persons in a leading position in them; or

b) by anyone acting in their name or on their behalf and in their direct or indirect interest, under the authority of the persons referred to in the previous sub-paragraph, as a result of a breach of their duty of supervision or control.

3 - (Revoked.)

4 - It is understood that the bodies and representatives of the legal person and whoever has authority to exercise control over its activity, including non-executive members of the administrative body and members of the supervisory body, occupy a leading position.

5 – Civil companies and de facto associations are deemed to be entities equivalent to legal persons for purposes of their criminal liability.

6 - The liability of legal persons and equivalent entities is excluded when the agent acted against orders or specific instructions given by a person entitled thereto.

7 - The liability of legal persons and equivalent entities does not exclude the individual liability of the respective agents, nor does it depend upon their being liable therefore.

8 - The criminal liability of a legal person or an equivalent entity is not extinct following a demerger or a merger, and the following persons shall remain liable for the commission of the crime:

a) The legal person or equivalent entity within which the merger has taken place; and

b) The legal persons or equivalent entities resulting from the demerger.

9 – Without prejudice to the right of recourse, the persons holding a leading position are subsidiary responsible for the payment of any fines and compensations to which the legal person or equivalent entity has been sentenced in respect of criminal offences.

a) Committed in the period in which such persons held their position, without their express opposition thereto;

b) Committed at a prior time, where the insufficiency of the property of the legal person or equivalent entity to cover payment is their sole responsibility; or

c) Committed at a prior time where the final decision to impose the said payment has been notified during the period of tenure and the lack of payment is attributable to them.

10 – In case several persons are held liable under the preceding paragraph, they become jointly and severally liable.

11 – Where the fines or compensations are imposed on an entity without legal personality, their payment shall be made out of the joint property and, in the absence or insufficiency thereof, jointly and severally out of each partner's property.

Article 46 - Prohibition to exercise a profession, function or activity (Sanctions of legal persons)

1 - Imprisonment for a term not exceeding 3 years shall be replaced by prohibition for a period of 2 to 8 years from exercising a profession, function or activity, whether public or private, when the offence has been committed by the defendant in the exercise thereof, whenever the court concludes that the purposes of the punishment are adequately and sufficiently achieved by this means.

2 - In the case provided for in the previous number, the provisions of paragraphs 4 to 6 of article 66 and article 68 shall apply, with the necessary adaptations.

3 - The court shall revoke the penalty of prohibition from exercising a profession, function or activity and order the execution of the prison sentence determined in the sentence if the agent, after conviction:

a) Violates the prohibition;

b) Commits a crime of which he or she will be convicted and shows that the purposes of the penalty of prohibition to exercise a profession, function or activity could not be achieved thereby.

4 - The provisions of article 57 shall apply correspondingly.

5 - If, in the cases provided for in subsection 3, the convicted person is required to serve a prison sentence but has already served a period of prohibition to exercise a profession, function or activity, the court shall deduct the period of prohibition already served from the prison time to be served.

6 - For the purposes of the provisions of the previous article, each day of imprisonment shall be equivalent to the number of days of prohibition to exercise a profession, function or activity that correspond proportionally to it under the terms of the sentence, rounding off the number of days to be served, whenever necessary.

Article 90-A - Applicable sanctions and determination of the penalty (Sanctions of legal persons)

1 - For the crimes provided for in Article 11(2), the main sanctions of fine or dissolution shall apply to legal persons and similar entities.

2 - For the same crimes and those provided for in special legislation, the following accessory sanctions may be applied to legal persons and similar entities:

3 - For the same crimes and those provided for in special legislation, legal persons and equivalent entities may be subject to the following substitute sanctions as an alternative to a fine sanction

a) admonition

b) Good conduct bond;

c) Judicial surveillance.

4 - The court shall specially mitigate the penalty, under the terms of article 73 and beyond the cases expressly provided for by law, in accordance with the provisions of article 72, also considering the circumstance that the corporate body or equivalent entity has adopted and implemented, prior to the commission of the crime, an appropriate compliance programme to prevent the commission of the crime or crimes of the same kind.

5 - The court shall apply an accessory penalty together with the primary or substitute penalty, whenever appropriate and necessary to achieve the purposes of the punishment, namely because the legal person has not yet adopted and implemented an adequate compliance programme to prevent the commission of the crime or crimes of the same kind.

6 - The court shall substitute the fine by an alternative penalty that adequately and sufficiently fulfils the purposes of the punishment, considering, namely, the adoption or implementation by the corporate body or equivalent entity of an adequate compliance programme to prevent the commission of the crime or crimes of the same nature.

