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NATIONAL POLICY

The prevention and fight against terrorism is a priority of the utmost importance for Portugal both internally and internationally.

Portugal deals with terrorism primarily from a criminal perspective and mainly through its judicial and law enforcement authorities and the contributions of all the bodies and entities involved in the prevention of terrorism are taken into account. This perspective implies the recognition that an effective response to terrorism entails a comprehensive approach, which includes, among others, integration and conflict reduction policies.

Terrorism is a problem at global scale of which no country is safe and combating it requires unprecedented level of international cooperation. In this context, Portugal is fully committed with the international efforts to fight terrorism and actively participates in international activities in this area within the framework of the UN, EU, Council of Europe, NATO, OSCE and other international organizations and bodies as the FATF.

As far as the prevention of arm sales to terrorists is concerned, it should be stated that Portugal is a member of several international organisations which aim to combat the proliferation of weapons of mass destruction and the criminal use of weapons.

Portugal therefore complies with its international commitments, accepted in different fora, including the Nuclear Suppliers Group (NSG), the Missile Technology Control Regime (MTCR), the Australia Group (Chemical and Bacteriological Weapons) and the Wassenaar Arrangement (Dual use items other than those included in the preceding Groups) and complies with EU law, namely Regulation (EC) 1334/2000 setting up a European regime for the control of exports of dual use items and technology.

LEGAL FRAMEWORK

The fight against terrorism is carried out with observance of the principles of the rule of law and the protection of human rights and on the respect for the fundamental rights, freedoms and

guarantees foreseen in the Constitution of the Portuguese Republic.

As a result, all the values which terrorist activities seek to jeopardize or to destroy enjoy special protection under the Portuguese legal order, in line with the international framework.

Criminal law

The main criminal legal instrument is the Criminal Code, in the version approved in 1982, which has been amended several times, the most recent in 2018. Other legislation in the criminal area is in force, approved by Laws and Decrees-Laws, an easier way of approval and avoiding the constant amendments to the Criminal Code. It is, for example, the case of Law on the organization of criminal investigation, approved by Law 49/2008, of 27 of August, the anti-money laundering and terrorism financing law, approved by Law 83/2017, of 18 August or the law that defines the objectives, priorities and orientations of criminal policy for the biennium 2017-2019, approved by Law 96/2017, of 23 August.

The Code establishes the general principles of criminal law and its applicability, namely in what concerns the conduct of the offender and participation in crime, as well as to defences and circumstances affecting criminal liability. It foresees the crimes and penalties, defining as well the way to determine the concrete penalty applicable and the statute of limitation.

It also lays down the rules concerning the scope of temporal and extraterritorial jurisdiction of the Portuguese criminal legislation.

The crimes of terrorism and terrorist organization were provided for in Articles 300 and 301 of the Criminal Code and were repealed with the approval in 2003 of a new law specifically devoted to the terrorist phenomenon.

Law 52/2003, of 22 August, transposed EU Framework Decision 475/JHA/2002 into the Portuguese legal order. The Law has a wide scope and aims to punish the activities of groups, terrorist organisations and terrorist associations, as well as encompasses the punishment of individual acts of terrorism.

Apart from a provision on domestic terrorism (Article 4), there is a provision in this Law expressly typifying

the crime of international terrorism (Article 5). This Law foresees the punishment of whoever who promotes or founds a terrorist group, a terrorist organisation or a terrorist association, or adheres to or supports them, namely by supplying information or material resources and the person who heads or directs a terrorist group, a terrorist organisation or a terrorist association.

The Law also foresees the punishment of any person that, by any means, make available a message to the public, with the incitement to the commission of acts of terrorism or that, in a public meeting, by means of social media, by dissemination of written or other mean of technical reproduction, reward or praise another person, group or association for the commission of terrorism acts, in a way that adequately create a danger for the commission of another crime of the same type.

