



**Law No. 5/2002,  
of 11 January 2002**

**MEASURES FOR THE FIGHT AGAINST ORGANISED CRIME**

*as amended by Law 19/2008, of 21 April 2008, Decree-Law 317/2009, of 30 October 2009, Law 60/2013 of 23 August 2013, Law 55/2015 of 23 June 2015 and Law 30/2017 of 30 May 2017*

This Law lays down measures for the fight against both organised and economic and financial crime, introducing a second amendment to Law 36/94 of 29 September 1994, as amended by Law 90/99 of 10 July 1999, and a fourth amendment to Decree-law 325/95 of 2 December 1995, as amended by Law 65/98 of 2 September 1998, by Decree-law 275-A/2000 of 9 November 2000 and by Law 104/2001 of 25 August 2001.

Pursuant to article 161(c), of the Constitution of the Portuguese Republic, the Assembly of the Republic does hereby pass and decree as follows:

**CHAPTER I**

**Article 1  
Scope**

(1) This Law lays down a special regime on collection of evidence, breach of professional secrecy and confiscation of property regarding the following criminal offences:

- (a) illicit drug trafficking pursuant to articles 21 to 23 and 28 of the Decree-Law No. 15/93 of 22 January 1993;
- (b) terrorism, terrorist organisations, international terrorism and financing of terrorism;
- (c) illicit trafficking in weapons;
- (d) trading in influence
- (e) undue receiving of advantage



- (f) active corruption (offering/granting) and passive corruption (soliciting/accepting);
- (g) embezzlement;
- (h) unlawful economic advantage in a transaction
- (i) money laundering;
- (j) criminal association;
- l) child pornography and incitement to child prostitution
- m) damage regarding computer programs or other computer data and computer sabotage pursuant to articles 4 and 5 of Law 109/2009 of 15 September 2009, as well as unlawful access to a computer system, where one of the results provided for in article 6(4) of the said Law has been produced or is attained with recourse to one of the said instruments or constitutes one of the conducts typified by paragraph 2 of the said article;
- n) trafficking in persons;
- o) counterfeiting of currency and of titles equivalent thereto;
- p) incitement to prostitution;
- q) smuggling;
- r) trafficking in, and tampering with, stolen vehicles.

(2) The provisions laid down in this Law do not apply to the criminal offences falling within subparagraphs (p) to (r) of the preceding paragraph unless the criminal offence is committed in an organised manner.

(3) The provisions set forth in Chapters II and III are further applicable to the other criminal offences referred to in article 1(1) of Law No 36/94 of 29 September 1994.

(4) The provisions laid down in Chapter IV, Section II, are further applicable to the criminal offences provided for in Law 109/2009 of 15 September 2009 provided they are



not covered by paragraph (1)(m) of this article.

*[Wording introduced by Law 19/2008 of 21 April, Law 60/2013 of 23 August and Law 55/2015 of 23 June 2015]*

## **CHAPTER II**

### **Professional secrecy**

#### **Article 2**

#### **Levy of secrecy**

(1) While the Inquiry, the Examining and the Trial stages of cases regarding criminal offences covered by article 1 above are running, the professional secrecy to which board members of credit institutions, financial enterprises, payment institutions and electronic money institutions, their staff or service providers are subject is levied where there are grounds to believe that the information they can provide is relevant to the determination of the truth. The same applies to the secrecy which tax administration officials are subject to.

(2) For purposes of this Law the provisions laid down in the preceding paragraph depend solely upon a duly motivated order given by the judicial authority entrusted with the direction of the case.

(3) The order referred to in the preceding paragraph shall identify the persons covered by the measure, and it shall further specify the information to be disclosed and the documents to be made available. If specific details are not feasible, the order may have a generic feature adequate to each of the concerned persons.

(4) Where the identification of the holder(s) of the accounts or the person(s) involved in the bank operations is unknown, the identification of the accounts and transactions in relation to which information is sought shall suffice.



(5) In case of information concerning either a defendant in the case or a legal person, the order mentioned in paragraph 2 above acquires a generic form, and it shall include:

- (a) tax information;
- (b) information on bank accounts or payment accounts - and related operations - of which the defendant or the legal person is the holder or co-holder or in relation to which the defendant or the legal person has powers to make transactions;
- (c) information on banking and financial transactions, including payments and issuing operations, distribution and return of electronic currency, in which the defendant or the legal person intervenes;
- (d) identification of other stakeholders intervening in the transactions mentioned in (b) and (c) above;
- (e) documents supporting the information mentioned in the preceding paragraphs.

(6) For purposes of the provisions laid down in the preceding paragraphs, the judicial authorities and the criminal police bodies entrusted with investigation powers shall have access to the tax administration databases.

*[Wording introduced by Decree-Law 317/2009 of 30 October 2009]*

### **Article 3**

#### **Procedure regarding credit institutions, finance corporations, payment institutions and public money institutions**

(1) After issuance of the order mentioned in the preceding article the judicial authority or, upon its delegation, the criminal police body with powers to investigate shall request the credit institutions, the finance corporations, the payment institutions and the electronic money institutions to provide the relevant information and supporting documents, or copy thereof.