Article 90-B - Fine penalty

1 - The minimum and maximum limits of the fine penalty applicable to legal persons and equivalent entities are determined with reference to the prison sentence provided for natural persons.

2 - One month in prison corresponds, for the legal persons and equivalent entities, to a 10-day fine.

3 - Whenever the penalty applicable to natural persons is exclusively or alternatively a fine, the same day-rate system is applicable to legal persons or equivalent entities.

4 - The fine shall be fixed in days, in accordance with the criteria established in Article 71(1), and the circumstance that the legal person has adopted and implemented, after the commission of the offence and until the date of the court hearing, a compliance programme with control and monitoring measures suitable for preventing crimes of the same nature or for significantly reducing the risk of their occurrence may be considered.

5 - Each day-rate corresponds to an amount between (Euro) 100 and (Euro) 10 000, which the court sets according to the economic and financial situation of the convicted person and his duties towards the employees, being applied the provisions of article 47(3 to 5).

6 - At the end of the period for the payment of the fine or of any of its instalments without such being made, it takes place an act of enforcement against the property of the legal person or equivalent entity.

7 - A fine that is not voluntarily or coercively paid cannot be converted into subsidiary imprisonment.

Article 109 – Confiscation of instruments

1 - Instruments of a typical illegal act shall be declared confiscated by the State when, due to their nature or to the circumstances of the case, they endanger public safety, morality or public order, or offer a serious risk of being used for committing new typical illegal acts.

2 - The provision in the previous number takes place even if no specific person can be punished for the fact, including in case of death of the perpetrator or when the perpetrator has been declared as contumacious.

3 - If the instruments referred to in paragraph 1 cannot be appropriated in kind, confiscation may be substituted by payment to the State of the respective value, and such substitution may operate at any time, even during the enforcement stage, within the limits provided for in Article 112-A.

4 - If the law does not establish a special destination for instruments lost under the terms of the previous paragraphs, the judge may order that they be totally or partially destroyed or put out of commerce.

Article 110 – Confiscation of proceeds and advantages

1 - The following shall be declared confiscated by the State

a) The products of a typical illicit fact, considering as such all objects that have been produced by its commission; and

b) The advantages of a typical illegal act, understood as all things, rights or advantages that constitute an economic advantage, directly or indirectly resulting from that act, for the perpetrator or for another person.

2 - The provision in sub-paragraph b) of the previous number covers the reward given or promised to the agents of a typical illegal act, already committed or to be committed, for them or for others.

3 - Confiscation of the proceeds and advantages referred to in the preceding paragraphs shall take place even if they have been the object of possible further transformation or reinvestment, also covering any quantifiable gains that may have resulted therefrom.

4 - If the proceeds or advantages referred to in the previous paragraphs cannot be appropriated in kind, the loss shall be replaced by payment to the State of the respective value, and such replacement may be carried out at any time, even during the enforcement phase, within the limits provided for in Article 112-A.

5 - The provisions of the previous numbers take place even if no specific person can be punished for the fact, including in case of death of the perpetrator or when the perpetrator has been declared as being contumacious.

6 - The provisions of this article are without prejudice to the rights of the victim.

Article 111 - Instruments, proceeds or advantages belonging to a third party

1 - Without prejudice to the provisions of the following paragraphs, confiscation shall not take place if the instruments, proceeds or advantages did not belong to any of the agents or beneficiaries at the date of the fact, or did not belong to them at the time when confiscation was ordered.

2 - Even if the instruments, proceeds or advantages belong to a third party, confiscation shall be ordered when

a) their holder has objectionably concurred in their use or production, or has derived benefit from the fact;

b) The instruments, proceeds or advantages were, by any means, acquired after the commission of the fact, and the acquirer knows or should have known of their origin; or

c) The instruments, proceeds or advantages, or the value corresponding to them, have, for any reason, been transferred to the third party to avoid the loss decreed under the terms of articles 109 and 110, and the third party is or should be aware of such purpose.

3 - If the proceeds or advantages referred to in the previous paragraph cannot be appropriated in kind, the confiscation shall be replaced by payment to the State of the respective value, and such replacement may be made at any time, even during the enforcement stage, within the limits provided for in Article 112-A.

4 - If the instruments, proceeds or advantages consist of writings, drawings or records made on paper, on other media or means of audiovisual expression, belonging to a bona fide third party, confiscation shall not take place and restitution shall be made after erasing the writings, drawings or records that are part of the typical illicit fact. Should this not be possible, the court shall order the destruction of the records and there shall be a right to compensation under the terms of the civil law.