The recruitment of a person in order to commit acts of terrorism, the providing of training or instruction to other person on the manufacture or use of explosives, firearms or other weapons and noxious or hazardous substances or on other specific methods or techniques for the commission of the acts of terrorism, as well as the punishment of a person that with the purpose to be recruited for the commission of terrorism acts, access or gain access through computer system or by any other means, to the messages and used such messages in the commission of the respective preparatory acts are also foreseen.

The travelling or the attempt to travel to a different territory of the State of residence or nationality, in order to provide training, logistical support or instruction to other person for the commission of terrorism acts is foreseen in Law 52/2003. The travelling or attempt to travel to other State in order to receive training or instruction (foreign terrorist fighters) is also foreseen.

The person who organizes, finance or facilitate travel or attempt to travel previously referred is also punishable with an imprisonment penalty.

Legal persons and equivalent entities shall be criminally liable, in general terms, by the commission of crimes set forth in this Law.

Terrorism financing is set forth in Article 5-A, which states that whoever, by any means, directly or indirectly, provides, collects or holds funds or assets of any type, as well as products or rights liable of being transformed into funds, with the intention that they should be used or in the knowledge that they may to be used, in full or in part, for the planning, preparation or commission of terrorism acts shall be punishable with a penalty of 8 up to 15 years. For an act to constitute the crime of terrorism financing, it shall not be necessary that funds originate from a third party, or have been delivered to whom they were destined, or have actually been used to commit the facts therein mentioned.

Law 52/2003 could be applicable outside of the Portuguese territory to acts that constitute crimes committed by terrorist organisations (Article 2), to terrorism crimes (Article 4), to crimes committed by other terrorist organisations (Article 3) and international terrorism (Article 5), provided that the offender is found on Portuguese territory and cannot be extradited or surrendered to the requesting EU Member State under the execution of a European arrest warrant.

Law 83/2017, of 18 August, approving preventive and repressive measures to combat money laundering and terrorist financing transposes into the Portuguese legal order Directive 2015/849/EU, of 20 May 2015, on the prevention of the use of the financial system and the designated authorities and professions for the purposes of money laundering or terrorist financing, as well as Council Directive 2016/2258/EU of 6 December 2016 amending Directive 2011/16/EU as regards access to anti-money laundering information by tax authorities is also important for the fight against terrorism.

Procedural Rules

Terrorism and the other crimes foreseen in Law 52/2003 are of priority prevention and investigation according to Law 96/2017, of 23 August.

The Code of Criminal Procedure foresees procedural rules and basic instruments which allow the verification of the commission of a crime and the identification of its perpetrators. Regarding terrorist crimes, some exceptions are foreseen in this Code. It is the case of house searches (Article 177) which can be carried out between 9 p.m. and 7 a.m. in the case of a terrorism investigation. In general terms the search in an inhabited house or in a closed place dependent thereof may only be ordered or authorised by the judge and made between 7 a.m. and 9 p.m., under penalty of being void.

Portuguese legislation allows for the use of special investigative techniques, which are foreseen in the Code of Criminal Procedure - interception of phone calls and other communication and information technologies, as e-mails – and in separate legislation that can be used to investigate terrorism and related crimes, among others, environment interceptions – Law 5/2002, of 11 January – Special regime evidence gathering and breach of professional silence and confiscation of assets; undercover agent – Law 101/2001, of 25 August – Legal regime of undercover actions for prevention and criminal investigation; and controlled deliveries – Law 104/2001, of 25 August - updating the Law 144/99, of 31 August, on international judicial cooperation in criminal matters. The creation of joint investigation teams is also possible under the Portuguese criminal legislation.

Specific legislation for witness protection is in force since 1999 – Law 93/1999 of 14 July - governing the enforcement of measures on the protection of witnesses in criminal proceedings where their lives, physical or mental integrity, freedom or property of a considerably high value are in danger due to their contribution to the collection of evidence of the facts which are subject to investigation. The provisions of this law could be applicable to witnesses' relatives and to the persons that live with them in a situation similar to a spouse and other persons in close contact with them. It should be stated that a victim of a crime could intervene in the criminal procedures as a witness. The law foresees security measures and programmes, the last including a new identification and ID documentation, changes in the physiognomy or the body of the beneficiary or the granting of a new place to live in the country or abroad.