(2) The credit institutions, the finance corporations, the payment institutions and the electronic money institutions are obliged to provide the requested elements within:

- a) 5 days, as regards available information kept in computer-readable form;
- b) 30 days, as regards the supporting documents and information that are not available in computer-readable form. This time-limit is reduced by half in case of arrested or detained defendants.

(3) If the request is not be executed within the given deadline, or if there are grounded suspicions that documents or information have been kept concealed, the judicial authority in charge of the case shall seize the concerned documents. Seizure must be authorised by the Examining judge if made during the Enquiry stage.

(4) Documents deemed unnecessary shall be returned to the entity that has provided them, or they shall be destroyed in case of copies. A report thereof shall be drawn up.

(5) If the institutions mentioned in paragraph 1 above remain unknown, the judicial authority directing the case shall ask the Portuguese central bank *Banco de Portugal* to disseminate the request for information.

(6) The credit institutions, the finance corporations, the payment institutions and the electronic money institutions shall communicate to the Prosecutor General's Office the name of a central entity responsible for satisfying the requests for information and documents.

*[Wording introduced by Decree-Law 317/2009 of 30 October 2009]*



## **Article 4**

### **Control of bank accounts and payment accounts**

(1) Control of a bank account or of a payment account imposes on the respective credit institution or payment institution the obligation to report any account operations to the judicial authority or to the criminal police body within the subsequent twenty-four hours.

(2) The control of a bank account or of a payment account is authorised or ordered, as applicable, by way of an order given by the judge, should it be of great relevance to the determination of the truth.

(3) The order referred to in the preceding paragraph identifies the account(s) covered by the measure, its duration and the judicial authority or criminal police body responsible for the control.

(4) The order provided for in paragraph 2 above may also include the obligation to suspend operations specified thereunder, whenever such a measure is necessary for preventing the commission of the offence of money laundering.

(5) The suspension ceases in case it lacks confirmation by the judicial authority within forty-eight hours.

*[Wording introduced by Decree-Law 317/2009 of 30 October 2009]*

## **Article 5**

### **Duty of secrecy**

The persons referred to in article 2(1) hereabove shall be bound by secrecy pending criminal investigation in respect to those acts laid down in articles 2 to 4 that may come



to their knowledge. The said persons may not, in particular, disclose them to the persons whose accounts are being controlled or in relation to which information or documents have been requested.

### **CHAPTER III**

#### **Other means of obtaining evidence**

##### **Article 6**

##### **Audio and video recordings**

(1) Whenever they are deemed necessary for the investigation into the criminal offences referred to in article 1 above, audio and video recordings are admissible by whatever means, without the consent of the person concerned.

(2) These recordings require a prior authorisation or the judge's order, according to the cases.

(3) The formalities laid down in article 188 of the Criminal Procedure Code are applicable to the recordings obtained subject to the necessary adaptations.



## **CHAPTER IV**

### **Confiscation of property**

#### **Article 7**

##### **Extended confiscation**

(1) In case of conviction for a criminal offence referred to in article 1 above, and for purposes of a confiscation order, any difference between the value of the convict's estate and the value proportionate to his or her lawful income is construed as advantage deriving from a criminal activity.

(2) For purposes of this Law, the defendant's estate means:

- a) property owned by the defendant, or property under his control or her or to his or her benefit, at the moment when s/he acquires the status of defendant or subsequently thereto;
- b) property transferred to third parties during the five-year period prior to his or her acquiring status of defendant, against a trivial compensation or gratuitously;
- c) property received by the defendant during the five-year period prior to his or her acquiring the status of defendant, even if the disposal thereof remains unknown.

(3) Any interests, financial gains or other benefits derived from property complying with the requirements set out in article 111 of the Criminal Code are always considered advantages from criminal activities.





## **Article 8**

### **Request for confiscation**

(1) The amount to be confiscated is settled by the Public Prosecutor in the indictment.

(2) Should it be impossible to make the settlement at the moment the indictment is produced, it may be made directly in the file prior to the 30<sup>th</sup> day immediately preceding the date on which the first trial session takes place.

(3) The settlement thus made may be altered within the time-limit set forth in the preceding paragraph, in case the inaccuracy of the previously set value is perceived at a later moment.

(4) Upon deposit of the settlement amount, or of any alteration thereof, before the Court, service thereof is immediately made on the defendant and his or her counsel.

## **Article 9**

### **Evidence**

(1) Without prejudice to the court general consideration of the evidence contained in the file, the defendant may demonstrate the lawful origin of the property referred to in paragraph 2 of article 7.

(2) For the purposes of the preceding paragraph, any evidence deemed valid under criminal procedure is acceptable.

(3) The assumption set forth in article 7(1) above is rebutted where proof is given that the property:



- a) Was originated by income deriving from lawful activities;
- b) Was owned or acquired by the defendant in the five-year period, at least, prior to his or her acquiring the status of defendant;
- c) Was acquired by the defendant with income obtained during the lapse of time set above.