Article 118 - Limitation periods

1 - The criminal procedure is extinguished by statute of limitations as soon as the following periods of time have elapsed since the commission of the crime

(a) 15 years, in the case of: [...]

iv) Crimes provided for in Articles 7, 8 and 9 of Law No. 20/2008, of 21 April

Article 178 - Object and prerequisites of the seizure

1 - Instruments, proceeds or advantages related to the commission of a typical illegal act, as well as all animals, things and objects left by the perpetrator at the crime scene or any other that may be used as evidence, are seized.

2 - The instruments, products or advantages and other objects apprehended in the terms of the previous paragraph are joined to the process, when possible, and, when not, they are entrusted to the custody of the judicial officer assigned to the process or a depositary, with everything being mentioned in the record.

3 - Seizures shall be authorised, ordered or validated by order of the judicial authority.

4 - Police bodies may make seizures during searches or when there is urgency or danger in delay, as provided for in Article 249, paragraph 2, sub-paragraph c).

5 - Police bodies may also carry out apprehensions when there is a well-founded fear of disappearance, destruction, damage, concealment or transfer of animals, instruments, products or advantages or other objects or things resulting from the commission of a typical unlawful act that may be declared forfeited to the State.

6 - Seizures made by the criminal police are subject to validation by the judicial authority within a maximum period of seventy-two hours.

7 - The owners of seized instruments, products or advantages or other objects or things or animals may request the judge to modify or revoke the measure.

8 - The request referred to in the previous number shall be registered and the Public Prosecutor's Office shall be notified to lodge an opposition within 10 days.

9 - If the seized instruments, products or advantages or other objects or things or animals are susceptible to be declared lost to the State and do not belong to the accused, the judicial authority shall order the presence of the interested party and hear him/her.

10 - The judicial authority waives the presence of the interested party when it is not possible.

11 - Once the seizure has been carried out, the respective registration is promoted in the cases and under the terms foreseen in applicable registration legislation.

12 - In cases referred to in the previous paragraph, where the property is registered as having been acquired or recognised as property right or merely as being in possession in favour of a person other than the person considered to be its owner in the process, before registering the seizure, the judicial authority shall notify the registered owner so that, if he or she so wishes, he or she can issue a statement within 10 days.

Article 368-A – Laundering

1 - For the purposes of the provisions of the following numbers, advantages are deemed to be those derived from the commission, in any form of participation, of typical illegal acts punishable by a prison sentence of at least six months or a maximum term of more than five years or, irrespective of the applicable penalties, of typical illegal acts of:

[...]

k) Trading in influence, undue receipt of advantage, corruption, embezzlement, economic participation in business, harmful administration in a public sector economic unit, fraud in obtaining or diverting a subsidy, grant or credit, or corruption with prejudice to international trade or in the private sector

[...]

2 - Assets obtained through the assets referred to in the preceding paragraph shall also be considered as advantages.

3 - Whoever converts, transfers, aids or facilitates any conversion or transfer operation of advantages, obtained by himself or a third party, directly or indirectly, with the purpose of disguising their illicit origin, or of preventing the author or participant of such offences from being criminally prosecuted or subjected to a criminal reaction, shall be punished by imprisonment of up to 12 years.

4 - The same penalty shall be incurred by whoever conceals or disguises the true nature, origin, location, disposition, movement or ownership of advantages, or the rights thereto.

5 - The same penalty shall also be imposed on any person who, not being the author of the illegal act from which the advantages originate, acquires, holds or uses them with knowledge of that fact at the moment of acquisition or at the initial moment of holding or use.

6 - Punishment for the crimes provided for in paragraphs 3 to 5 takes place even if the place of commission of the typical illegal acts from which the advantages originate or the identity of the authors thereof is unknown, or even if such acts have been committed outside national territory, unless they are lawful acts under the law of the place where they were committed and to which Portuguese law is not applicable under the terms of Article 5.

7 - The fact is punishable even if the criminal procedure regarding the typical illicit facts from which the advantages derive depends on a complaint and the latter has not been filed.

8 - The penalty provided for in paragraphs 3 to 5 is increased by one third if the perpetrator carries out the conduct habitually or if he or she is one of the entities referred to in article 3 or in article 4 of Law 83/2017, of 18 August, and the offence was committed in the exercise of his or her professional activities.

9 - When full reparation of the damage caused to the victim by the typical illicit fact from which the advantages derive is made, without illegitimate damage of a third party, until the beginning of the trial hearing in the first instance, the penalty is specially mitigated.

10 - Once the requirements provided for in the previous paragraph have been verified, the penalty may be specially mitigated if the reparation is partial.

11 - The penalty may be specially reduced if the perpetrator concretely assists in the collection of decisive evidence for the identification or capture of those responsible for the commission of the typical illegal acts from which the advantages derive.