Law 130/2015, of 4 September, introduced amendments in the Code of Criminal Procedure and approved the Victims Statute, transposing into Portuguese legal order the Directive 2012/29/ EU, of October 2012, laying down rules on the rights, support for and protection of victims of crime.

Portuguese legislation does not differentiate victims according to the crime they have suffered, but only victims of violent crime and victims of domestic crime. According to the definitions set forth in Article 2 (j) of the Code of Criminal Procedure 'violent crime' means conduct which is committed intentionally against the life, physical integrity or freedom of a person and punishable by imprisonment of a maximum of 5 years or more. According to paragraph (l) of the same provision 'particularly violent crime' means the conduct provided for in the previous paragraph punishable by imprisonment of a maximum of 8 years or more.

The Commission for the Protection of Victims of Crime is the Ministry of Justice body responsible for receiving, analysing and deciding on State compensation claims brought by victims of violent crime and victims of domestic violence, where victims of terrorism are included.

Information for victims of crime is available in the courts, in any police station and on-line, in the Portuguese and English languages and a victim support helpline works in a 24/7 basis (free call to 116 006).

(<https://cpvc.mj.pt/> and http://infovitimas.pt/pt/en/001_home/001_infovictms.html)

The Law on Nationality was amended in 22 June 2015, through the Organic Law 8/2015. According to the new wording the Public Prosecution Service may oppose to a procedure for acquisition of the Portuguese nationality by marriage or other family relationship, if the concerned person represents a

threat to the national security and/or is involved in terrorist activities.

The same applies to the acquisition of citizenship via naturalization, where, according to the former version of the law, one could not acquire the Portuguese citizenship if the person was convicted for having committed any serious crime. Under the revised wording of the Law on Nationality, a person could not acquire the Portuguese citizenship either if he or she represents a threat to the national security or is involved in terrorist activities.

INSTITUTIONAL FRAMEWORK

According to the existing judicial organization and to the Code of Criminal Procedure, the Public Prosecution Service (MP - Ministério Público) is the entity responsible for the investigation of all crimes foreseen in the Portuguese legislation and could delegate the said investigation in the law enforcement authorities. The investigation of terrorism and other related crimes are centralized in the Central Department for Criminal Investigation and Prosecution (DCIAP), a special department of the MP based in Lisbon, which is competent for all the Portuguese territory.

As previous referred to, Law 49/2008, of 27 of August, establishing the organization of criminal investigation, states that the Criminal Police (Polícia Judiciária) is the solely law enforcement authority that has the exclusive competence for the investigation of terrorism, terrorism financing and other serious crimes.

As a scientific and specialized police, the Criminal Police created within its structure, in 2008, the National Counter Terrorism Unit, which replaced the former Central Department for Combat the Banditry (DCCB). Other law enforcement authorities in Portugal only have competence for the general prevention in what regards terrorism.

A Financial Intelligence Unit (FIU) was created in 2002, within the Criminal Police, dealing particularly with money laundering and the financing of terrorism and proliferation, according to FATF Recommendations, the UN and CoE Conventions and EU legislation. The FIU is responsible for receiving, analysing and sending to the Public Prosecution Service any information about suspicious transactions, reporting of money laundering and terrorism financing, as well as for the working with other entities with capacity to control financial flows and other financial transactions, namely the supervisory authorities of the financial sector and the oversight authorities of DNFBP – Designated Non-Financial Businesses and Professions. The FIU is a member of the Egmont Group.

In 2011 the Assets Recovery Office (GRA) was created under the remit of the Criminal Police. GRA can perform criminal, financial and patrimonial investigations and has, as mission, the role of

identification, tracing and freezing of proceeds from, or property related to, crime, either at national or international level, to ensure the cooperation between assets recovery offices of other States and to perform all other powers legally conferred upon it. GRA is also entrusted with the collection, analysis and processing of statistical data on the freezing, confiscation and allocation of proceeds from, or property related to, crime.