(4) Where settlement of the value to be confiscated is included in the indictment, challenge thereof must be produced in the pleadings. If settlement takes place at a later moment, challenge thereof must be produced within a 20-day period counted from service of the settlement.

(5) The evidence referred to in paragraphs 1 to 3 above is produced together with the challenge.

## **Article 10**

### **Restraint**

(1) The restraint of the defendant's property is ordered for purposes of guarantee of payment of the value set out under article 7(1).

(2) The Public Prosecutor requests the restraint of the defendant's property at any time, amounting to the value considered an advantage derived from the defendant's criminal activities.

(3) The restraint is ordered by the judge whether or not the requirements set out in article 227(1) of the Criminal Procedure Code are complied with, should there be strong evidence of the commission of the criminal offence.



(4) The regime of provisional restraint provided for in the Criminal Procedure Code applies to the restraint, unless the provisions laid down in this law are contravened.

### **Article 11**

#### **Amendment to, and extinction of, the restraint**

(1) The restraint ceases where a deposit is made for the amount specified in article 10(1) hereabove.

(2) Where, at any later moment of the case, it is determined that the value liable to confiscation is lower or higher than the one initially set out, the Public Prosecutor requires the decrease or the increase of the restraint, as appropriate.

(3) Both the restraint and the deposit are extinguished upon the rendering of the final acquittal decision.

### **Article 12**

#### **Confiscation statement**

(1) The value to be confiscated is stated by the court in the condemnatory decision pursuant to article 7 hereabove.



(2) Where this value is lower than the one amounting to the restrained property or the deposit made, either one is reduced to the correct value.

(3) Where no deposit has been made, the defendant may pay voluntarily the amount set out in the preceding paragraph within the 10 days that follow the *res judicata*, case in which the restraint shall be extinguished.

(4) Should no payment be made, the restrained property is confiscated.

(5) In case no property has been restrained or its value is not enough to pay the concerned amount, and should there exist other available property, the Public Prosecutor launches an enforcement proceedings.

#### **Article 12-A**

##### **Financial and property investigation**

For purposes of investigation and tracing of any property deemed non proportionate under article 7 above, the financial or property investigation may be made after closure of the inquiry for the cases provided for in article 8(2), and for purposes of the enforcement launched under paragraph 5 of the preceding article, even after conviction, within the limits set out in article 112-A of the Criminal Code.

The conditions of the enforcement by way of fees shall apply.

*[Wording introduced by Law 30/2017 of 30 May 2017]*



## **Section II**

### **Confiscation of documents**

#### **Article 12-B**

##### **Confiscation of documents**

(1) The instruments of the typified illicit act referred to in article 1 are confiscated, even if they pose no danger to the persons' safety, to the public morals or the *ordre public*, or even if there is no serious risk of them being used for the commission of further typified illicit acts.

(2) The provisions laid down in the Criminal Code or in special legislation shall apply to confiscation of instruments as provided for in the preceding paragraph, provided the provisions laid down therein are not contravened.

*[Added by Law 30/2017 of 30 May 2017]*

## **CHAPTER V**

### **Penalties**

#### **Article 13**

##### **Untruthful information**

(1) Any person who, being a member of the governing bodies of a credit institution, of a financial enterprise, of a payment institution or an electronic money institution, or being one of their employees or services provider, or a tax administration employee, discloses information or provides false or misleading documents in the scope of a procedure ordered under chapter II shall be sentenced to imprisonment ranging from 6 months to 3 years or to fine not less than 60 days.



(2) The same penalty applies to any person who unjustifiably refuses to disclose information or to provide documents, or to any person who precludes the seizure thereof.

*[Wording introduced by Decree-Law 317/2009 of 30 October 2009]*

## **Article 14**

### **Administrative offences**

(1) Failure by the credit institutions, financial enterprises, payment institutions or electronic money institutions to comply with the obligations falling within chapter II above is deemed to be an administrative offence to which corresponds an administrative fine ranging from 750€ to 750 000€ .

(2) Should non-compliance be repeated, both the maximum and minimum limits of the administrative fine are doubled.

(3) In case of negligence the maximum limit of the administrative fine is reduced by half.

(4) Proceedings for administrative offences falling within the preceding paragraphs are entrusted to the authority responsible for the supervision of the respective sector in respect to each entity.

(5) It is incumbent on the Minister of Finance to impose the sanctions provided for in paragraphs 1 to 3 of this article.

*[Wording introduced by Decree-Law 317/2009 of 30 October 2009]*



**CHAPTER VI**  
**Final Provisions**

**Article 15**  
**Repealing provisions**

The following provisions are hereby repealed:

- a) Article 5 of Law 36/94 of 29 September 1994, in the wording introduced by Law 90/99 of 190 July 1999;
- b) Article 19 of Decree-Law 325/95 of 2 December 1995.

**Article 16**  
**Entry into force**

This law enters into force 30 days after its publication.

Passed on 31 October 2001.

The President of the Assembly of the Republic, António de Almeida Santos

Enacted on 19 December 2001.

For publication

The President of the Republic, JORGE SAMPAIO.

Submitted to referendum on 27 December 2001.

The Prime Minister, António Manuel de Oliveira Guterres.