12 - The penalty applied under the terms of the preceding numbers shall not exceed the maximum limit of the highest penalty among those provided for the typical illegal acts from which the advantages derive.

Law 5/2002 (Confiscation)

Article 12-B – Confiscation of instruments

1 - The instruments of a typical unlawful act referred to in article 1 are declared confiscated by the State even if they do not endanger public safety, morality or public order, nor offer a serious risk of being used for committing new typical unlawful acts.

2 - In all matters that are not contrary to the provisions of the previous paragraph, the provisions of the Criminal Code or special legislation shall apply to the confiscation of the instruments provided for therein.

Commercial Companies Code (False Accounting)

Article 519 - False information

1 - Whoever, under the provisions of this Code, is obliged to provide others with information about the life of the company, and does so contrary to the truth, shall be punished with a prison sentence of up to 2 years or with a fine.

2 - The same sentence shall be applied to whoever, in the circumstances described in the preceding paragraph, maliciously provides incomplete information which may lead the recipients to erroneous conclusions with an identical or similar effect to that of false information on the same subject-matter.

3 - If the act is committed with the intention of causing damage, material or moral, to any shareholder who has not consciously contributed to the same act, or to the company, the penalty shall be a prison sentence of up to 2 years and 6 months or a fine.

4 - If serious, material or moral damage is caused, which the agent could foresee, to any shareholder who has not consciously contributed to the act, to the company or to a third party, the penalty shall be a prison sentence of up to 3 years or a fine.

5 - If, in the case of paragraph 2, the act is committed for a ponderous reason, and such does not indicate a lack of zeal in defending the rights and legitimate interests of the company and shareholders, but only a misunderstanding of the object of these rights and interests, the judge may specially mitigate or waive the sentence.

Article 519-A - Submission of adulterated or fraudulent accounts

The manager or administrator who, in breach of the duties laid down in article 65, intentionally submits, for consideration or deliberation, documents or elements that serve as a basis for the provision of false or adulterated accounts shall be punished with a prison sentence of up to 3 years or with a fine.

Legal Regime of Tributary Offences (False Accounting)

Article 103 - Fraud

1 – The unlawful conducts described in this Article that aim at the non-assessment, delivery or payment of tax due or at the undue granting of tax reliefs, reimbursements or other capital advantages that may cause a reduction of the tax revenues shall be deemed as tax fraud, punished with imprisonment of up to 3 years or a fine of up to 360 days. Tax fraud may occur by:

- a) The concealing or change of facts or values that shall be stated in accounting and bookkeeping records, or in declarations submitted or provided for the specific inspection, determination, assessment or control of the tax base by the tax administration;
- b) The concealing of facts and values not declared and which shall be disclosed to the tax administration;
- c) The conclusion of a simulated agreement, both on the amount and on the nature, by interposition, concealing or replacement of people.

2 – The events provided for in the previous paragraphs shall not be punishable where the illegitimate capital advantage shall not exceed EUR 15 000.

3 - For the purposes of the provisions of the previous paragraphs, the amounts to be considered shall be those that, under the applicable laws, shall be stated in each tax return to be submitted to the tax administration.

Article 104 - Aggravated fraud

1 – The events provided for in the previous paragraphs shall be punished with imprisonment between 1 and 5 years for individuals and a fine between 240 and 1,200 days for legal persons, where in the presence of more than one of the following circumstances:

- a) The offender colluded with a third party subject to ancillary obligations for the purposes of tax inspection;
- b) The offender is a public official and has seriously abused of his duties;
- c) The offender used the help of a public official with severe abuse of his duties;
- d) The offender falsifies or taints, conceals, destroys, renders unusable or refuses to deliver, display or present books, computer programs or files and any other documents or evidence required by the tax law.
- e) The offender uses the books or any other document mentioned in the previous paragraph knowing they were falsified or tainted by a third party; f) Where it was used the interposition of individuals or legal persons resident outside the Portuguese territory and there subject to a clearly more favourable tax scheme;

g) The offender colluded with a third party with whom he is in a situation of special relations.

2 – The same penalty shall be applied where:

a) The fraud shall take place by the use of invoices or equivalent documents for non-existing operations or for different values or even for the intervention of people or entities other than those of the underlying operation; or

b) The capital advantage shall exceed € 50,000. 68

3 – Where the capital advantage shall exceed EUR 200,000, the penalty shall be of imprisonment between 2 and 8 years for individuals and a fine between 480 and 1,920 days for legal persons.

4 – The events provided for in paragraph 1 (d) and (e) of this Article, with the purpose described in Article 103 (1) shall not be autonomously punishable, unless a more serious penalty applies.