The same law – Law 45/2011, of 24 June – created the Property Management Office (GAB) within the Institute for Financial Management and Justice Infra-structures, I.P. (IGFIJ, I.P.) in order to deal with the management of seized and confiscated property in the scope of national proceedings or of international judicial cooperation.

Portugal established a Counter-Terrorism Coordination Unit (UCAT), where all the law enforcement authorities and intelligence services are represented, as well as the Public Prosecution Service, is the body responsible for the coordination and sharing of information, within the scope of the threat and the fight against terrorism. One of the tasks of this unit is to coordinate the implementation plans of the actions foreseen in the National Strategy to Combat Terrorism and, in the field of international cooperation, the coordination between the contact points for the different areas of intervention in the field of terrorism.

The UCAT performs its tasks within the scope of the Internal Security System, is coordinated by the Secretary-General of the Internal Security System and is directly dependent on the Prime Minister.

The internal organization of the UCAT is set forth in the Regulatory Decree 2/2016, of 23 August 23, establishing the organization and operational functioning of the Unit, so as to achieve quality in the cooperation, based on centralization and specialization, in order to provide a more flexible and appropriate answer to the coordination and sharing of information, as well as to the purposes of the National Strategy to Combat Terrorism.

The National Strategy to Combat Terrorism was approved in 2015 by the Resolution of the Council of Ministers 7-A/2015, of 19 February, which is based on the commitment to eliminate terrorism in all its manifestations, based on the following strategic objectives - detect, prevent, protect, pursue and respond:

1. Detect - Identify early potential terrorist threats by acquiring the essential knowledge for effective combat, both in terms of their isolated dismantling and the detection of other foci of terrorist actions. The collection, treatment and analysis of data and information and their mutual availability between entities responsible in this field, in the national territory and abroad, allows to anticipate the knowledge and the evaluation of offensives in preparation;

2. Prevent - To know and identify the causes that determine the emergence of processes of radicalization, recruitment and terrorist acts. The mastery of the facts that promote its expansion allows for the adoption of measures that hinder its emergence and development;

3. Protect - Strengthen the security of priority targets, reducing both their vulnerability and the impact of potential terrorist threats. Protection is achieved by increasing the security of persons, borders, the movement of capital, goods, transport, energy and critical national and/or European infrastructures;

4. Pursue - Dismantle or neutralize planned or on-going terrorist initiatives and their support networks, prevent displacement and communications, and access to financing and materials for use in terrorist attacks and to bring terrorist phenomena to justice;

5. Respond - Operationally manage all means to be used in reaction to terrorism occurrences. Responsiveness can limit the consequences, both at the human level and at the level of infrastructures. The response also concerns assistance, taking into account the special needs of victims and witnesses.

Under this Strategy, the UCAT has increased powers and a coordinating role for the execution of the actions set out in the strategy, by strengthening cooperation with the military forces, law enforcement authorities and intelligence agencies, and enhancing international cooperation.

A mention should also be made to the Commission for the Coordination of Policies for the Prevention and Combating Money Laundering and the Financing of Terrorism created by Resolution of the Council of Ministers 88/2015, of 1 October, operating under the Ministry of Finance.

This Commission has the mission of monitoring and coordinating the identification, evaluation and response to ML/FT risks to which Portugal is or will be exposed, contributing to the continuous improvement of the technical compliance and effectiveness of the national AML/CFT system.

The main attributions are to evaluate and propose the adoption of policies necessary for the continuation of the national strategy to prevent and combat ML/FT; to conduct national AML/CFT risk assessments, coordinating the identification, analysis and mitigation of such risks; to assess the technical compliance and effectiveness of the national system for preventing and combating ML/FT; to contribute to improving the quality, completeness, consistency and reliability of relevant statistical data in this field; to propose legislative, regulatory and operational measures; to contribute to the elaboration and dissemination of sectoral orientations aimed at ensuring the adoption of best practices in the prevention and control of ML/FT

by the entities subject to it; to promote the dissemination of relevant information to the prevention and control of the ML/FT, both for the subject entities and for the general public; to promote the coordination and cooperation among all authorities with responsibility for preventing and combating ML/TF; to proceed with the identification and periodic assessment of ML/FT risks specifically associated with non-profit organizations; to prepare assessments of the national AML/CFT system requested by supranational bodies with competence in the matter, as the FATF; to cooperate with the competent authorities in the implementation of restrictive measures adopted by the United Nations, the European Union or other international organizations in the national territory.

All the supervisory authorities of the financial sector as well as the oversight authorities of the DNFBP set forth in Law 83/2017, the Criminal Police, the FIU, DCIAP, the intelligence services and officials of different Ministries are represented in the Commission for the Coordination of Policies for the Prevention and Combating Money Laundering and the Financing of Terrorism.

Within the framework of the Commission, Portugal approved in June 2015 its first National Risk Assessment of ML/TF and the update work is currently on-going. Effectively, the elaboration of threat and risk assessments increased in terms of periodicity and diversity as a result of Portugal's participation in several international fora, namely at the level of the FATF and EU.

Regarding the prevention of terrorism, border control and surveillance is incumbent upon the Borders and Immigration Service (Serviço de Estrangeiros e Fronteiras) along with the Directorate General of Maritime Authority (direção-Geral da Autoridade Marítima) as for the sea border.

Several cooperation agreements concluded with the Kingdom of Spain are in force in what regards the control of land border between the two States. These agreements allow permanent joint work, namely joint offices placed along the border control line – including the feasibility for initiating pursuit and/or surveillance operations – and information exchange. Despite of the fact that such agreements aim, in the first place, at preventing cross border crime, and are relevant for the fight against illegal immigration, they are also important for the prevention and fight against terrorism.

Airport security matters are incumbent upon a structure specifically created for such a purpose at national and local level (in each international airport), with the involvement of the following organisations: National Institute for Civil Aviation (Instituto Nacional de Aeronáutica), Public Security Police (Polícia de Segurança Pública), National Republican Guard (Guarda Nacional Republicana), Airport and Port Authority (Administração Aeroportuária) and Borders and

Immigration Service (Serviço de Estrangeiros e Fronteiras).

INTERNATIONAL CO-OPERATION

Portugal attaches great importance to international cooperation, be it multilateral or bilateral.

According to Article 8 of the Constitution of the Portuguese Republic, the norms and principles of general or common international law are an integral part of Portuguese law. The norms contained in duly ratified or approved international conventions come into force in Portuguese internal law once they have been officially published, and remain so for as long as they are internationally binding on the Portuguese State.

The norms issued by the competent organs of international organisations to which Portugal belongs come directly into force in Portuguese internal law, on condition that this is laid down in the respective constituent treaties. The norms and principles of general law form an integral part of Portuguese law.

The provisions of the treaties that govern the European Union and the norms issued by its institutions in the exercise of their respective competences are applicable in Portuguese internal law in accordance with Union law and with respect for the fundamental principles of a democratic state based on the rule of law.

Law 144/99, of 31 August, on international judicial cooperation in criminal matters, is applicable to extradition, transfer of proceedings in criminal matters, enforcement of criminal judgements; transfer of sentenced persons to a punishment or measure involving deprivation of liberty, supervision of conditionally sentenced or conditionally released persons and to mutual legal assistance in criminal matters. This law is subsidiarily applicable where the provisions of the international treaties, conventions and agreements that bind the Portuguese State are non-existent or do not suffice. Reciprocity could also be used in the framework of international cooperation.

Law 65/2003, of 23 August, on the regime of the European Arrest Warrant regimen, is an important cooperation tool between European Union States and is applicable to terrorism.

Portugal ratified the Council of Europe Conventions on international judicial cooperation, as the Convention on Extradition or the Convention on the Transfer of Sentenced Persons, ratified the three Conventions adopted within the Conference of Ministers of Justice of the Portuguese Speaking Countries (Extradition, Transfer of Sentenced

Persons and Mutual Legal Assistance) and celebrated a number of bilateral agreements on the same matters as well on cooperation for the fight against transnational organized crime and terrorism.

Seventeen of the 19 terrorism related UN Conventions have been ratified by Portugal. Portugal support the work of the UN Security Council and the obligations from the Resolutions approved by this body in the field of fight against terrorism, as well as the work carried out by the Counter-Terrorism Committee (CTC) which is responsible for the examination of the implementation of the sanctions in the UN Member States.

In relation to this issue, Law 97/2017, of 23 August, regulates in Portugal the implementation and enforcement of restrictive measures by the United Nations or the European Union and lays down the rules on penalties applicable to the infringements of these measures.

Besides its participation in the EU working groups related to terrorism, radicalization and violent extremism and in EUROPOL, EUROJUST and INTERPOL activities, Portugal participates in other international organizations and bodies as the OSCE, the FATF or the G4 (Portugal, Spain, France and Morocco).

In the framework of the Portuguese Speaking Countries Community, the approval of the "Declaration of the CPLP on Combating International Terrorism", in 31 of October 2001, illustrate the commitment of Portugal to promote awareness in the prevention and fight terrorism.

Due to its efforts during the Portuguese Presidency of the OSCE, it was adopted in December 2002 the Charter for the Prevention and Fight against Terrorism, which provided the political basis for this organization initiatives and activities in the anti-terrorism field.

Technical assistance

Pursuant to the "Memorandum of Understanding" between Portugal and the UNODC - United Nations Office of Drugs and Crime, technical assistance has been provided to Portuguese-speaking countries - Angola, Mozambique, São Tome and Príncipe, Cape Verde, Guinea-Bissau and East Timor - in the framework of the assistance for the ratification and implementation of United Nations legal instruments, namely the Convention against Transnational Organized Crime and the respective Additional Protocols, the Convention against Corruption, the Conventions against Terrorism, including UNSC Resolutions such as Resolution 1373 (2001). Some of those States have found in the Portuguese experience an example to use in drawing up their reports to submit to the UN and, at the domestic level, in the preparation of measures applicable in the fight against international terrorism.

The Criminal Police, the National Unit against Terrorism and the FIU have also participated in training actions in the prevention and fight against terrorism and terrorism financing with their counterparts of the Portuguese speaking countries, either through training sessions in these countries or through the displacement of officials to Portugal.

Portugal is also involved in providing counterterrorism technical assistance in the context of the European Common Foreign and Security Policy (CFSP). Various national experts have been identified and made available to participate in EU-led technical assistance projects in the fields of radicalisation and recruitment, false documentation and airport and maritime security.

Relevant Council of Europe Conventions - Portugal	Signed	Ratified
European Convention on the Suppression of Terrorism (ETS 90)	27/01/1977	14/12/1981
Amending Protocol (ETS 190)	15/05/2003	25/11/2015
European Convention on Extradition (ETS 24)	27/04/1977	25/01/1990
First Additional Protocol (ETS 86)	27/04/1977	25/01/1990
Second Additional Protocol (ETS 98)	27/04/1978	25/01/1990
European Convention on Mutual Assistance in Criminal Matters (ETS30)	10/05/1979	27/09/1994
First Additional Protocol (ETS 99)	12/08/1980	27/01/1995
Second Additional Protocol (ETS 182)	08/11/2001	16/01/2007
European Convention on the Transfer of Proceedings in Criminal Matters (ETS 73)	10/05/1979	-
European Convention on the Compensation of Victims of Violent Crimes (ETS 116)	06/03/1997	13/08/2001
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141)	08/11/1990	19/10/1998
Convention on Cybercrime (ETS 185)	23/11/2001	24/03/2010
Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS 189)	17/03/2003	24/03/2010
Council of Europe Convention on the Prevention of Terrorism (ETS 196)	16/05/2005	19/08/2015
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS 198)	16/05/2005	22/04/2010
Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (ETS 217)	22/10/2015	01/07/2017